**Moral Rules and Political Action**

**A rule-consequentialist ACCOUNT of the relationship between ethics and politics**

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**Chapter One: INTRODUCTION**

**1.1 *Introduction***

There seems always to have been an uneasy and uncertain relationship between ethics and politics. In the practical day-to-day world most people have probably considered the two domains largely distinct, colliding only when politicians are revealed to have behaved in a manner inconsistent with private moral codes. This tendency towards detachment is rooted in the distant past. Christianity distinguished between spiritual and secular powers, [[1]](#footnote-1) and ideas spawned by the Renaissance, the Protestant Reformation and the Enlightenment all contributed towards the view that political and moral concerns had little connection with each other. Morality, many came to believe, is largely a private matter. People are responsible for their individual choices only to other individuals (or, perhaps, to God or to the dictates of Reason). Politics, on the other hand, involved practical decisions about how best to organise, govern and defend communities.

Prior to the twentieth century most philosophers took a different view, generally assuming an intimate connection between the academic study of ethics and politics. Both were considered normative disciplines, making substantive recommendations about human conduct. Thus Plato and Aristotle believed that the virtuous character of rulers ensured the flourishing of the state. Locke and Rousseau stressed the moral component of political obligation, and Millian Utilitarianism and Hegelian Idealism were simultaneously moral and political theories. Philosophical attitudes started to change in the early twentieth century, especially in Britain. The influence of logicians and philosophers of language of a Positivist bent became pervasive from the 1930s onwards. [[2]](#footnote-2) Emotivism, the moral theory most closely associated with Positivism, considered moral propositions merely to express subjective attitudes of approval or disapproval. To the extent that political philosophy was connected with ethics, it was also considered non-cognitive in nature. Differing viewpoints in political philosophy were reducible either to disagreements about facts or to mere assertions of opinion. Significantly, while most moral philosophers recognised (if only tacitly) the connection between their discipline and everyday moral practice, political philosophy hived off practical issues that had formerly been part of its remit to the new, empirically-based discipline of political ‘science’. [[3]](#footnote-3) This explicitly sought to exclude normative considerations. Most academic political philosophers also shunned normative investigation, restricting themselves to conceptual analysis. The apparently unchallengeable ascendancy of liberal democracy over rival political systems seemed, moreover, to render such investigation superfluous. As a result moral and political philosophy tended to drift apart. [[4]](#footnote-4) In the 1970s the writings of John Rawls and Robert Nozick signalled the ‘return of the normative’ to political theory, both employing Kantian moral theory in defence of their differing versions of liberalism. Rawls stressed ‘the central place of the study of our substantive moral conceptions’ in his theory of political justice, [[5]](#footnote-5) and Nozick insists that ‘Moral philosophy sets the background for, and the boundaries, of political philosophy’. [[6]](#footnote-6)

How, then, might ethics and politics be related? Initially there seem to be four possible answers. According to what we may call the Divergence Thesis, the domains are wholly unrelated. The Separability Thesis holds that despite occasional overlaps, they are largely separate. The Distinct Political Morality Thesis (DPMT) holds that the political domain has its own ethical system. Finally, the Assimilability Thesis – the position defended here – holds that ethics is a wider realm than traditionally conceived, and encompasses much of the political. [[7]](#footnote-7)

The Divergence Thesis is associated with Political Realism. The most prominent realist, Hans Morgenthau, denies any comprehensive scope to morality, and argues that it must be subordinated to political considerations: especially in the field of international relations. [[8]](#footnote-8) Some politicians have explicitly embraced Realism. Thus Dean Acheson, US Secretary of State, speaking about the Cuban missile crisis of October 1962, recalled that ‘…judgment centered about the appraisal of dangers and risks, the weighing of the need for decisive and effective actions against considerations of prudence…Moral talk did not bear on the problem’. [[9]](#footnote-9) However, the realist position seems unintelligible. Acheson’s decisions were underpinned by notions of duty and responsibility to the American people, and by the belief that what he considered the small risk of nuclear war between the US and the USSR was morally superior to capitulation to Khrushchev. Rather than deny the relevance of moral imperatives, he tacitly asserted the supremacy of a distinct political morality over everyday, ‘private’ morality. Advocates of the Separability Thesis do likewise. Niccolò Machiavelli famously wrote

…a man who wants to act virtuously in every way necessarily comes to grief among so many who are not virtuous. Therefore if a prince wants to maintain his rule he must learn how not to be virtuous, and to make use of this or not according to need…

A superficial reading of this and similar remarks suggests that Machiavelli is arguing for the divorce of political from moral considerations. However, in the next sentence he insists that the prince ‘must not flinch from being blamed for vices which are necessary for safeguarding the state’. [[10]](#footnote-10) Since ‘safeguarding the state’ is an objective that invokes norms, Machiavelli is evidently advocating an instrumental political morality, one that demands ruthless action of a kind condemned in private life. Machiavelli has many modern heirs, the most brutal of dictators invoking ‘the good of his people’ to justify unleashing terror upon them.

More generally, claims that morality is irrelevant to or separate from politics are incoherent just because their proponents almost invariably justify those claims by reference to what they consider morally desirable outcomes. Indeed, they typically fail to recognise that they are implicitly attributing moral value to those outcomes. For example, Anthony Quinton argues for separability partly with the observation that the self-avowed virtuous politician is more likely to act badly *because* she believes her decisions warranted by immutable moral principles. [[11]](#footnote-11) In other words, he advocates the separation of ethics from politics on *ethical* grounds.

These considerations suggest that those who advocate divergence or separability are really arguing that political conduct *is* or *should be* governed by a different morality from that which governs everyday private life. In other words, most arguments for divergence or separability are reducible to arguments for a distinct political morality. There is one exception: some philosophers argue that moral and political concepts should be investigated separately for *methodological* reasons. [[12]](#footnote-12) Much of my discussion is accordingly focussed on a critique of the DPMT and on defending the Assimilability Thesis.

Nevertheless, there are two apparently weighty arguments against assimilability. Firstly, ethics is widely considered to demand compliance with universal principles, such as ‘You should never harm innocent people’. However, political circumstances may be such that the sacrificing of innocent lives seems justifiable.If moral rules reflected universal and absolute truths they would indeed be largely irrelevant to political action. Secondly, expecting politicians and private citizens to adopt the same system of morality might lead to everyday morality being infused with the ruthlessness and cynicism that characterise much political decision-making. Private morality would be contaminated and hence weakened. Put differently, insisting that morality constitutes a seamless whole might have consequences nearly as harmful as acknowledging a distinct political morality. For example, British Foreign Secretary Robin Cook trumpeted an ‘ethical foreign policy’ to be adopted by the newly elected British Labour Government of 1997. [[13]](#footnote-13) However, the Government largely carried on the previous administration’s practice of permitting arms sales to unsavoury regimes. While some concluded that moral concerns were largely irrelevant to the political process, others considered the Government to have added the vice of hypocrisy to that of profiting from the misery of others. In short, the use of the word ‘ethical’ by politicians could be construed as debasing the notion of the ethical. [[14]](#footnote-14)

Although these two arguments point in opposite directions, in both cases (it is argued) having a distinct political morality would preserve the purity of private morality by upholding, say, the inviolability of rules prohibiting lying and promise-breaking in everyday life. I pursue several strands of argument aimed at demonstrating that this line of reasoning is fallacious: including an extended defence of Rule-Consequentialism as the explanatorily most successful normative theory, and demonstrating that public and private are not dichotomous concepts. Most importantly, I argue that a system of exceptionless, universally valid and inviolable moral rules neither can nor should form the basis of our moral reasoning. Moreover, distinguishing between *morality* and *moral code* permits the understanding that one moral system may encompass different codes appropriate to different walks of life. We must obviously acknowledge that political agents have wide and diffuse responsibilities differing markedly from those of private individuals. They are more likely to encounter moral conflicts than are private citizens, and must also handle issues that affect large numbers of people with whom they have no direct relationship. It is therefore appropriate that they follow specific codes, but their actions will still be governed by the same moral system that applies to all.

I treat several topics that might individually merit a whole book, but defend a broad-brush approach on the grounds that philosophers must sometimes attempt to answer very general questions. Indeed, a narrow focus on one area risks ignoring relevant ideas in related areas. For example, investigations into moral luck modify our understanding of dirty hands problems, which in turn affect claims about the existence of a distinct political morality. An adequate account of moral luck might also support Rule-Consequentialism. Again, an account of (say) Machiavelli’s influence on contemporary political philosophy would be ineffective against a background of inadequately defended normative assumptions. Indeed, one difficulty in investigating the ethics-politics relationship stems from the inadequate grasp of moral philosophy or philosophy of mind displayed by some political theorists. For example, commentators may assume that *the self* is a relatively unproblematic notion and claim that it ‘applies’ the ‘faculty of judgement’ to morally ambiguous situations. Such obfuscatory phrases do not explain what might be involved in making moral judgements. In fact, of course, my ‘privileged’ access to what I am thinking at any one time does not yield direct access to my ‘self’, however this is conceived. Any philosophical investigation that ignores our limited knowledge and understanding of our own mental processes has little chance of making worthwhile progress.

A related problem is that philosophers tend to stick to their specialisms, one consequence being the rarity of attempts to link discussions of rule-following in ethics and in philosophy of language. A significant element of my defence of Rule-Consequentialism involves Wittgenstein’s denial that that rules are self-interpreting.

My arguments are intended to reinforce each other. I defend the method of Reflective Equilibrium – which seeks coherence between judgements, principles and theory – as a means of justifying our choice of moral principles. However, I also seek equilibrium and compatibility between the numerous arguments presented here in a linear manner. Moral theories should be assessed by their internal coherence and by how well they harmonise with our considered convictions, and also by how they handle issues such as moral luck and moral conflict, sometimes considered peripheral to ethics proper. Rule-Consequentialism offers robust solutions to these problems, solutions that also support my critique of the Distinct Political Morality Thesis. The most important group of arguments involves the following considerations. Political agents have duties and responsibilities distinct from those of private individuals, and handle issues that affect large numbers of people with whom they have no direct relationship. Politics thus seems to require rule-based and consequentialist principles. Since there is (I argue) no firm dividing-line between public and private domains, such principles must also be applicable in private life.However, since we do not judge moral worth in private life solely by reference to the consequences of actions, those principles must be underpinned by Rule- rather than by Act-Consequentialism. In turn, because political decisions must be rationally and publicly justifiable there is a *prima facie* presumption in favour of Cognitivism and hence (I argue) a Constructivist metaethics.

My arguments and conclusions thus constantly move back and forth between different areas, attempting to demonstrate that reasonable solutions to each problem raised are compatible both with each other and with my general thesis. However, synthesis and coherence are not my only aims: on the model of Susan Haack’s ‘foundherentist’ epistemology (see 1.3.4) I also adduce independent reasons for denying the existence of a distinct political morality and for favouring Constructivism and Rule-Consequentialism.

The relational nature of political and ethical concepts also warrants a broad integrated approach. As Ian Shapiro emphasises, it is fruitless to seek ‘gross’ foundational concepts in isolation from other concepts. [[15]](#footnote-15) The notion of *the private*, for example, arises only in contrast with *the public*, and such seemingly disparate concepts as *positive freedom* and *collective moral responsibility* are intimately linked. Shapiro points out that attempts to establish political ideologies on gross concepts may have adverse consequences, as when theorists elevate freedom above equality or *vice versa*.

No matter how cogent, credible and tightly argued a theory, commentators will inevitably find weaknesses. These may comprise ambiguities, inadequately defended presuppositions, unconscious (or deliberate) ideological bias or logical flaws. If we attempt to repair the theory, we risk complicating it and thus introducing further errors. I acknowledge at the outset that I cannot present watertight arguments for my claims, ones that render them invulnerable to future criticism. I hope to show rather that they are individually plausible and collectively coherent. After all, an element of indeterminacy is unavoidable when dealing with the chaos of a world inhabited by agents whose demands conflict, whose motives are often opaque, and whose actions and intentions interact in highly complex and unpredictable ways.

A *comprehensive* defence of my stance would entail detailed appraisals and rebuttals of all competing metaethical and normative theories and their variants. Space limitations evidently prevent my doing so. Instead I provide thumbnail sketches of those theories, indicating very briefly what I consider to be their unresolved weaknesses.

**1.2 *Synopsis***

In the remainder of this Introduction I define the scope of my discussion, explain my terminology, and briefly survey existing literature. I give a short account of thought-experiments mentioned in the text and discuss six recurring issues: the nature of the relationship between law and ethics; the need for compromise between opposing philosophical positions; the existence of continua between various phenomena, especially between the notions of the morally right and the morally wrong; the contingent nature of moral claims; and the need to acknowledge the ideological assumptions that constantly insinuate themselves into our analyses.

This book proper is divided into two parts. At the core of Part I, ‘Moral Theory’, is an extended defence of a modified version of Rule-Consequentialism. However, I also examine metaethics, and discuss four topics – special obligations, agents’ intentions, moral dilemmas and moral luck – that have a particular bearing on questions discussed subsequently. My lengthy treatment of moral theory is justifiable on the grounds that the plausibility of my denial of the Distinct Political Morality Thesis depends on that of my metaethical and normative stance. Taking their cue from Michael Walzer’s highly influential paper ‘Political Action’, many advocates of the DPMT take the dividing-line between private and political moralities to be given by that between two normative theories: typically (and respectively) Deontology and Consequentialism. [[16]](#footnote-16) In other words they consider that while our everyday, ‘private’, moral code is essentially deontological, the public realm and political decision-making are governed largely by consequentialist concerns. Since the two theories are seemingly irreconcilable – despite frequently recommending the same acts – the grounds of private and public morality must differ essentially.

