A Basis for Deriving the "Ought" from the "Is"

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I am addressing some issues here which have been on my mind for years. I have had a persistent, if not elaborately developed, concept of how the "ought" is derived from the "is", and of "natural law," which seems to me different from that of anyone else I have read. The first part of this paper was written about a decade ago, but I did not pursue it further. The second half was written this year in an attempt to clarify for myself what was bothering me about the presentation of Northrup's and Fuller's theories in a doctoral dissertation. When I compared the two versions it occurred to me that my fundamental view has not changed over the years, and that they could be put together as a whole with only a slight amount of repetition. This is the fundamental view I have held for perhaps two decades without ever getting any feedback on it so I take this occasion to ask for your feedback.

It seems to me that most of the claims that the "ought" cannot be derived from the "is" are based on the presumption that the "ought" is categorical. But it seems to me that not enough attention has been paid to the possibility that the "ought" is essentially hypothetical. Utilitarianism has been rejected out of hand because its opponents suppose that one must accept the whole package, including its dependence on *results* rather than *intentions*. What I am about to propose, though not utilitarianism, shares some characteristics with it. This is only a preliminary investigation and I am not sure I want to make a universal claim here, but I will claim that in my own experience, my own use of the term over the years, the "ought" has in fact been an expression which points to the optimal perceived course by which to achieve a particular goal or value. The goals and values are facts. The hypothetical imperative begins with a fact, an "is," which is a value, and derives as "ought" as the practical method for realizing that value: if X wants Y, then X ought to do Z.

Let me offer a simple example. I am a being who wants to live a happy life. But I am dependent upon a certain social order for what I would count as that happy life. Therefore I *ought* to work to maintain that social order (or create if it does not yet exist). The ought here is purely hypothetical and is not universally applicable to anyone who does not want to live the happy life as I would define it. But one might be able to find a scientific basis for establishing certain desires (goals, values) as common to *all* human beings, and scientific evidence that certain actions are the

most likely to lead to these ends. In fact, I believe that it is the case that we have certain common ends as rational, social animals, and that dysfunctions such as suicide which might indicate the contrary can be explained. Should we be able to establish such a common set of ends (more fundamental than minor variations in taste), then we could establish a universally valid "ought" derivable solely from what "is" universally the case for all human beings.

Then, the question with which G. E. Moore might reply would be "but ought we to do what we need to do to achieve our goals?" or "ought we to desire what we desire?" His question seems to make sense until we remember that what I mean by ought in this case is the scientifically determinable practical method to achieve our goals; then his questions fail to make sense. Moore is using a different sense of the "ought," the very unfounded mystified absolute categorical one he is trying to reject, but the fact that he can use it differently from my usage is not a refutation of my usage. Maybe his (categorical?) usage cannot be derived from the is; but mine (the hypothetical one) can. What I am not sure about is whether or not his usage does not rest on a category mistake, an abstraction from its original meaning which no longer has any concrete basis. If my usage were the original usage of the term (I have not done any philological study of this possibility--but let us suppose for a moment that I am correct), then his questions would presume that there is some reason (based on some *other* value) why I ought not to do what I need to do to achieve happiness, e.g., when it conflicts with my God-given duty. But would it make any sense to say that I "ought" to do my God-given duty when I don't want to (for any reason, such as fear of eternal punishment, desire to help others, etc.)? It seems to me that any "ought" must rest, ultimately, on some desire on my part to perform it, no matter how many steps removed the desired consequences.

We can ask Moore "why ought I to do what I ought to do?" It is a question which makes as much sense as the questions he asks (like "ought I to seek pleasure?"). But what would count as an answer that did not appeal to some criticism outside of and beyond the ought?

The greatest problem for me in Ethics is that we constantly face the issue of conflicts of interest. As Hegel said, evil is nothing but the conflict of goods. The solution to that is not an easy one, for it requires the establishment of a hierarchy of values, and this is difficult for one person to do systematically, much more in a society with a great diversity of values. Legal systems are the results of inadequate and confused attempts to formulate such hierarchies universally. I look forward to the day in which we succeed in creating for ourselves a harmoneous and comprehensive system which will allow each individual the maximum fulfillment of his particular potentialities in harmony (or ecological balance) with each other.