For those who believe in two moral realms, there are several other ways of setting a dividing-line. We might, for example, be virtue ethicists in private life and consequentialists in public. Some philosophers reverse the position described above, arguing that politicians do or should (at least in some circumstances) adopt deontological principles while private individuals will base their moral decision-making on whatever principles seem appropriate. We find suggestions of this approach in the writings of Thomas Nagel (Chapter Eight) and Jonathan Wolff (Chapter Twelve). Russell Hardin and Robert Goodin, in contrast, suggest that the private and political domains should be governed by two different varieties of consequentialism (Chapter Twelve). I suggest that the very existence of several purported dividing-lines between political and private moralities, and the corresponding claims that several different normative theories (or different sub-varieties of theories) are appropriate for political and private domains, support the view that there is *no* dividing-line. Occasionally philosophers argue that private and political moralities are separated by other considerations. For example, Ruth Grant argues that hypocrisy is necessary in political relationships because these involve mutual dependence among people with conflicting interests. In contrast, hypocrisy is unnecessary where true friendship or open enmity exist. [[17]](#footnote-17) However, ordinary social relationships surely also involve much hypocrisy, in which case it cannot be a defining feature of political morality.

Nevertheless, advocates of the DPMT still most commonly take the boundary between private and public moralities to be marked by the deontological/consequentialist divide. Most agree that a sound version of Rule-Consequentialism would bridge that divide, but probably assume that the theory fails because it either collapses into Act-Consequentialism or is incoherent. Providing a satisfactory account of R-C thus seems a necessary preliminary to a critique of the DPMT.

In Part II, ‘The Relation between Ethics and Politics’, I discuss various arguments that have been offered for the separability of ethics and politics, including, at some length, the influential Rawlsian liberal argument. I criticise the claim that there is an unbridgeable public/private divide. Finally, I examine in detail three specific arguments that have been offered in favour of the DPMT: that ‘dirty hands’ cases arise almost exclusively in the political world; that public policy decisions, which necessarily involve indeterminate outcomes, must be based on different moral assumptions from those which govern private life; and that special features of collective action distinguish private and public moralities.

Here are more detailed summaries of the various chapters. In **Chapter Two** I argue that a cognitivist metaethical theory is a precondition of intelligible political and moral discourse, and defend Onora O’Neill’s version of Constructivism as the most persuasive non-Realist candidate. The theory holds that we stipulate the objective nature of moral propositions. Critics of Constructivism argue that,like most other metaethical theories, it must make normative assumptions. Otherwise we have no grounds for objecting to, say, slavery if a community has stipulated that the practice is morally acceptable. Constructivism cannot, therefore, provide a self-sufficient account of the status of moral claims. I agree, but consider that combining O’Neill’s minimal constraints on constructivist *procedures* with naturalistic constraints on the moral *codes* emerging from those procedures greatly diminishes the problem. (These naturalistic constraints derive from physiological and psychological facts about human well-being. While contingent, these facts have, *in this world*, objective status.) I also reject the assumption that there is no necessary connection between one’s metaethical and one’s normative stance.

In **Chapter Three** I first defend normative theory against its anti-theoretical critics. The general problem here is, as many philosophers have argued, that no system of strict rules can respond adequately to the moral ambiguities that constantly face us in an imperfect world. I agree that normative ethics cannot be completely codified. Nevertheless, general principles and standards cannot be dispensed with, and our task must be to find an acceptable means of reconciling this circumstance with avoiding a requirement for inflexible adherence. No doubt ambivalence and inconsistencies will remain, but these are inescapable features of human life.

I then turn to the fundamental question: which theory might best explain morality in both the private and public spheres? I conclude that the currently most favoured contender, Virtue Ethics, is inadequate to the task, as are Deontology and Act-Consequentialism: and that a rule-consequentialist account is required. Rule-Consequentialism (R-C) holds that actions are best morally assessed by the consequences of the acceptance of rulesgoverning those actions. It is a highly attractive theory, largely because of the mutual trust and predictability of behaviour promoted by the very existence of rules. Such benefits are irreducible to the aggregated advantageous consequences of discrete actions. However, R-C is vulnerable to certain powerful objections concerning ‘rule-worship’ and conflicts between rules. **Chapter Four** examines Brad Hooker’s response to these objections. Hooker’s version of R-C is the most highly developed and sophisticated contemporary account but, I suggest, may resolve the problems mentioned only at the expense of introducing further difficulties. I conclude that Hooker’s R-C does not easily handle complex situations and conflicts between rules.

I attempt to resolve these issues in **Chapter Five**, primarily by introducing two significant modifications to Hooker’s account. Firstly, I elucidate the notion of *practice-rules*, specific to particular contexts, which incorporatequalifications and exceptions to the central idea. Secondly, I argue that practice-rules must be supplemented by what I call *background* *principles*. These principles are applicable to all moral actions and require, for example, agents to pay attention to their epistemic fallibility. Background principles fulfil several functions, including acting as a tie-breaker between practice-rules and reducing the number of practice-rules that we must acquire.

R-C already bridges the divide between Consequentialismand Deontology by accommodating rights-based constraints and the significance of outcomes. It thus encourages adherence to such practices as promise-keeping when there are short-term benefits to breaking a promise. It isalso inherently plausible; it harmonises with our customary moral convictions; and it resolves many issues discussed elsewhere in this thesis. In particular I attempt to demonstrate that R-C is as applicable to political as to everyday contexts. While political decisions are frequently highly complex and taken under conditions of uncertainty, the practice-rules and background principles of Rule-Consequentialism are designed specifically to handle complexity and uncertainty.

In **Chapter Six** I discuss special obligations and agent’s intentions. A satisfactory rule-consequentialist account of special obligations is important because some commentators argue that while public affairs are governed by a consequentialist code that values impartiality and universality, personal relationships cannot be so governed. I note that supporters of the DPMT are wrong in assuming that impartiality is required in public but not in private life. The issue of agents’ intentions is central to my discussion throughout: principally to avoid the conclusion that only the moral value of consequences counts, and (and consequently) to nullify the problem of moral luck. I aim to show how R-C can pay due attention to the moral significance of intentions. In that case it can take account of issues of moral character that, according to supporters of Virtue Ethics and Kantian Deontology, are disregarded by consequentialist theories.

In **Chapter Seven** I examine two further issues bearing on the DPMT: moral ‘dilemmas’ and ‘moral luck’. Both raise greater difficulties in the political than in the private sphere due to the complexity and unpredictability of political events. Political dilemmas are often held to derive from the irreconcilable deontological demands of everyday morality and the consequentialist demands of public life. I argue that a rule-consequentialist analysis overcomes the problem and, more generally, that the very notion of dilemma is incoherent. The phenomenon of moral luck, if it existed in the form envisaged by some philosophers, would raise significant (and insufficiently acknowledged) problems for moral theory in general and for Consequentialism in particular. Clearly outcomes involve chance factors, so if outcomes alone determine moral rightness or wrongness then we can act morally through good luck alone. However, the notion that luck affects our moral assessments is counter-intuitive. It is relatively easy to demonstrate the invulnerability to moral luck of outcomes in everyday life just because acting *intentionally* rules out its possibility. (Rule-Consequentialism, as noted above, can take account of intentions.) Moreover, practical justifications offered for moral luck are untenable. However, difficulties in determining intentions, in determining causes and in attributing responsibility all apparently make political outcomes susceptible to retrospective justification, and hence to moral luck. However, if only political acts (and not private morality) are susceptible to luck, the two domains are drawn apart. The private/public continuum argument alone seems inadequate to meet this difficulty. To avoid concluding that a DPM is, after all, required, we must assign determinate causes to and specific (perhaps collective) responsibility for political outcomes: an issue pursued further in Chapter Thirteen. Moral luck also has repercussions for dirty hands problems, for chance alone cannot determine that morally unjustifiable acts become justifiable.

From this point I examine more specifically arguments that might be offered in support of the Separability and the Distinct Political Morality Theses. I suggested earlier that the former is ultimately incoherent. In respect of the latter, adopting a rule-consequentialist perspective seems to offer in each case a viable alternative to accepting the thesis.

**Chapter Eight** investigates miscellaneous issues: including Felix Oppenheim’s separation of ethics and politics on methodological grounds, with a purportedly value-free analysis of political concepts; various arguments offered by Anthony Quinton, Bernard Williams and Thomas Nagel against assimilability; Hare’s ‘Desert Island’ case and the nature of political obligation; and certain psychological issues that bear on the relation between ethics and politics. Nagel’s discussion is particularly important, for he argues both that liberalism’s commitment to neutrality entails an objective political morality, as opposed to a subjective private morality, and that political action requires a degree of impersonality that is inappropriate in private life. Incidentally, the issues of impartiality and neutrality might seem to demand their own chapter. However, it seems more appropriate to discuss them in relation to the topic that raises the question of their being needed. Thus I examine whether Rule-Consequentialism can reconcile the demands of impartiality and special obligations in Chapter Six, and the liberal ideal of impartiality between different notions of the good in Chapter Nine. I conclude Chapter Eight with the suggestion that, just as the traditionally somewhat narrow remit of moral inquiry has expanded to include concerns about the environment, non-human animals and responsibilities to future generations, it should be further widened so as wholly to incorporate political philosophy.

**Chapter Nine** examines the Rawlsian claim that principles of political justice should be neutral between different conceptions of the morally good. This position seems to detach ethics from politics. The grounds for neutrality are, paradoxically, moral ones: namely that detachment will permit people with varying views on what constitutes the good life to live together harmoniously. They need not agree on what makes something good, but only on the ‘purely political’ principles of justice. The paradox is resolved, Rawls believes, by distinguishing between ethics considered as the pursuit of *the good* and considered as the pursuit of *the right*. However, many commentators consider Liberalism’s claim to neutrality dubious, finding its political principles to be based on, and directed towards promoting, particular substantive conceptions of the good. The distinction between the politically right and the morally good thus collapses.

One of the most significant underlying themes of this book is that there is a continuum, and no rigid distinction or dichotomy, between the concepts of *public* and *private* and the entities and actions associated with those concepts. I argue explicitly for this claim in **Chapter Ten**, therebylaying the groundwork for arguments against the DPMT presented in subsequent chapters. I argue that although the distinction is often useful and important, public and private nevertheless merge imperceptibly into one another. As always, ideology colours agents’ views on the matter. For example, one person will regard civil partnerships between homosexuals as a purely private matter, and another will consider such partnerships to have significant social and political repercussions.

In the final three chapters I investigate specific arguments that have been offered in support of the DPMT. All involve moral choices arising in public scenarios that differ substantially from those of everyday private life. **Chapter Eleven** examines the claim that ‘dirty hands’ cases demonstrate that political agents are not bound, and must sometimes commit acts forbidden, by everyday morality. If private and public domains each have their own moral principles, what the everyday moral code (EMC) considers dirty-handed behaviour may be wholly justifiable in a political morality. In other words, if the DPMT were correct, there might be no such things as dirty hands in the political realm. There would consequently sometimes be irreconcilable conflict between political and private moralities, with the former requiring behaviour forbidden by the latter. My response invokes the public/private continuum and the concomitant observation that dirty hands cases arise in private life. I suggest that a rule-consequentialist code will indicate when dirty-handed behaviour might be justifiable.

In **Chapter Twelve** I discuss the implications of major public policy decisions for the DPMT. It seems evident that agents responsible for decisions about whether, say, to introduce mass vaccination programmes or to adopt expensive rail safety measures must adopt consequentialist lines of reasoning. One reason for this being so is that such decisions usually involve stochastic (‘non-determined’) processes, and hence indeterminate outcomes and risk, and hence the need for *calculations* of expected costs and benefits. These processes either do not arise, or are much less prominent, in the moral decision-making of private individuals: leading many commentators to argue that political agents and individuals tacitly adopt different normative theories. However, the three philosophers discussed in this chapter take alternative positions. Robert Goodin and Russell Hardin argue that different versions of Consequentialism underlie private and public moralities, while Jonathan Wolff finds a mixture of consequentialist and deontological reasoning in our attitudes to the risks arising from public policy decisions. I suggest that Rule-Consequentialism provides a more economical way of resolving the issue.

In **Chapter Thirteen** I investigate the problem of ‘many hands’: that is issues arising from actions performed by multiple agents. Whether we are discussing informal groups of people or formally constituted institutions, many hands situations involve structures and functions that differ markedly from those of mere aggregations of individuals. Besides further complicating dirty hands situations, the issue of many hands has two significant ramifications for our discussion of the DPMT. Firstly, the presence of many hands may hinder or prevent the ascription of moral responsibility. In the private domain responsibility can generally be pinned onto particular persons. In the public domain, however, the specification of responsibility is frequently diffused and uncertain: and if responsibility cannot be ascribed, neither can blame. Secondly, it seems uncertain whether group-members can share intentions: and if they cannot, the problem of moral luck may resurface. In other words, if we cannot attribute shared intentions to group-members, collectively performed actions might turn out to be morally good or bad by chance alone. My responses involve defending the notion of *collective responsibility* and demonstrating that *intentions are shareable*. I propose three forms of collective responsibility (CR): (1) joint or shared responsibility, by which we hold each group-member both individually responsible for the outcome of a collective action and jointly responsible with other members; (2) assumed CR, by which we treat group-members *as if* they are fully collectively responsible; and (3) *actual* full CR. However, even in the latter case, although I accept that collectives (often unintentionally) bring about what would be impossible for the aggregated efforts of individuals to achieve, I deny that those collectives possess properties over and above those possessed by their members. They certainly do not possess ‘group minds’. Their special properties rather arise from the *relationships* between their members. Finally, I argue that that we do not need intentions to be shared ‘equally’ by *all* responsible for some act in order to avoid it having a luckily morally good, or unluckily morally bad, outcome. It is sufficient that *some* of those involved acted intentionally to render many-handed actions invulnerable to moral luck.

A further important theme of this chapter is that of causation. This is because assigning responsibility and intentionality to persons depends upon being able to assign determinate causes to events. I accordingly argue that insofar as they involve actions or omissions attributable to human beings, the causes of events are in principle determinable.

**1.3 *Scope of the Discussion***

I focus on one central issue, attempting to show that if we adopt the most defensible normative theory, Rule-Consequentialism, the case for a distinct political morality evaporates. Many other issues bearing on the relation between ethics and politics accordingly remain unexamined. The concepts of *freedom*, *justice* and *equality* overlap the two domains but have been extensively investigated elsewhere. I do not offer a historical survey of my topic, and, writing from an Anglo-American analytical viewpoint, omit discussion of the contributions of such postmodernists as Derrida and Lévinas.

A more comprehensive account of the relation between ethics and politics would also examine the ethical implications of our choice of political systems and ask, for example, whether democracy requires and/or promotes social justice. It would discuss feminist political philosophy, environmental issues and the interplay between religion and politics.

Perhaps the most serious omission is that there is little discussion of international politics. Although I refer occasionally to the invasion of Iraq in 2003, my discussion is largely restricted to problems arising internally in secular Western democracies. However, we live in an era characterised both by rapid globalisation and the ever-present threat of terrorism. The gap between rich and poor constantly widens, and the output of several private corporations is greater than the GNP of some countries. A decision made by an American banker can destroy the livelihood of thousands in a Third World country. At the same time relatively small numbers of fanatics seemingly have the ability to inflict huge destruction and loss of life. I cannot justify this omission other than by pleading lack of space and pointing to the considerable body of work done by other writers in the fields of international politics, development ethics and the like. However, throughout this book I emphasise the obligations owed by political agents to those outside their immediate sphere of responsibility. My version of Rule-Consequentialism specifically requires them to follow the practice-rule that will probably produce the best consequencesfor *all* affected. [[18]](#footnote-18) Act-Consequentialism, in contrast, seems to value only the ‘best’ short-term outcomes for one community: and these may entail disregarding the interests of or even harming those outside that community.

The close connection of ethics and politics is further suggested by most political concepts having ideological, and hence value-laden, connotations: resulting in the near impossibility of discussing political issues in a wholly neutral manner. As discussed further below, unacknowledged ideological presuppositions permeate and motivate much avowedly dispassionate political analysis. However, I do not specifically discuss the relation between political ideology and ethics, and therefore pass over such issues as Marx’s assertion that morality itself constitutes an ideology. The influence of particular normative theories on ideology is an under-explored area, the only significant discussions being Rawls’s and Nozick’s linking of modern liberalism with Kantian deontology. Nozick, in particular, purports to find support for his right-wing libertarianism in Kant’s requirement to respect persons as ends-in-themselves I explore these issues elsewhere. [[19]](#footnote-19)

**1.4 *A Survey of the Literature***

Other than Christine Korsgaard and Onora O’Neill, few philosophers have written about Constructivism as a metaethical theory. [[20]](#footnote-20) David Lyons’s influential claim that Rule-Consequentialism inevitably collapses into Act-Consequentialism hindered further research into that theory until it was revived by Richard Brandt and, more recently, Brad Hooker. [[21]](#footnote-21) Hooker’s *Ideal Code, Real World*, together with numerous supporting papers, offers the most comprehensive contemporary defence of Rule-Consequentialism. [[22]](#footnote-22)

Explicit, systematic and sustained discussions of the relationship between normative theory and politics are comparatively rare. One reason for this may be that although university philosophy departments often teach some political philosophy, most research in the subject takes place in politics departments: and politics specialists typically have little background in ethics.

Two otherwise valuable contemporary accounts of the relation between ethics and politics – Coady’s *Messy Morality* and Mendus’s *Politics and Morality* – both lack a strong theoretical framework. [[23]](#footnote-23) Hare’s *Essays on Political Morality* and Williams’s posthumously published *In the Beginning was the Deed* are collections of essays partly unified by their authors’ central concerns. [[24]](#footnote-24) Some promising titles disregard normative theory, discussing instead disparate topics in applied political ethics: including development ethics, war, economic justice and civil disobedience. [[25]](#footnote-25) Many monographs focus on issues tangential to my central concerns. For example, Carritt’s *Morals and Politics* is a partial (in both senses of the word) history of political philosophy focussing on the question of whether political obligations have moral grounds. It makes no mention of Mill or other utilitarian thinkers, and Carritt’s later *Ethical and Political Thinking* dismisses Utilitarianism in a chapter entitled ‘Crude Moral Theories’. [[26]](#footnote-26) Among more recent works, Dennis Thompson’s *Political Ethics and Public Office* offers an excellent but slightly outdated prescriptive account of political ethics. [[27]](#footnote-27) Calum Paton’s *Ethics and Politics* examines the relation between metaethics and ideology, and Richard Vernon’s *Political Morality* defends liberalism as a precondition for moral behaviour in politics. [[28]](#footnote-28)

The specific issue of whether political morality differs from everyday morality has been the subject of numerous papers and two monographs. Stephen de Wijze’s *Political Morality* argues that dirty hands scenarios demonstrate that political agents may act outside the boundaries of ordinary morality: a position directly contrary to that defended here. [[29]](#footnote-29) Stephen Buckler’s *Dirty Hands* has the merit of examining normative issues at length, but his virtue-ethicist framework seems inadequate to the task. [[30]](#footnote-30) Like other supporters of the DPMT, Buckler presupposes an unbridgeable divide between the alleged categorical demands of everyday morality and the instrumentalist, consequentialist exigencies of political life. Politics constitutes an autonomous realm, he believes, one characterised by an arithmetical mode of reasoning and by luck, ambiguity and indeterminacy. However, Buckler’s assumption that Consequentialism is not a substantive moral theory is question-begging, and the claim that politics *introduces* ambiguity into morality erroneous, for that ambiguity is already present. An unwavering commitment to truth-telling, for example, may cause immense harm. The saintly life is inappropriate for both the political and the everyday world.

My fundamental claim is that both political and private realms are governed by the same normative theory, Rule-Consequentialism. My approach complements that of Joseph Raz, who offers different, though compatible, reasons for rejecting the DPMT. He writes

…we will be asking whether political respect for individual freedom is a simple case of applying general moral principles to political action, or whether it involves a more radical modification of or departure from general morality to suit the political context. Influential voices among political theorists argue for the existence of a relatively independent body of moral principles, addressed primarily to the government and constituting a (semi-) autonomous political morality.’ [[31]](#footnote-31)

He aims to show that that ‘the morality of political freedom… [is]…based on considerations of individual morality to a greater degree than is common in many contemporary works of political philosophy’. More specifically, he derives the value of political freedom from that of personal autonomy. [[32]](#footnote-32)

**1.5 *Terminology***

Imprecise terminology, or its inconsistent use, lie behind much defective philosophical argument. I attempt to be consistent in following the usages given below.

The term ‘politician’ is shorthand for any kind of political agent (whether elected, appointed or self-appointed) who represents the interests of large numbers of people with whom she has no direct relationship. ‘Public official’ normally denotes an employee of the state. I argue that public justifiability is the primary warrant both of the *procedures* by which moral principles are constructed and of the *principles* themselves. It is therefore important to distinguish politicians from officials because only the former must normally justify their decisions to the public. Traditionally, officials are responsible only to their employers. However, matters are complicated by two trends that gathered momentum in the UK during the late 20th Century: the ‘politicisation’ of the civil service, with some officials working directly for governing parties; and the privatisation of many public sector organisations and (some argue) a consequent reduction in accountability. Moreover, the powers and responsibilities of officials vary greatly – from the head of the Civil Service at one pole to ‘street-level bureaucrats’ (policemen, social workers etc.) at the other. By some criteria, the directors of multinational companies, newspaper editors and ‘celebrities’ enjoy far more power than most politicians, though they typically disavow any accountability for the effects of their actions.

The term ‘politics’ is shorthand for ‘the political realm’ or, less frequently, ‘political philosophy’. ‘Political ethics’ designates an area of academic inquiry, while a ‘political *ethic*’ is a moral code appropriate for politicians. The expression ‘political morality’ in synonymous with neither but denotes rather a set of principles which are typically underpinned by consequentialist reasoning. [[33]](#footnote-33) (‘Morality’ likewise designates a *system*, and not a mere collection, of ideas.) These distinctions are important because, as noted earlier, denying that politics has its own distinct *morality* is compatible with recognising that politicians may need a distinct political code or *ethic*. A code may have largely spontaneous and informal origins in long-standing practices (like the EMC); be relatively systematised but advisory (such as the Principlism that dominates medical ethics); or strict and prescriptive (such as a professional code of behaviour for doctors or lawyers). An adequate political code will incorporate both the EMC and certain requirements specific to politics, its rules being more explicit and acknowledging the wider responsibilities of politicians. It will thus be advisory rather than prescriptive, except insofar as certain actions are explicitly prohibited. [[34]](#footnote-34)

The term ‘everyday moral code’ (EMC) largely equates to Sidgwick’s ‘Common Sense Morality’. [[35]](#footnote-35) It signifies the informal set of rules that is tacitly and unreflectively accepted by most people in Western societies, one that originated in long-standing practices rather than in theory. The EMC resembles WD Ross’s *prima facie* deontological principles, but its rules frequently have implicit subclauses attached. For example, we normally understand ‘Do not lie’ to be qualified by ‘…except in circumstances x, y and z’. Since qualifiers are usually expressed in consequentialist terms, and since the EMC also recommends the practice of certain virtues, it is a hybrid of Consequentialism, Deontology and Virtue Ethics. However the EMC will, I suggest, be *explicable* in rule-consequentialist terms. On a related point, in using such terms as ‘morally desirable behaviour’ I do not intend to beg the question as to what is desirable. I merely assume that there is a substantial range of cases on which different normative theories would agree. For example a Kantian, a consequentialist and a virtue ethicist will all agree that it is normally morally desirable to prohibit the killing of innocent persons.

The relationship between moral rules, principles, standards and theories is complex, and not simply hierarchical, as some writers suggest.[[36]](#footnote-36) My account of R-C takes principles to have a more general application than rules, but it certainly does not follow (as the hierarchy argument would suggest) that what are highly specified rules can be *deduced* from principles.

I refer to three accounts of Rule-Consequentialism. ‘Standard’ R-C designates versions prior to Brad Hooker’s theory, ‘Hooker’s’ R-C is self-explanatory; and ‘modified’ R-C designates the version expounded in Chapter Five. I generally treat ‘impartial’ and ‘neutral’ as synonyms: likewise ‘ethical’ and ‘moral’. ‘Iff’ signifies ‘if and only if’. I capitalise the names of theories, as in ‘Constructivism’, but not the corresponding adjectives.

Shelly Kagan distinguishes two senses of the word ‘normative’. [[37]](#footnote-37) A normative theory establishes how the rules that govern correct conduct are to be derived, and thus answers the *methodological* question ‘How should I decide what to do?’ A normative code makes substantive recommendations about how to act, and answers the *axiological* question ‘What should I do?’ I use the term only in the first sense. This, we should note, is *not* purely formal: in deciding (say) that consequences count more than deontological obligations, we are evidently making a value-judgement.

The terms ‘public’ and ‘private’ normally designate not dichotomous concepts but positions on the public-private continuum. They are accordingly shorthand for ‘*largely* public’ and ‘*largely* private’. I do not distinguish between the personal and the private, and generally use ‘political’ and ‘public’ interchangeably. However, since political institutions belong to the public realm, the public constitutes a higher genus than the political.

The notion of *responsibility* is ambiguous, for Alice may be responsible for x in at least three different ways. [[38]](#footnote-38) It may (1) be her *duty* to do x because she has agreed or been assigned to do x. She may (2) be *causally responsible* for x having occurred, or (3) responsible in an *evaluative* sense, being either blameworthy or praiseworthy. I am concerned here primarily with moral responsibility, and ‘collective responsibility’ (‘CR’) accordingly normally signifies ‘collective moral responsibility’. These three senses may apply simultaneously: Alice may bear moral responsibility for failing to fulfil a duty, such failure causing bad consequences. Sometimes only (2) is present, in which case Alice bears formal or legal accountability alone. *Responsibility* is not only a multifaceted but also a relational concept: Alice is responsible *to* someone *for* something.

I acknowledge the potentially question-begging nature of such expressions as ‘in normal circumstances’ and ‘*ceteris paribus*’ (‘other things being equal’), and of the suppositions behind appeals to what ‘we’ believe. Indeed, one of the most striking features of philosophical discourse is its combination of rigorous analysis with constant invocation of ‘our’ intuitions. According to some philosophers, *ceteris paribus* clauses are virtually meaningless, either because of their open-ended, catch-all nature or because we can never detach events from their context.[[39]](#footnote-39) However, without making certain assumptions, philosophy could not begin to grapple with the inescapable contingency, complexity and uncertainty of human affairs.