Unfortunately, we have never been able to come to any agreement about what "human nature" is, so that we do not yet have a scientific basis for a naturalistic

ethic. The ancient tradition, that we are the rational animal, has been strongly challenged, and with that challenge goes the basis for the "Categorical Imperative." But what we have overlooked is the possibility that the hypothetical imperative is basis enough for Ethics. I am not suggesting a utilitarian ethic based on future results, for the ultimate results of any particular action will never be known. It is enough that we "ought" to act upon the optimal perceived path (to a particular goal) (since our knowledge is always limited); thus the "ought" is based upon intention, not results. This was my argument a decade ago. Now we turn to last year's version of the same argument in a similar context.

My argument regarding how the "ought" is derived from the "is" is very simple. I was interested in Northrup's claim that the "ought" can be derived from the "is" and that "natural law" theory can be based on scientific fact; but he never told us *how* to do it. Lon Fuller in "American Legal Philosophy at Mid-Century" points out that "purpose" is a fact, but as a direction-giving fact it is a standard for judging other facts. From this starting point I would go on to claim that, whereas Kant played down the value of the hypothetical imperative in favor of the Categorical Imperative, it is really the hypothetical imperative that is the basis of all morality, though not all hypothetical imperatives are moral. One's purpose is a fact; a person may or may not want X (fact); but *if* one wants X, then one *ought* to do Y in order best to achieve X. That is, the *ought* is a statement of the best, or optimal way to achieve X; and what is optimal may be a matter which is also a matter of fact, or at least of probability, theoretically scientifically discoverable. For instance, such a hypothetical imperative can be seen in the statement "if one wants to be healthy in the long run, one ought not to smoke cigarettes." Whether he wants to be healthy in the long run (weighed against the pleasure he derives from smoking, etc.) is a matter of purpose (fact), and whether or not smoking damages health is a matter of scientifically determinable probability (regardless of whether or not that probability has been accurately determined to date). The ought in this case derives from two facts, one of which is a human purpose, or value.

Now this matter of smoking or not is only a matter of individual evaluation, an individual hypothetical imperative, and is not yet a matter of morality. I disagree with Kant that there are duties to oneself, for I am the *source* of value, not its slave or object. Because *I* am a social being, (i.e., need social order), I have social duties. It becomes a matter of morality when it affects other human beings or the ecosystem. The basis for morality stems from another fact (a contingent one about who human beings are as a result of evolutionary and historical conditions): human beings are, as Plato and Aristotle claimed, social beings. This is not a claim about an eternal absolute, but a fact of our present conditions. We are dependent on education, language, technology, and an elaborate social organization. It is not just that it would be difficult for anyone of us to go off and be hermits, completely

independent of all other human beings (after all, even animals are effected by human pollution and changes to the ecosphere -- so no hermit *could* be completely independent). But whereas a *few* may survive as hermits where there is sufficient food and water, it is not the case that *all* human beings could survive as hermits now, for there is a limited food and clean water supply in nature. Rather we collectively, are so completely dependent on technology, a complex economic and distribution system, and social organization that the horror of nuclear war is more likely to be the long term pollution and destruction of everyone's life support systems than the immediate deaths of large numbers of people. So, I believe it *is* a *fact* that we are social beings, and that there is a theoretically knowable optimum organization of society so as to achieve the optimum satisfaction of each and every person's desires. *If* there is an optimum way to achieve our desires (a matter of fact), *then* we ought to act so as to bring about that end. This I consider to be the *grundnorm*, the basic moral principle, the social hypothetical imperative. It is based on three contingent matters of fact (that is, the truth or falsity of my claims are theoretically scientifically verifiable): (fact 1) each human being desires the optimal satisfaction of his own purposes, (fact 2) he is a social being, and (fact 3) the maximum satisfaction of his purposes depends on the optimal organization of society. *If* these claims are true, *then* it follows that one *ought* to act so as to bring about the optimal social organization. This is all I mean by the moral "ought". All particular moral oughts will be based on this *grundnorm*, that is, they will be *means* of achieving the basic social end: e.g., one ought to respect law in general in so far as it is an attempt to achieve the basic end; one *ought* not to steal (including undeserved exploitation of the labor of others), lie, murder (including, for example, war between nations).