Terms used to describe ideological stances are notoriously slippery, the more so because we cannot simply place them on a left/right axis, represented (respectively) by collectivist and free market attitudes to economic matters. Cutting through this axis we also find another signifying a continuum between liberal and authoritarian attitudes to such issues as abortion and homosexuality. Thus many conservatives combine a faith in the free market to solve economic problems with the demand that the state intervene in many areas of private life. Matters are complicated further by the term ‘liberal’ usually signifying an economically left-wing position in the US, while in the UK it increasingly denotes a combination of *laissez-faire* economics with social tolerance. My chief concern here is the division between right or ‘market’ liberalism and left or ‘welfare’ liberalism. Both doctrines are socially liberal but the former denotes, as the name indicates, the view that the state should play a minimal role in economic life; and the latter overlaps with socialism insofar as it demands that governments actively intervene in the economy and provide state-funded welfare and health services. Market liberalism overlaps with right-wing libertarianism of the kind advocated by Nozick.

Finally, when arguing for a certain proposition ρ, philosophers may equivocate between four claims: (i) the factual assertion that ρ *is* the case; (ii) the claim that ρ *ought* (morally) or (iii) *ought* (rationally) or (iv) *ought* (regulatorily) to be the case. (iii) and (iv) involve non-normative oughts: examples being, respectively, ‘However many even numbers you add, you ought to get an even number’ and ‘You ought to move the bishop diagonally when playing chess’. My discussion of Rule-Consequentialism assumes (iii): though, if there is (as I argue below) a continuum between the non-normative and the normative, specific instances of (iii) and (iv) may entail (ii). In defending R-C, I thus implicitly recommend it as a basis for moral decision-making. However, in practice people rarely make conscious moral decisions, let alone base those decisions on theoretical principles. For every person who (after reading Kant) rationally determines never again to lie, or who (after reading Bentham) attempts to implement the ‘felicific calculus’ of utilitarianism, innumerable others act first and justify their reasons for acting afterwards. As Nietzsche says, one of our ‘four great errors’ is to believe that our actions are straightforwardly caused by the conscious exercise of our will. [[40]](#footnote-40)

**1.6 *Thought-Experiments*** ***and Case Studies***

Thought-experiments typically describe imagined scenarios in which various elements are successively introduced or removed in order to investigate how our judgements change with changed conditions. Case studies describe historical situations that may or may not have a basis in reality: such as, respectively, the Watergate conspiracy and Walzer’s torture case. Both thought-experiments and case studies are intended to test general philosophical claims in concrete and particular circumstances. The line between them is often blurred, and both are vulnerable to similar criticisms.

The following examples are referred to in this book.

(1) ‘Walzer’s torture case’. Michael Walzer’s example is intended to support his claim that politicians must sometimes dirty their hands. He writes

…consider a politician who has seized upon a national crisis – a prolonged colonial war – to reach power. He and his friends win office pledged to decolonisation and peace; they are honestly committed to both, though not without some sense of the advantages of the commitment. In any case, they have no responsibility for the war; they have steadfastly opposed it. Immediately the politician goes off to the colonial capital to open negotiations with the rebels. But the capital is in the grip of a terrorist campaign, and the first decision the leader faces is this: he is asked to authorise a torture of a captured rebel leader who knows or probably knows the location of a number of bombs hidden in apartment buildings round the city, set to go off within the next twenty-four hours. He orders the man tortured, convinced that he must do so for the sake of the people who might otherwise die in the explosions – even though he believes that torture is wrong, indeed abominable, not just sometimes but always. He had expressed his belief often and angrily during his own campaign; the rest of us took it as a sign of his goodness. How should we regard him now?[[41]](#footnote-41)

The politician apparently faces a moral dilemma: either he authorises an abhorrent act or allows many innocent citizens to die. Whatever he decides, he will have committed wrong.

(2) ‘Walzer’s corruption case’. An otherwise honest local politician must corruptly grant construction work to a contractor favoured by an influential ward boss in order to win an important election. [[42]](#footnote-42)

(3) ‘Bauer’s use of torture’. In Season Two of the television series *24*, Agent Bauer tortures terrorists to find the location of a nuclear device that, if detonated, will kill millions.[[43]](#footnote-43)

(4) ‘Hare’s Desert Island case’. RM Hare offers the following scenario, designed to show how legal obligations can generate moral obligations. [[44]](#footnote-44) Many people are stranded on a desert island. They know that typhus will spread unless virtually everyone observes high standards of hygiene. Each person has a moral obligation to do this. However, all will benefit if the group elected as a governing council passes and enforces an edict, a law, requiring everyone to take precautions. For reasons explained in 7.5.7, the very existence of that edict creates moral reasons for taking these precautions.

(5) ‘Bok’s Jewish refugees case’. Sissela Bok describes the case of a ship from a neutral country taking Jewish refugees fleeing Nazi Germany.[[45]](#footnote-45) The refugees are well-hidden. The ship is stopped by a German patrol vessel and the captain asked whether any Jews are on board. An informal code of honour operates at sea, and that the captain accordingly expects his word to be taken.

Philosophers criticise the more bizarre science fiction-based thought-experiments – such as Hilary Putnam’s conjecture that all cats are Martian robotic spies [[46]](#footnote-46) – on the grounds that we cannot be sure whether we will apply familiar concepts in never-before-experienced circumstances. [[47]](#footnote-47) In particular, our moral intuitions are dependable only in everyday situations, and may unpredictably fail us in unusual or extreme scenarios. That we can *imagine* such scenarios does not entail that we can sensibly forecast our reactions. Moreover, imaginability does not entail possibility. My ability to imagine a perpetual motion machine hardly overrides the First and Second Laws of Thermodynamics, which declare such machines (physically) impossible. [[48]](#footnote-48) Thought-experiments in moral philosophy are probably legitimate and warranted only if they involve worlds reasonably similar to the actual world and transgress no laws of nature. Most of the examples discussed here do not fall into the ‘science-fiction’ category. One exception – Sissela Bok’s secrecy example, mentioned below in my defence of the Contingency Thesis – describes a counterfactual but not a (logically or physically) impossible situation.

More mundane examples are still susceptible to the criticism that schematic models of a problem shed light only upon those variables specified among its causes, paying little or no attention to attendant circumstances that might be causally relevant in the real world. As Garth Hallett asks, ‘If the details omitted would be relevant in real-life situations, why are they irrelevant in imagined situations? If they are relevant in imagined situations, how can we be expected to pass judgement without knowing the missing details?’ [[49]](#footnote-49) Thus in Walzer’s example background detail is vague, and many unanswered questions arise. For example, how has the politician won power? Has he been democratically elected, or simply ‘emerged’ as the leader of the victorious faction? (If elected, we can more readily anticipate the torture being retrospectively subject to public scrutiny, and perhaps thereby justifiable.) The point here is that a seemingly minor change in the way a case is described may radically change our intuitions.

Moreover, Walzer draws a picture of a lone figure acting outside existing laws, and building a new society from scratch. However, no political revolution builds on wholly new foundations. The politician’s entourage presumably includes advisers and prospective colleagues, who may have retained their notions of justice. Since the country’s infrastructure is intact, we may also assume that its legal system still functions. Again, we need to know whether alternative courses of action were available, such as evacuating the threatened apartments? Will the rebel leader be given medical attention after torture? Additionally, ‘ticking bomb’ scenarios are highly unrealistic and in practice give rise to very few cases of torture. The reason is that most bombs in scenarios such as Walzer describes have coded timing mechanisms to forestall the risk of discovery; and, because terrorists work in cells, the chance of arresting one with the code is small. If one such is captured, he will usually be able to withstand torture for the short period necessary. Information gathered from torture will thus be useless in most cases. One commentator concludes that ticking bomb scenarios ‘exist only in philosophy textbooks and the neo-con imagination, not on the streets of Belfast or Baghdad’.[[50]](#footnote-50)

In Walzer’s example we remain uncertain whether sufficient relevant contextual information has been provided to permit a reasoned assessment. Walzer is also vulnerable to the criticism that he has set up a conflict between deontological principle and utilitarian expediency that inexorably generates a contradiction. The general problem here is that case studies may be selected or described, or thought-experiments devised, so as to generate intuitions that support predetermined theoretical conclusions rather than to encourage the exploration of other possible approaches. The opposite danger is that philosophers report their intuitions about the permissibility or otherwise of various courses of action in hypothetical cases and then adjust their theory.

As I emphasise throughout, we should discuss philosophical issues primarily as they arise within the existing world. In Russell Hardin’s words, ‘…if we get a moral theory that is compelling for our own world, we should be delighted at the success and not worry whether it would be compelling in some fanciful alternative world.’[[51]](#footnote-51) However, moral intuitions might also vary between our world and another very similar one. Jeffrey Brand-Ballard offers a useful example here. [[52]](#footnote-52) Discussing Frances Kamm’s assumption that virtually everyone shares the deontological intuition that actively killing a stranger is less justifiable than letting her die (the distinction between acts and omissions), Brand-Ballard asks

Would people still have these intuitions if they lived in a world in which opportunities to rescue had always been more common and profitable than opportunities to kill? In our world, profitable opportunities to kill are more common, by several orders of magnitude, than profitable opportunities to let die… So imagine a world in which each of us, every day, confronts an opportunity to rescue a stranger from drowning, and could profit from failing to do so, but one almost never has the opportunity and incentive to kill.  In our world, much human life would be unjustifiably lost if people considered killing easy to justify.  The fact that people consider failing to rescue somewhat easier to justify than killing does not have such disastrous consequences, in our world.  Whereas, the opposite would hold in the alternate world just described.  I do not believe that we would still consider killing to be more difficult to justify than letting die if we lived in that world.

Moral intuitions are also highly context- and culture-dependent. What might seem obviously wrong to a British philosopher sitting in his book-lined study might seem obviously right to a starving African villager.

Case studies and thought-experiments are thus prone to accusations of artificiality, the over-simplification of complex issues and tendentiousness. They may invoke what the originator considers to be universally shared intuitions, but which are in fact contingent or parochial beliefs. Nevertheless, they have undeniable heuristic value, and are probably inescapable as starting-points for discussion.

The female personal pronoun and possessive adjective is normally used throughout except when referring to existing case studies that specify male agents. In my own examples I use five placeholder names: Alice, Bill, Clare, Dan and Ed. (In one set of examples I also use Fred, George and Harry.)

**1.7 Presuppositions: *(1) A Positivist Account of the Relation between Law and Morality***

Throughout this book I assume the soundness of certain background claims. These are (1) that Legal Positivism offers the most plausible account of the relation between law and morality; (2) that defensible arguments are frequently compromises between opposing positions; (3) that we distort our understanding of human experience by imposing *dichotomous* distinctions (most significantly, between right *or* wrong and public *or* private) onto *continuous* phenomena; (4) that moral claims are grounded on contingent facts about ourselves and the world; (5) that we have, or at least are obliged to behave as if we have, free will; and (6) that ideological presuppositions pervade all political discourse.

The precise nature of the relationship between law and morality is complex and much debated. [[53]](#footnote-53) In common with most philosophers, I consider the doctrine of Natural Law, which holds that human law is or should be determined by the way the world is, to be mistaken. In line with my constructivist approach to metaethics, I favour rather the doctrine of Legal Positivism, which holds that law is a social construction, established by political authorities and backed by sanctions for non-compliance. The status of law derives from the institutions that create and uphold the law having themselves been established by a government recognised as legitimate by most of the country’s citizens. Whether that government is democratic, or considered just or fair, is irrelevant.

H L A Hart, the most influential legal Positivist of the twentieth century, insists that law and morality must be sharply distinguished, that laws may be simultaneously legally valid and morally offensive. Although the origins of legal and moral codes are linked, and they frequently require or forbid the same acts, there are several striking differences. As Hart notes, legal codes require only external compliance and are indifferent to those intentions which seem fundamental to moral assessments. [[54]](#footnote-54) Thus while I can be strictly legally accountable irrespective of my intentions, if I commit some immoral act unintentionally I am not normally considered morally responsible. Moreover, while moral codes are not immune to change, unlike legal codes they cannot can be introduced or repealed by human fiat. Additionally, as I emphasise at several points in this book, the distinction between the lawful and unlawful is dichotomous, unlike that between the morally right and morally wrong.

According to Positivism, then, a law’s status *as law* does not depend upon its moral standing. Hart’s ‘Separability Thesis’ holds that even though there are in practice many connections between law and morality, those connections cannot be necessary because we can conceive circumstances in which they do not hold. Thus in most modern democracies it is true that laws may promote certain moral principles; that the very existence of laws is usually morally beneficial; and that legal systems depend for their acceptance and hence survival on being seen to be just and impartial. However, these connections are contingent, and do not hold of all *actual* (or historical), let alone of all *possible* legal systems.

The Positivist account of law initially seems unassailable. Preserving the gap between law and morality permits us to argue that, say, the legalisation of torture would have no bearing on its moral acceptability or justifiability. However, matters are more complex than they first appear. Positivism seems to depend on an absolute distinction between facts and values: between the social fact of a law’s existence and its ethical implications. However, as I argue below, there are very often continua between non-normative and non-normative reasons for acting, indicating the collapse of the fact/value distinction. R M Hare’s ‘Desert Island’ case makes a similar point, demonstrating how legal obligations may generate moral obligations. In that case there can be no disjunction between the two kinds of obligation. There are other features of law which suggest a stronger connection than crude accounts of Positivism would allow. Firstly, insofar as the law requires us to act in the interests of other persons or in the public interest generally, it makes *moral* demands of us. Secondly, a law is essentially the kind of thing that is *apt* for evaluation as just or unjust. In other words, it *always* makes sense to ask whether a law is just or not. In contrast, it makes no sense to ask whether, say, a landscape painting is just or unjust. [[55]](#footnote-55)

We have two seemingly contradictory claims: that law and morality are (or ought to be) separate, and yet that they cannot be. There is insufficient space to investigate these matters further here, but my account of Constructivism in Chapter Two might indicate how the claims could be reconciled. Very briefly, just as the construction of moral principles inevitably involves normative constraints, normative considerations cannot be excluded from the process of constructing laws. Even the legalisation of torture would be justified by reference to the supposedly beneficial results of doing so. I consider, then, that Legal Positivism is compatible with the claim that connections between law and morality are both significant and necessary.

**1.8 *Presuppositions: (2) The Middle Way***

According to Jonathan Wolff, most philosophers tend to prize originality and novelty over agreement, to find compromise ‘dull and uninteresting’. [[56]](#footnote-56) I take a different line: namely, that when strong and individually persuasive arguments can be adduced to support each of two or more opposed positions, the most defensible is probably (though *not* necessarily) found in the middle ground. Constructivism might be considered a compromise between Moral Realism and Expressivism, and my version of Rule-Consequentialism attempts to reconcile both Deontology and Consequentialism *and* rule- and virtue-based theories.I also seek the middle ground between those who deny the existence of collective responsibility (that is, those who believe that moral *responsibility* for collective *action –*the existence of which is undeniable – can always be distributed to specific individuals – and those who hold that responsibility can be attributed to some strange entity, the collective, that is in some sense distinct from its members.

The main complaint of advocates of Virtue Ethics, Particularism and the like is that moral experience is too complex and diverse to be rule-governed. We must resist ‘bewitchment by the dream of an ethical algorithm – a universal and invariable code of procedures capable of producing unique and definitive answers to all our moral questions’. [[57]](#footnote-57) Such a code would fail to capture many firmly entrenched moral intuitions. The self-evident deficiencies of the absolutist claim that all rules are universal and exceptionless may also provoke wholesale scepticism and relativism. However, indiscriminate rejection of all general principles is no more acceptable than the promulgation of exceptionless rules. In public life rule-based standards must be established and adhered to and, as I argue throughout, public and private shade into one another. Moreover, because some things – such as a policy of promoting torture for the sake of amusement – are *in-all-circumstances* wrong, the relevant judgements must be underpinned by universal principles and not by case-by-case decisions. An intermediate position between two extremes – the ‘ethical algorithm’ and the rejection of rule-based theory – is required. Mynotion of following practice-rules is intended to offer an acceptable compromise between the advantages of having rules and the disadvantages of inflexible adherence to those rules.

**1.9 *Presuppositions: (3) The Continuum Thesis***

Another reiterated sub-theme of this book is that we cannot precisely map dichotomous, either/or distinctions onto continuous phenomena. More informally, we cannot invariably demand black-or-white answers of a world made up largely of shades of grey. Indeed, many philosophical problems arise from treating as absolute and dichotomous (and hence as mutually exclusive) entities, mental states, theories and concepts that are more accurately characterised as occupying positions on continua. The pursuit of orderly unambiguous theories – moral or otherwise – disregards the immeasurable complexities of the real world. It also leads to disillusionment and cynicism. In particular, since no-one could adhere to an internally consistent system of absolute moral rules, some will conclude that ethics is irrelevant to everyday life.

What I call the Continuum Thesis acknowledges the complexities and grey areas of human experience. It implies, most significantly, that there are indefinitely many degrees of moral acceptability. Moreover, as argued in Chapter Ten, most conceptions of *public* and *private* are continuous, not dichotomous: which conclusion alone provides strong grounds for affirming that public and private moralities form a seamless whole.

There are two reasons why we may assume that moral concepts are dichotomous. Firstly, it is easier to teach children that there is an absolute dividing-line between right and wrong than to introduce the notion of a continuum. Secondly, we underestimate the extent to which (secular and religious) legalistic ways of thinking affect our moral assessments. As noted above, in law acts are either legal or illegal: there are no degrees of lawfulness. The legal system compensates for this rigidity by recognising extenuating circumstances and moderating the severity of punishments. Similarly, moral absolutists may not chastise a child for lying because she is too young to understand the difference between truth and falsehood. Admittedly, the law acknowledges the existence of borderline cases, but doing so differs from acknowledging continua. Borderline cases are not easily categorisable because denoting expressions are insufficiently precise. For example, take the law that prohibits *being drunk in charge of* a *vehicle*. It is uncertain what constitutes drunkenness, whether a back-seat passenger is ‘in charge’, whether a tricycle is ‘a vehicle’. It seems initially that the vagueness of these expressions, and hence borderline cases, might be eliminated by specifying precisely what counts as *drunkenness*, etc.: but vagueness is a precondition of the functionality of language. We cannot have a separate word for every degree of drunkenness, nor for every conceivable type of vehicle: for we would then need an infinitely large vocabulary. Nevertheless, the law treats borderline cases *as if* more precise language would indubitably assign them to the correct category; and allows for uncertainty, not by conceding a blurring of boundaries but by tempering punishments. The law thus *stipulates* an absolute distinction between the lawful and the unlawful, just as the moral absolutist stipulates one between right and wrong. As with moral luck, legal judgements affect our moral assessments, and we may forget that there exist seamless transitions between the morally acceptable and the unacceptable. Thus moral philosophers often use the quasi-legal expressions ‘permissible’ and ‘impermissible’. However, these allow no degrees: an action may be more or less *acceptable* than another, but not more or less *permissible*. [[58]](#footnote-58)

Our psychological craving for certainty thus impels us towards absolutism, towards the belief that actions can be indubitably categorised as right or wrong or, in the slightly more sophisticated model, as obligatory, permissible or forbidden. We consequently have two incompatible bases for judgement: the legal, characterised by a conventionally established dichotomy between disjunctive positions, and the moral, characterised by a continuum. I make no attempt to model the nature of the relationship between law and morality. The fact that the very existence of legal obligations may give rise to moral obligations (as discussed in 5.5.3) does not, of course, entail law and morality lying on a continuum. (Instrumental and prudential considerations, discussed below, differ in this respect. However, although they may recommend compliance with the law, they are not inherently legal considerations.)

There is a further complication, for the unilinear model representing the continuum between the wholly good and the wholly bad is inappropriate when deciding on the *justifiability* of actions. The justifiable/unjustifiable continuum can be represented by a movable vertical line intersecting the horizontal line that models the good/bad continuum. Combining the two gives what I call the moral continua model (MCM). This allows for a particular act α being morally reprehensible but in-the-circumstances justifiable, and β being only slightly morally disagreeable but in-the-circumstances unjustifiable.

The paradigmatic instance of a non-moral continuum is a linear array of colour patches shading seamlessly from red to green. Because differences between two neighbouring patches are indiscernible, we cannot say when a red patch is turning to green. However, the boundary patches may instantiate the pure colour: the wholly red patch being succeeded by one containing a molecule of green pigment, and so on. I suggest that moral continua are similarly bounded at both poles by absolutes, that there are acts that are always morally required or forbidden. [[59]](#footnote-59) Thus the prevention of serious human suffering when negligible risks and costs are involved is in-all-circumstances right, and a *policy* of promoting torture for the sake of amusement is in-all-circumstances wrong. [[60]](#footnote-60)

Vague boundaries and continua are linked to Sorites problems. A Sorites case typically involves the claim that if any numerical quantity n is x, then n+1 or n–1 is also x. For example, if a man with n (say 20,000) hairs on his head is not bald, then neither is a man with n –1 hairs. We eventually arrive, via a succession of *modus ponens* syllogisms, at the paradoxical conclusion that the man is not bald when n = 0. At each point the categorical premise p of the *modus ponens* is very slightly less the case than the conditional premise p. [[61]](#footnote-61) Similarly, if we remove grains one at a time from a heap of 20,000 grains of wheat, when does the heap cease to exist? [[62]](#footnote-62)

Sorites cases are commonly held to generate paradoxes because they involve two necessarily conflicting premises: that small increments or diminutions of some property cannot make a difference to our ascription of that property; and yet they must (at some point) make a difference. There is much technical debate about whether and how the paradox may be resolved, though virtually all philosophers agree that vagueness is a *de dicto* matter, that fuzzy boundaries are features of our language and our concepts, not of objects. For example, it is not the existence of borderline cases that make it uncertain whether someone is correctly described as bald or not, but the vagueness of the word ‘bald’. If we are to eliminate its vagueness, we must use it only to refer to cases where someone’s head is completely hairless. However, it would then lose much of its usefulness. In other words, vagueness is a feature of our *description* of the world, not of the world itself.

The most influential approach to Sorites problems explains our use of such words as ‘bald’ by reference to paradigm instances. Mark Sainsbury, for example, argues that we must abandon any hope of ‘providing a system of pigeon-holes, by placing a grid over reality…’ [[63]](#footnote-63) Concepts rather resemble ‘magnetic poles exerting various degrees of influence: some objects cluster firmly to one pole, some to another…’ [[64]](#footnote-64) Paradigms play regulatory roles: we decide whether to describe Bill as bald by comparing him with exemplars of baldness.

Rupert Read, among other commentators, emphasises that its purpose, the context and ambient conditions determine the appropriateness of a soritical predicate. [[65]](#footnote-65) A paradox arises only if we treat (say) baldness as simply a *numerical* matter. For example, suppose that while Bill suffers from alopecia, Dan has completely shaved his head. For some purposes (such as needing protection from the sun) both are bald; for others (such as assessing legal damages) only Bill counts as bald. Again, if Bill has 10,000 hairs spread evenly on his scalp, we would probably not describe him as bald, as we would were those hairs concentrated around the perimeter to leave a large hairless patch. How, then, do we judge whether someone is bald or hirsute in borderline cases? Suppose that Bill and Dan stand in a long line of men, each differing from his neighbour by 10 hairs and other relevant factors remaining constant. At some point we will simply say that one (say, Dan) is bald, even though the difference between him and Bill, *considered in isolation from the other men*, is imperceptible. The point is that Bill and Dan are *not* being considered in isolation. We reliably *judge* that Dan is bald, relative to context, to the purpose of the judgement and to paradigmatic instances of bald men, without having to practise soritical reasoning. If two observers differ there no paradox: just a simple disagreement.

A contextualist-paradigmatist resolution of the issue thus seems plausible, one that takes sorites paradoxes to arise only when cases are de-contextualised and paradigmatic instances unavailable. In practice we have little difficulty in deciding whether someone is bald or not-bald. Similarly, Wittgenstein notes that while there exist no predetermined boundaries to the concept of *game*, this fact never troubles us when we use the word. [[66]](#footnote-66) More generally, the absence of dichotomous relationships entails only that we cannot draw *rigid* distinctions. We can still draw *clear* distinctions: that is, we can usually confidently assign something to the appropriate category by reference to paradigmatic instances of that category. [[67]](#footnote-67) To take another example: although there is a continuum between public and private phenomena, we can usually assign a particular situation S to either the public or private sphere by comparing S with paradigmatic instances of public or private phenomena. [[68]](#footnote-68)

The continuum thesis has many implications for my discussion. Firstly, it buttresses the claim that save in the most unusual circumstances – namely, when we must choose between acts that are each absolutely forbidden – there are no moral dilemmas but rather conflicting reasons for action, reasons which vary in strength. The very claim that one reason for action may rightly override another presupposes a moral continuum. To illustrate this point, take a case described by Patrick Nowell-Smith. He contrasts the situation of A, who must break a promise to dine with friends in order to help a badly injured accident victim, with that of B, who must ignore a slightly injured person in order to keep a promise to attend a cabinet meeting that will decide between war and peace, her vote being decisive. [[69]](#footnote-69) A should evidently let a ‘Good Samaritan’ rule override a promise-keeping rule; B should give priority to her promise. The point is that increasing the importance of the promise and decreasing the severity of the injury causes us to slide by imperceptible degrees from one conclusion to its converse. The notion of *dilemma*, however, presupposes that we have an absolute duty to fulfil all relevant moral obligations, obligations that are equal in strength. I suggest that we perceive dilemmas only because we often do not, and indeed cannot, know which reasons should prevail. In Nowell-Smith’s example, the presence of the continuum indicates that we cannot definitively resolve the conflict between Good Samaritan and promise-keeping rules, but must make a judgement that takes account of the particular circumstances.

Secondly, both the way in which we categorise things and the way in which my version of Rule-Consequentialism generates practice-rules involve reference to paradigmatic cases. In other words, just as we decide whether something belongs to the category *furniture* by comparing it with an unambiguous example of an item of furniture, we base practice-rules on particularly clear-cut instances of a practice. For example, the practice arises within a community of considering a lie told for purely private gain to be morally unacceptable and, within most contexts, unjustifiable. That particular practice (Φ) is tacitly positioned at a certain point on the MCM and becomes an exemplar against which similar lies told in similar contexts are assessed. Φ thereby yields a tentative practice-rule, the status of which is either strengthened or weakened as feedback processes of assessment and modification kick in.