I am not claiming that what I *say* about what I ought to do is *logically* derivable from what I *say* is the case, for I am not doing language analysis. But, I am saying that what ought to be the case is grounded in a complex number of facts about the world. So my moral imperative is not of the form:

a) I desire X (e.g., to be healthy)

b) In order to achieve X I must do Y (e.g. give up smoking)

c) Therefore I ought to do Y.

That is the linear and individualistic form of ethical argument which has prevailed in most Anglo-American ethical thought. I can agree with Searle that one cannot *logically* derive a set of evaluative statements from a set of descriptive statements, but my facts *include* evaluations (desires are value-laden facts). My hypothetical imperative is of the following form (including both positive and negative reasons for considerations):

(fact a)   I desire myself and others to be happy,

(fact b)   I am a social being and thus maximizing the social harmony and well being or happiness depends on maximizing the social

harmony and well being or happiness,

(fact c)   My smoking causes irritation and illness in myself and others,

(fact d)   My smoking uses up valuable agricultural and capital resources which could be better used to meet other social needs as well as my monetary resources which could be better used to meet other personal and social needs,

(fact e)   Smoking affects my family and insurance rates,

(fact f)   Smoking gives me pleasure and calms my nerves,

(fact g)   Smoking dulls the senses of taste and smell to other possible pleasures and pains (this may be positive or negative depending on the quality of one's food and environment),

(fact h)   There is a social approbation in some circles and social disapprobation in others regarding smoking,

(fact i)   Being addicted to anything is demeaning,

(fact j)   The woman (or man) I love detests (or adores) smokers, (etc.; one might bring in any number of other factual points of personal social import),

therefore morally I ought to give up smoking because the points for far outweigh the points against. This is not a linear logical deduction but a weighing of reasons pro and con. What makes it *moral* is that it is not just a selfish calculation of personal benefits, but is done at a level beyond the personal, namely the social level. The work "ought" can be used in many non-moral senses, as when we say "the train ought to arrive at any minute now," but the moral ought is a calculation of benefits at both the personal and social levels at once.

Laws are simply the codification of the moral rules we derive in our attempt to optimize social order to meet human ends, with sanctions (rewards and punishments) added to be applied by those given that task by society. The deduction of particular moral rules from the *grundnorm* is a matter of scientific determination, or where science can not yet derive the answer, social agreement or belief (and one cannot expect that to be universal).

It seems to have been the traditional view of natural law that it is either based on some religious concept of divine reason, such that the law is an eternal, immutable truth deriving from divine authority, or a set of truths based on a concept of human nature which is itself immutable and eternal, such that the natural laws derived therefrom are absolute, immutable, and eternal. Opposed to that has been positive law theory which posits law to be a mere unfounded human artifact; in its Austinian extreme formulation it is merely the mutable "command of the ruler". That the ruler may be one person, many, or all universally in a democracy, and that such commands may be matters of evolved tradition (or based on "mores" which have evolved) makes them no less arbitrary. What I am proposing is a middle

ground between these extremes and I call it "natural law theory" because I believe it to be based on natural facts which are the foundations of an objectively valid morality, yet not absolute or eternal since they are as mutable as human nature and collective human ends.

My *grundnorm* could change e.g., *if* human beings ceased at some point in history (e.g., after a nuclear holocaust this year) to be social beings. But, the *grundnorm* is based on what this author perceives to be "human nature" now. This *grundnorm* is not Kelsen's empty *grundnorm*, for it has a content on the basis of which the content of lesser moral rules can be judged, and that is based on ends that human beings in *fact* have (though they may be ignorant of the *best* way to achieve those ends, which is why moral prescription and proscription and legal compulsion are necessary). Law can change as particular human ends and conditions change. But law can be judged good or bad (and bad law *ought* to be changed) in accord with whether or not it tends toward the optimization of human ends. I call this a natural law theory, as opposed to a positive law theory, because it claims that law *ought* to be derived from morality, which is derived from the facts of the human situation.