Thirdly, what is termed dirty-handed behaviour is not (save in exceptional cases) straightforwardly *morally* right or wrong. It belongs rather in those sectors of the moral continuum model that range from the *reprehensible-but-sometimes-justifiable* to the *mildly disagreeable*. Crucially, because ‘private’ acts may also fall into this category, dirty-handed behaviour would not be justifiable solely on the grounds that it belongs to a separatesphere of political morality. The moral qualities of all actions may be positioned on the two intersecting continua. For example, instances of torture range from the harsh questioning of suspected terrorists to a policy of inflicting extreme pain on innocent people for their captors’ amusement: from the probably justifiable to the in-all-circumstances forbidden.

Fourthly, by acknowledging that morally undesirable behaviour is sometimes justifiable, the Continuum Thesis indicates that an absolutist deontological approach is unfeasible, that our normative theory must (at the very least) incorporate consequentialist elements. Conversely, consequentialist theories entail moral continua just because consequences vary in import. More specifically, the Continuum Thesis harmonises with the rule-consequentialist picture of moral value as an emergent property, arising from the interaction between the consequences of actions and the intentions behind those actions. Because intentions and consequences are combined in indefinitely many ways, moral values are necessarily on a continuum. On a related point, the continuum between the states of foreseeing and intending indicates that the deontological attempt to permit exceptions to categorical rules by positing an absolute distinction between those states must fail (see 2.2.3).

Fifthly, I assume a continuum between normative and non-normative concepts, upon which lie such notions as the instrumental and the prudential. The instrumental value of some thing, action or quality is its value as a means or precondition of achieving something else, which may itself have intrinsic moral value. Hence the notions of the instrumental and the moral are not dichotomous. To take a trivial example, Bill decides to wear a dark-coloured rather than a white shirt, the grounds of his choice seemingly wholly instrumental. However, not having to change the shirt the next day allows him more time for charitable causes. His instrumental reason for choosing the dark shirt thus merges into a moral reason. There is also a continuum between quantitative and qualitative properties of some action. For example, suppose Dan steals two watches, one worth £5, the other £5000. A qualitative difference arises from the quantitative one because (other things being equal) much greater harm will be caused by the theft of the £5000 watch.

In defending his distinction between political and moral obligations, Quinton argues that we obey the law almost wholly for prudential reasons (see 5.5.2). He concedes that in, say, desisting from committing a crime I may *also* act from concern for my family, and concludes that my motives are both prudential and moral. However, my desisting originates partly in my desire to avoid imprisonment *because* this will harm myself and my family emotionally and financially. The notion that motives are discrete and distinguishable entities is unsustainable, for self-interest and moral concerns here fuse imperceptibly. This is another instance of how non-moral considerations readily acquire moral ramifications: a point emphasised in Hare’s island example.

I make two final observations. I noted earlier that law and morality are conceptually distinct, that what is permitted by the law can never be assumed to be morally acceptable just because it is so permitted. This point has important implications for my discussion of rules. The general issue here is that *what is commanded* (and commands can be issued only by some authority, such as a parent, God or the state) may be wholly different from *what ought to be done*. [[70]](#footnote-70) What is commanded presents a dichotomous choice: something is either legal or illegal, permitted or prohibited. However, because various possible responses to a situation lie on the moral continuum, there is frequently some latitude or uncertainty about what oughtto be done. Hence moral rules *as I understand them* are not normally commands. (There are two exceptions to this claim: we may be presented with a choice at one or other pole of the moral continuum, or be teaching a young child. In these cases we may demand absolute compliance with moral rules.) They are not intended to be either straightforwardly obeyed or disobeyed, but are rather *action-guiding* principles.

Secondly, it should be obvious that in arguing for moral continua I am *not* arguing for moral relativism, for the view that whether something is right or wrong is simply a matter of personal opinion or of the view of the community that we happen to live in. I claim that only rarely are actions *wholly* right or wrong: *not* that right or wrong are whatever we choose them to be.

**1.10 *Presuppositions: (4) The Contingency Thesis***

The contingent nature of moral judgements and the need to ground moral theory in actual human experience are also recurring themes. As John Dewey writes, ‘Philosophy recovers itself when it ceases to be a device for dealing with the problems of philosophers and becomes a method, cultivated by philosophers, for dealing with the problems of men.’ [[71]](#footnote-71)

While some philosophers argue that true moral propositions hold necessarily in all possible worlds, several thought-experiments suggest otherwise. In a scenario designed to explore the notion of privacy, Sissela Bok describes a society in which ‘…no-one can keep secrets from anyone who desires to know them. Plans, actions, fears, and hopes are all transparent. Surprise and concealment are out of the question.’ [[72]](#footnote-72) In this world truth-telling has no moral significance, so ‘People must always tell the truth’ cannot be *necessarily* true, true in all possible worlds.[[73]](#footnote-73) It also follows that moral reasoning is inductive, with empirical evidence providing good reasons for acting in certain ways. [[74]](#footnote-74)

Here are two further examples. The first describes a fictional, but readily conceivable, scenario. José Saramago’s novel *Blindness* describes a world in which nearly all social institutions break down when everyone (save one person) suddenly goes blind. [[75]](#footnote-75) The blind cannot return unaided to their houses once they have left them, and are obliged to plunder abandoned shops for food. The traditional moral principle that owners have inalienable rights to their legally acquired property now seems meaningless, for adherence to that principle would result in most people starving to death. The second example is straightforwardly factual. While traditional Inuit communities are relatively tolerant about sexual infidelity, deceitfulness regarding sources of food is considered highly reprehensible. This is so simply because such behaviour threatens the well-being, perhaps the lives, of all. In contrast instances of private food-hoarding in well-nourished societies are generally harmless.

Because human physiology and mental constitution are contingent matters, it cannot, it seems, be the case that any particular moral claim is true in all possible worlds. The claim that moral judgements express necessary truths may originate in our confusing necessary *truth* with necessary *belief*. Jonathan Bennett argues that some judgements (such as ‘It couldn’t possibly be the case that an act’s causing someone to be in terrible agony counts towards its being morally right’) are necessary insofar as they express an unconditional *belief* that holds in all possible worlds. They are not necessarily *true*. [[76]](#footnote-76) Bennett reasons as follows: a non-necessary moral judgement derives from a more general moral judgement allied with contingent non-moral facts about the world inhabited by the agent towards whom the injunction is directed. This general moral judgement must ultimately derive from a belief that owes nothing to any contingent non-moral fact, and which is therefore necessary. [[77]](#footnote-77) Moreover, moral codes originate in the need to *regulate* human behaviour in this world, not to *explain* such behaviour in any possible world.[[78]](#footnote-78)

The contingency thesis harmonises with and reinforces my central arguments. In particular, Constructivism is a fact-sensitive theory and (I argue) its procedures are justifiable only if we acknowledge (minimal) normative constraints (see 1.4). Moreover, Rule-Consequentialism is an empirical theory intended to deal with actual conditions: indicating that we can disregard thought-experiments that attack it as only contingently justifying moral rules (see 3.4.2). The thesis also answers claims that the method of Reflective Equilibrium cannot ground R-C (see 3.3.5). Again, the principle *‘ought’ implies ‘can’* – crucial to my rejection of moral dilemmas, and ultimately to my defence of R-C – applies to normal human capacities, not those of superhumans.

My essential claim is that moral theory must not be divorced from facts about human nature, particularly facts involving the boundaries imposed by our constitution and our limited intelligence. As Darwall *et al.* note, ‘Too many moral philosophers…have been content to invent their psychology or anthropology from scratch…’ [[79]](#footnote-79) Advocates of ‘empirically informed ethics’ include Doris and Stich, who argue that ‘*ethical theorizing should be an (in part) a posteriori inquiry richly informed by relevant empirical considerations*’. [[80]](#footnote-80) Evidently moral theory is subject to the idiosyncrasies of the language in which it is articulated. It is also affected by technological contingencies. For example, traditional defences of the absolute obligation to keep promises lose some of their force when mobile telephones are ubiquitous. If Alice promises Bill to Φ, the strength of her obligation partly derives from the adverse effects on Bill of her failure to Φ. If, however, she can readily explain beforehand why something overrides Φ, the broken promise has lesser impact. Of course, the Kantian deontologist will respond that what matters is not that the consequences of the broken promises can be mitigated, but that the promise is broken in the first place. However, this position implies an absurd conclusion: namely that that promises must always be kept, no matter how disastrous the consequences of doing so.

Our moral reasoning must, then, be based upon the actual circumstances of this world, which include the limitations imposed by human physiology and psychology. Similar considerations apply to social and political reasoning. As Bernard Williams says, the most important political question is not ‘What is the best form of society?’ but rather ‘What is the best form of society we can get to, starting from here?’ [[81]](#footnote-81)

Finally, we should note that the Contingency and Continuum Theses are interlinked. It is because circumstances change that the moral acceptability of certain actions will vary. For example, in the *Blindness* scenario, the more sighted people exist to help the blind, the less morally acceptable becomes plundering abandoned shops. Moreover, both Theses deny the universal validity of certain moral injunctions which, according to Kantian deontology, express necessary moral truths. For example, as the *Blindness* scenario demonstrates, an injunction prohibiting taking the legally acquired property of another person without her consent is not universalisable.

**1.11 *Presuppositions: (5) Free Will***

Several of the arguments made in this book presuppose the existence of free will. In particular, it seems that we can denythe existence of *moral luck* (that is, deny that people can act morally through luck alone) and *assign responsibility* only if we assume that we *act intentionally*. (In fact I argue in Chapter Thirteen that collective responsibility does not *require* shared intentions.) Moreover, my version of Rule-Consequentialism involves principles that require agents to act with appropriate intentions. The notion of intentional action assumes a mental mechanism that makes a free choice between alternatives, one that is not determined to act in a certain way by external forces. If determinism were true my account would face serious problems. It might turn out that our actions turn out to be morally correct through chance; that we cannot rightly hold agents responsible for the harm they cause; and that we do not *form* intentions, let alone form them *freely*, but are in the grip of forces beyond our conscious control.

Free will is, of course, a hugely complex topic and I can only indicate very briefly how we may defend it against the determinist. Needless to say, I am not arguing for the Cartesian picture of an inner control centre in which the self assesses various options and dictates actions to the body. I assume rather a functionalist account, whereby the self *emerges* from various systems within the brain: aided, of course, by appropriate educational measures, social structures and conventions.

I start by indicating how we might respond to two areas of scientific discovery – neuroscience and genetics – that apparently have highly adverse repercussions for our ‘commonsense’ belief in free will.

On the first issue, experiments carried out by the neuroscientist Benjamin Libet and confirmed by John-Dylan Haynes and colleagues have been interpreted as demonstrating that the self is not the author of its actions. [[82]](#footnote-82) Libet asked subjects to flex their wrists whenever they wished and note the time when they made the conscious decision to flex. He found that readiness potential – the neural functions associated with preparing to perform the action – *preceded* the conscious decision by 300-450 milliseconds. Haynes established that brain scanning using fMRI (functional magnetic resonance imaging) allowed reliable predictions to be made concerning which button subjects would press up to seven seconds before they had made a conscious decision. Some commentators have concluded that Libet and Haynes have demonstrated that free will is an illusion, that which button is pressed is determined by factors beyond our conscious control.

One response is that the determinist conclusion ignores the fact that intentions do not occur in isolation, that we have general background intentions as well as specific intentions. In Libet’s experiment subjects were involved in a complex pattern of intentional actions that preceded the wrist-flexing: most importantly, the intention to co-operate with the experimenters by making movements at the appropriate time. In other words, flexing the wrist is simply the last stage of a complex and sustained intention to play a useful role in the experiment. Hence the recorded brain activity that constituted subjects’ readiness potential may have indicated preparation for a decision rather than the decision itself. Moreover, the timing of agents’ reported awareness of their decisions is impossible to state accurately. Given the fuzzy area between unconscious and conscious brain processes, how does a subject determine the precise time at which she makes a conscious decision? Raymond Tallis concludes that the determinist explanation is rooted in ‘a very distorted conception of what constitutes an action in everyday life’, one stripped of its context and meaning for the subject. ‘The true focus of our free will’, he writes, ‘is a *field* of intention, rooted in the self and its world, which extends far beyond a few moments in the laboratory’. [[83]](#footnote-83)

Admittedly, this account seems less able to cope with Hayne’s findings of a seven second gap between recorded brain activity and conscious awareness of an intention. However, Haynes states that

Our study shows that decisions are unconsciously prepared much longer ahead than previously thought. But we do not know yet where the final decision is made. We need to investigate whether a decision prepared by these brain areas can still be reversed. [[84]](#footnote-84)

It may still be possible, Haynes suggests, to override the decision that the brain has prepared us to make. Alfred Mele makes a similar point: brain activity may increases the probability of a certain button being pressed, but does not, perhaps, make it inevitable. [[85]](#footnote-85) Moreover, Mele suggests, the concept of free will is less applicable to trivial actions, such as flexing the wrist, than to more significant decisions.

Secondly, it has been known for many years that much human behaviour is genetically determined. To take one example, psychopaths frequently have the so-called ‘warrior gene’, monoamine oxidase A enzyme. Does it follow that agents with this gene cannot be held morally or legally responsible for their actions, as some philosophers have claimed? We should rather conclude, I suggest, that people must be highly cautious about their own innate propensities and take steps to neutralise or at least mitigate the possibly harmful effects of those propensities. For example, when Professor Jim Fallon, a neuroscientist at the University of California, Irvine, discovered that he had the genetic profile of a psychopath, this knowledge enabled him to monitor and control his behaviour. [[86]](#footnote-86) Of course, most people do not possess Professor Fallon’s knowledge and insight. Nevertheless, someone who knows that he is subject to ungovernable feelings of rage is morally obliged to avoid circumstances that will excite that rage and to seek professional help. As discussed in Chapter Five, my version of Rule-Consequentialism requires us to follow a Responsibility Principle, (B-P(3)), which directs us to be circumspect about our weaknesses.

Of many philosophical defences of free will, one of the most influential is that adopted by Peter Strawson in his paper ‘Freedom and Resentment’. Rather than engage in analysis of the concepts of free will and responsibility and of their logical relations, Strawson holds that we must start from our actual moral psychology: in particular from ‘…the very great importance that we attach to the attitudes and intentions towards us of other human beings, and the great extent to which our personal feelings and reactionsdepend upon, or involve, our beliefs about these attitudes and intentions’. [[87]](#footnote-87)

Strawson notes that when we resent A’s behaviour towards us, we may excuse her when we conclude either that her behaviour was unintended, or that A is not a normal adult person. These differing attitudes indicate two perspectives we can adopt with respect to other human beings. We may view them as *participants* in personal relationships, or as *objects* in the natural or social world. What Strawson calls ‘personal reactive attitudes’, such as resentment or gratitude, make sense only from the participant perspective. As objects it may or may not be true that our actions are determined, but human relationships necessarily presuppose free will. In practice it is impossible for us to believe in determinism, for ‘sustained objectivity of inter-personal attitude’ would entail ‘human isolation’. [[88]](#footnote-88) Moreover, it could never be rational to adopt exclusively the objective perspective, for our reactive attitudes are ‘too thorough going and deeply rooted’ to be suspended. Hence ‘it is *useless* to ask whether it would not be rational for us to do what it is not in our nature to (be able to) do.’ [[89]](#footnote-89) It follows that whether or not our actions are determined, we have no alternative but to treat others *as if* they act freely: and hence as if they are (normally) responsible and (normally) freely form intentions.[[90]](#footnote-90)

**1.12 *Presuppositions: (6) The Pervasiveness of Ideology***

A sixth sub-theme involves the claim that unacknowledged ideological presuppositions – frequently neglected by philosophers in the analytical tradition – permeate and influence purportedly dispassionate analyses.

John Plamenatz characterises an ideology as ‘a set of closely related beliefs or ideas’ that is ‘accepted regardless of whether or not its constituent beliefs satisfy the criteria of truth’. [[91]](#footnote-91) Ideologies share two features: they presuppose specific theories of human nature and metaphysical notions of what constitutes persons; and they merge descriptive and prescriptive claims. Since political ideologies make substantive recommendations concerning human conduct, they promote certain conceptions of the good. They accordingly make normative claims. Since, as I argue below, most political philosophy makes ideological assumptions, it also makes (usually tacit) normative claims. We therefore have additional reasons for adopting the Assimilability Thesis. Put differently: because political philosophy involves ideological assumptions, and because ideology involves values, political and moral philosophy must be closely related disciplines.

One’s ideological stance influences one’s approach to most of the issues discussed in this book. Thus even when isolated from their context, terms such as ‘freedom’ or ‘private’ have broadly favourable connotations for most people. When used in specific contexts the meaning of these terms varies according to the weight placed upon the variables that give content to the associated concepts. Evaluatively neutral definitions of *substantive* political concepts are therefore, I consider, impossible to achieve.  [[92]](#footnote-92)

Here are some further examples of how ideology affects political argument. Firstly, the belief that there is a clear distinction between positive and negative freedom is held primarily by those on the political right. Critics of the distinction argue that the negative conception, as mere non-interference by others, is in practice often meaningless. (Suppose, for example, that I have fallen down a well through no fault of my own and have no chance of escaping unaided. I will not be comforted by the libertarian standing at the wellhead who says that since he is not going to interfere with my situation, I am perfectly free.) Incidentally, the positive/negative distinction closely involves that between acts and omissions, indicating that what seems to be a value-free idea has ideological repercussions.

Secondly, while free-market liberals and conservative libertarians generally endorse a rigid distinction between the public and private domains, left-liberals and socialists tend to accept a public/private continuum. [[93]](#footnote-93) However, there is no invariant relationship between ideology and one’s stance on this issue. Thus, while some conservatives believe that the state should interfere as little as possible in the private realm, others demand that politicians promote or discourage certain types of private relationship: thus implicitly denying the separateness of public and private. The picture is blurred because some ideas cut across political ideologies. In particular, Communitarian ideas appear in both socialist and conservative guise, and many adherents of the New Right combine economic liberalism with social authoritarianism.

Thirdly, and following largely from one’s attitude to the public/private distinction, ideology may influence one’s position with respect to the Distinct Political Morality Thesis: especially with respect to the issue of dirty hands. Those who argue that politics has its own distinct morality, and that politicians should not hesitate to dirty their hands, have tended to come (in recent years and in Western democracies) from the political right. However, again there is no invariant relationship: a circumstance perhaps explicable by Hans Eysenck’s distinction between the ‘tough’ and ‘tender’ dimensions of political ideologies. [[94]](#footnote-94) Accordingly, irrespective of his ideological commitment, a ‘tough-minded’ philosopher such as Martin Hollis may argue that politicians must readily dirty their hands, or deny that they *can* acquire dirty hands (see Chapter Eleven). In other words, one’s attitude to the issue of a distinct political morality is as much a matter of psychology as of ideology.

Some political theorists go further, arguing for the separation of ethics from politics. Here the most influential are those liberal philosophers who minimise or even deny the normative component of their political theory, typically by distinguishing between the good and the right. As discussed in Chapter Nine, the Rawlsian, proceduralist version of liberalism affirms its neutrality between competing conceptions of the good, and hence the separation of ethics (*qua* investigation of the good) from a political conception of justice. However, most commentators agree that liberalism makes *substantive* claims, that on analysis the notions of *neutrality* and *autonomy* turn out to be substantive normative principles.[[95]](#footnote-95) Liberalism’s claims to neutrality – which, if correct, would buttress the DPMT – are mistaken: as is its claim to transcend ideology.

Fourthly, free-market liberals and conservatives may downplay, or even deny the possibility of, some forms of collective responsibility (CR). Those on the left are more inclined to accept the reality of CR. In this context ideology again may influence what seems to be a value-free process, that of deciding the chief cause of some event. For example, as discussed in Chapter Thirteen, when the ferry *Herald of Free Enterprise* sank in 1987 it was found politically expedient by many on the political right to pronounce the chief cause of the disaster to be forgetfulness on the part of one low-ranking employee, Assistant Boatswain Mark Stanley. Issues relating to corporate responsibility – including allegations that the ferry owners had neglected safety on cost grounds – were ignored or glossed over by some Conservative politicians and commentators. More generally, right-wingers and market liberals tend to favour Methodological Individualism, stressing our physical separateness and the inherently private nature of our mental experiences. Socialists, in contrast, tend to favour a more holistic account of human conduct, stressing that groups comprise not only individuals, but also structured *relationships* between individuals. Once more the seemingly neutral claims of metaphysicians and philosophers of mind have political ramifications.

The wider problem here is that it is extremely difficult, and perhaps impossible, to investigate any moral or political issue using wholly non-moralised language. For example, as discussed in Chapter Eight, some philosophers have attempted to provide evaluatively neutral definitions of such terms as ‘freedom’. However, while we may devise a formula that denotes purely formal qualities, we can never avoid the term’s normative *connotations.* In practice ‘freedom’ is generally used approvingly, and if the speaker wishes to indicate her disapproval of someone’s freedom she will probably describe it as ‘license’. Similar considerations apply to trait terms. Take the seemingly neutral term ‘unafraid’. We may initially consider this equally applicable to courageous and reckless people, but because it is normally used approvingly it is closer in meaning to ‘courageous’ than to ‘reckless’, both of which have normative connotations. Admittedly, it seems possible to *conceive* the non-moralised notion of *lacking fear*, and to devise a corresponding term without the associations of ‘unafraid’. However, as soon as that term came into general use it would start to gather associations, whether favourable or unfavourable.

I consider, then, that most political philosophy is permeated by ideological assumptions. While commentators rarely explicitly state their political beliefs, they reveal them tacitly in their presuppositions even while purporting to present a wholly objective analysis. [[96]](#footnote-96) In fact it seems all but impossible to discuss political arguments in a manner wholly free from ideological bias. Although I have attempted to make this book as fair as possible to all viewpoints, I acknowledge that my own political sympathies lie with welfare liberalism.

***…and finally***

The issues discussed here are not solely of theoretical interest, and might have important practical repercussions. For certain politicians and commentators, morality is almost wholly a private affair, the scope of agents’ concerns being limited to their friends and families. It has little or no bearing on political issues. Hence if a man has a sexual relationship outside marriage, say, he is acting immorally. If, on the other hand, agents of the state torture those perceived to be its enemies, or if or a multi-national company kills thousands of people in the Third World by ignoring health and safety issues, the matter is either of no moral significance or is attributable to the failings of specific individuals. Alternatively, if commentators accept that political action has a moral dimension, they may excuse torture or economic exploitation by arguing that the political domain is governed by its own moral imperatives, imperatives that sometimes permit such actions. The consequences in either case are grave. In short, establishing that all human action is governed by one and the same system of morality may be one small step in the direction of ending such abuses.

**NOTE**

This is the introductory chapter of my book *Moral Rules and Political Action: A Rule-Consequentialist Account of the Relationship between Ethics and Politics* (Etica Press, 2012). Some of the (few) people who have read the complete book have been kind enough to suggest that it offers one of the best solutions yet devised to how we can characterise the relationship between moral and political theory. Below is a brief summary.

The book can be ordered on Amazon or direct from me via davidlockwood34@yahoo.com. If you order from me (at £5, inclusive of postage in the UK – a bargain for a large format paperback of nearly 400 pages) you will also receive (1) a list of amendments and corrections; (2) a copy of my paper ‘Three Forms of Collective Responsibility’, which revises and strengthens arguments presented in Chapter Thirteen of the book; and an electronic version of the second, revised edition of the complete book in electronic format, which I hope to publish in 2016. (This offer does not amount to a contractual obligation, as I cannot guarantee availability in 2016.)

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***Moral Rules and Political Action*: Summary**

Many philosophers argue for the Distinct Political Morality Thesis, which holds that private and political life are governed by different ethical theories. I reject this claim, and must therefore find a theory that adequately encompasses both realms.

In Part One I first argue that a cognitivist metaethical theory is a precondition of intelligible political and moral discourse, and defend Onora O’Neill’s version of Constructivism as the most persuasive non-realist metaethical theory.

I next offer a new version of Rule-Consequentialism. My account attempts to answer traditional objections to the theory (objections involving incoherence, ‘rule-worship’, and conflicts between rules) by introducing two new elements. These are practice-rules, which incorporate qualifications and exceptions, and general background principles that both act as tie-breakers between practice-rules and reduce the number that must be absorbed. My notion of a practice-rule is intended to be a credible compromise between the advantages of having rules and the disadvantages of inflexible adherence to those rules. My theory also takes account of agents’ internal states. I defend J S Mill’s distinction between intentions and motives, and argue that at least some intentions cannot be purely mental entities because they involve *plans*, and changes in plans involve changes in *action*. Such intentions are consequently capable of being evaluated, and we can incorporate a requirement to have certain intentions within our background principles.

I also examine three other issues that seem to open up a divide between private and political morality: special obligations, moral dilemmas and moral luck. It might be held that politics is characterised by irreconcilable demands and hence true dilemmas, and that political decisions may be luckily morally good in their consequences. I seek to show that moral ‘dilemmas’ and moral ‘luck’ are both fictions.

In Part II I examine specific arguments offered in support of the Distinct Political Morality Thesis. I survey attempts to detach ethics from politics: including Liberalism’s claim that the two domains should remain separate. I demonstrate that there is a continuum, and no rigid distinction, between public and private. I examine the claim that ‘dirty hands’ cases show that political agents are not bound, and must sometimes commit acts forbidden, by everyday morality. I investigate the implications of large-scale policy decisions involving stochastic processes; and, finally, the issue of collective moral responsibility.

1. Cf. Christ’s words: ‘Render unto Caesar the things that are Caesar’s, and unto God the things that are God’s’ (Mark 12:17) [↑](#footnote-ref-1)
2. All forms of Positivism are linked by the belief that logic and sensory perception (the latter backed up by scientific methodology) are the only reliable sources of knowledge. Positivists therefore adhere to a rigid distinction between facts and values. [↑](#footnote-ref-2)
3. Political scientists investigate such topics as voting behaviour by gathering and analysing statistical information. I put ‘science’ in scare quotes because there are probably no laws of political science comparable in explanatory and predictive power to those found in the fundamental natural sciences. [↑](#footnote-ref-3)
4. I return to these issues in Chapter Eight. They involve extremely complex cross-currents of thought which, needless to say, my discussion greatly simplifies. [↑](#footnote-ref-4)
5. John Rawls, *A Theory of Justice*, rev. edn. (Oxford, Oxford UP, 1999) p. 45. In later work Rawls characterises liberalism as a purely political idea. [↑](#footnote-ref-5)
6. Robert Nozick, *Anarchy, State and Utopia* (Oxford : Blackwell, 1974) p. 6 [↑](#footnote-ref-6)
7. The terminology here is my own. See also 5.4.3. [↑](#footnote-ref-7)
8. Hans J Morgenthau, *Politics Among Nations: The Struggle for Power and Peace,* 7th edn. (Boston: McGraw-Hill, 2006) p. 13. Coady distinguishes between morality’s comprehensiveness and dominance: that is, between its universal applicability to all areas of life and its supremacy over all other reasons for action. See CAJ, Coady, *Messy Morality: the Challenge of Politics* (Oxford: Oxford UP, 2008) p. 19 [↑](#footnote-ref-8)
9. Dean Acheson, ‘Address Given at Amherst College’, quoted in Louis Henkin *et al*., *International Law: Cases and Materials*, (St. Paul, MN: West Publishing, 1993) p. 39 n. 3 [↑](#footnote-ref-9)
10. Niccolò Machiavelli, *The Prince*, trans. George Bull (Harmondsworth: Penguin, 1975) pp. 91-92 [↑](#footnote-ref-10)
11. A Quinton ‘Morals and Politics’, in AP Griffiths (ed.) *Ethics* (Royal Institute of Philosophy Supplement 35) (New York: Cambridge UP, 1993) 95-106 [↑](#footnote-ref-11)
12. For example, Felix Oppenheim. See 5.2.3 [↑](#footnote-ref-12)
13. Robin Cook advocated the new policy in a speech given on 12 May 1997. http://www.guardian.co.uk/world/1997/may/12/indonesia.ethicalforeignpolicy, accessed 9 February 2010 [↑](#footnote-ref-13)
14. Electorates rarely have a sophisticated grasp of moral issues, and Cook’s reluctance to elaborate on his understanding of the ethical – which might well encompass morally undesirable but in-the-circumstances justifiable actions – is understandable. Typically, of course, governments defend themselves against the charge of hypocrisy in such circumstances by declaring that their prime moral responsibility is to safeguard jobs. [↑](#footnote-ref-14)
15. **Ian Shapiro, ‘**Gross Concepts in Political Argument’, *Political Theory*, 17, 1 (1989), 51-76 [↑](#footnote-ref-15)
16. Michael Walzer, ‘Political Action: The Problem of Dirty Hands’, *Philosophy and Public Affairs*, 2, 2 (1973) 160-180 [↑](#footnote-ref-16)
17. Ruth W Grant, *Hypocrisy and Integrity: Machiavelli, Rousseau, and the Ethics of Politics*, (Chicago: University of Chicago P, 1997) [↑](#footnote-ref-17)
18. I refer here to the General/Cosmopolitan Background Principle, B-P(1). See 4.3.7 [↑](#footnote-ref-18)
19. David Lockwood, *Ethics and Ideology: The Relationship between Moral Theories and Political Ideologies* (‘Studies in the Relation between Ethics and Politics Vol. II’). To be published. [↑](#footnote-ref-19)
20. Many textbooks – such as Alex Miller’s *Introduction to Contemporary Metaethics* (Cambridge: Polity Press, 2003) – effectively ignore the topic. [↑](#footnote-ref-20)
21. David Lyons, *Forms and Limits of Utilitarianism*, (Oxford: Clarendon P, 1965) p. 134 [↑](#footnote-ref-21)
22. Brad Hooker, Ideal Code, Real World: A Rule-Consequentialist Theory of Morality (Oxford: Oxford UP, 2000). In discussing Hooker (and other philosophers) I do not claim to engage with what might be called the definitive version of their theories. Philosophers change their views in the course of their careers, and any one book or paper might present a misleading account of their position. [↑](#footnote-ref-22)
23. Coady, *Messy Morality: The Challenge of Politics* (Oxford: Oxford UP, 2008). Susan Mendus, *Politics and Morality* (London: Polity, 2009). [↑](#footnote-ref-23)
24. RM Hare, *Essays on Political Morality* (Oxford: Clarendon , 1998); Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. Geoffrey Hawthorne (Princeton, NJ: Princeton UP, 2005) [↑](#footnote-ref-24)
25. For example, Michael J Perry, *Morality, Politics and Law*, (New York: Oxford UP, 1988); Richard J Regan *The Moral Dimensions of Politics* (New York: Oxford UP, 1986); Joseph Raz, *Ethics in the Public Domain* (Oxford: Clarendon P, 1994); Ian Shapiro, *The Moral Foundations of Politics*, (New Haven & London: Yale UP, 2003) [↑](#footnote-ref-25)
26. EF Carritt, *Morals and Politics: Theories of Their Relation from Hobbes and Spinoza to Marx and Bosanquet* (Oxford: Oxford UP, 1947); EF Carritt, *Ethical and Political Thinking* (Oxford: Oxford UP, 1947) [↑](#footnote-ref-26)
27. Dennis Thompson, *Political Ethics and Public Office*, (Cambridge, MA: Harvard UP, 1987) [↑](#footnote-ref-27)
28. Calum Paton, *Ethics and Politics: Theory and Practice* (Aldershot: Avebury, 1992); Richard Vernon, *Political Morality: A Theory of Liberal Democracy* (London: Continuum, 2001) [↑](#footnote-ref-28)
29. Stephen de Wijze, *Political Morality: The Virtue of Dirty Hands* (London: Palgrave Macmillan, 2007) [↑](#footnote-ref-29)
30. Stephen Buckler, *Dirty Hands: The Problem of Political Morality* (Aldershot:Avebury*,* 1993) [↑](#footnote-ref-30)
31. Joseph Raz, The Morality of Freedom (Oxford: Clarendon, 1986) p. 4 [↑](#footnote-ref-31)
32. Raz, Morality of Freedom, p. 400 [↑](#footnote-ref-32)
33. The term ‘political morality’ is also sometimes used to signify the ideological climate of a society. The United States, for example, is sometimes said to have a conservative political morality. [↑](#footnote-ref-33)
34. Elizabeth Wolgast suggests various differences between an appropriate political code and professional codes. In particular, politicians assume responsibility over many issues the nature of which is unpredictable and their role is, other than in respect of serving those whom they represent, generally indeterminate. Moreover, they have a mandate to decide on moral issues. In contrast, the roles, and hence behaviour, of professionals are clearly circumscribed and they do not normally take moral decisions. See E Wolgast, ‘The Virtue of a Representative’, *Social Theory and Practice*, 17, 2 (1991) 273-293 [↑](#footnote-ref-34)
35. Henry Sidgwick, *The Methods of Ethics*, 7th edn. (Indianapolis: Hackett, 1981), p. xxii [↑](#footnote-ref-35)
36. For example, Tom L Beauchamp and James F Childress, *Principles of Biomedical Ethics*, 6th edn. (Oxford: Oxford UP) [↑](#footnote-ref-36)
37. Shelly Kagan, ‘The Structure of Normative Ethics’, *Philosophical Perspectives*, 6 (1992), 223-242 [↑](#footnote-ref-37)
38. Albert Flores and Deborah G Johnson, ‘Collective Responsibility and Professional Roles’, *Ethics*, 93, 3 (1983) 537-545, p. 538 [↑](#footnote-ref-38)
39. See, for example, P Mott, ‘Fodorand Ceteris ParibusLaws’, *Mind* 10, 402 (1992) 335-346. [↑](#footnote-ref-39)
40. Friedrich Nietzsche, *Twilight of the Idols; and, The Anti-Christ*, trans. R J Hollingdale, (Harmondsworth: Penguin, 1990) pp. 59-61 [↑](#footnote-ref-40)
41. Walzer, pp. 166-167 [↑](#footnote-ref-41)
42. Walzer, pp. 165-166 [↑](#footnote-ref-42)
43. *24*, Season 2, made by the Fox Broadcasting Company, was first broadcast in the USA in 2002-2003 [↑](#footnote-ref-43)
44. RM Hare, ‘Political Obligation’ in Hare, *Essays*, 1-20, pp. 13-15 [↑](#footnote-ref-44)
45. Sissela Bok, *Lying*: *Moral Choice in Public and Private Life* (London: Quarto, 1980) pp. 40-41 [↑](#footnote-ref-45)
46. Hilary Putnam, ‘The Meaning of “Meaning”’ in *Mind, Language, and Reality* (Cambridge: Cambridge UP, 1975) 215-271, p. 243 [↑](#footnote-ref-46)
47. See, for example, Tamar Szabo Gendler, *Thought Experiment: On the Powers and Limits of Imaginary Cases* (New York: Garland , 2000) [↑](#footnote-ref-47)
48. Hilary Putnam, ‘Is Water Necessarily H2O?’, in James Conant (ed.) *Realism with a Human Face* (London: Harvard UP, 1990) 54-79, p. 55 [↑](#footnote-ref-48)
49. Garth Hallett, *Essentialism: A Wittgensteinian Critique*. (Albany: State University of New York Press, 1991) p. 109 [↑](#footnote-ref-49)
50. Daniel Caola, Letter, *London Review of Books*, 27, 11 (2005) p. 4 [↑](#footnote-ref-50)
51. Russell Hardin, *Morality Within the Limits of Reason*, (Chicago: University of Chicago P, 1988) p. 25 [↑](#footnote-ref-51)
52. Jeffrey Brand-Ballard, review of FM Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harm*, *Notre Dame Philosophical Reviews* (17 May 2007) http://ndpr.nd.edu/news/25299-intricate-ethics-rights-responsibilities-and-permissible-harm, accessed 30 January 2012 [↑](#footnote-ref-52)
53. One common assumption is that law is an ‘intermediary’ between ethics and politics, but this position seems to assume that ethics and politics are distinct realms. See, for example, Michael Rosenfeld*,* Just Interpretations*: Law Between Ethics and Politics* (Berkeley: University of California P, 1998) pp. 37-40 [↑](#footnote-ref-53)
54. HLA Hart, *The Concept of Law* (Oxford: Clarendon P, 1961) pp. 169-176 [↑](#footnote-ref-54)
55. Some of these points are drawn from Leslie Green, ‘Legal Positivism’ in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy (Fall 2009 Edition)*, URL = http://plato.stanford.edu/archives/fall2009/entries/legal-positivism/, 4.2 The Separability Thesis [↑](#footnote-ref-55)
56. Jonathan Wolff, *Ethics and Public Policy: A Philosophical Inquiry* (London: Routledge, 2011) p. 193 [↑](#footnote-ref-56)
57. Albert R Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California P, 1990) p. 7 [↑](#footnote-ref-57)
58. One difference between Bernard Williams’s ‘thick’ and ‘thin’ terms is that only the former permit degrees. Thin terms, such as ‘right’, ‘wrong’, ‘(im)permissible’ and ‘(in)correct’ belong to absolutist ethics and law. We can be more or less generous, but not more or less correct. Of course, we frequently use such comparative forms of thin expressions, but these always contain a hidden clause: more (or less) correct in specific respects, the clause transforming a thin into a thick term. See Bernard Williams, *Ethics and the Limits of Philosophy*. (Cambridge: Cambridge UP, 1985) pp. 140-145 [↑](#footnote-ref-58)
59. Hence there is a dichotomous relationship between the absolute and the non-absolute requirement: between, say, the absolutely forbidden and the in-almost-all-circumstances forbidden. Note that a supererogatory demand will stand beyond the pole representing the absolutely required. [↑](#footnote-ref-59)
60. This example is carefully chosen. One instance of *permitting* torturing for the sake of amusement might exceptionally be justifiable. For example, there may be very strong grounds for the belief that allowing a psychopath to indulge a compulsive desire to torture will prevent him yielding to the urge to detonate a nuclear device, thereby killing millions. [↑](#footnote-ref-60)
61. A *modus ponens* syllogism is a valid argument in formal logic. It takes the form ‘If p, then q/p/Therefore, q’. Hence: ‘If Bill has 20,000 hairs on his head (the conditional premise p) he is not bald (q); Bill has 19,999 hairs on his head (the categorical premise p); Therefore, he is not bald (q)’. [↑](#footnote-ref-61)
62. This, the original formulation of the Sorites ‘paradox’, is usually attributed to Eubulides of Miletus. [↑](#footnote-ref-62)
63. Mark Sainsbury, ‘Concepts Without Boundaries’, *Departing from Frege: Essays in the Philosophy of Language*, (London: Routledge, 2002) 71-84, p. 71 [↑](#footnote-ref-63)
64. Sainsbury, ‘Concepts’, p. 77 [↑](#footnote-ref-64)
65. Rupert Read, ‘Logically Alien Thought and the Dissolution of “Sorites” Paradoxes’ at www.uea.ac.uk/~j339/publications.htm, accessed 15 February 2010. See also D Raffman, ‘Vagueness and Context-Sensitivity’, Philosophical Studies, 81 (1996) 175-192 [↑](#footnote-ref-65)
66. Ludwig Wittgenstein, *Philosophical Investigations*, trans. GEM Anscombe, 3rd edn, (Oxford: Blackwell, 1967) §68 [↑](#footnote-ref-66)
67. My account resembles Eleanor Rosch’s theory of categorisation, one based on prototypes. See 4.2.3 for further discussion. [↑](#footnote-ref-67)
68. As discussed in Chapter Ten, matters are more complex than this example suggests. In fact, S will be clearly public if positioned near the public poles on each of the three dimensions of agency, access, and interest. [↑](#footnote-ref-68)
69. PH Nowell-Smith, ‘Some Reflection on Utilitarianism’, *Canadian Journal of Philosophy*, 2, 4 (1973) 421-422 [↑](#footnote-ref-69)
70. Hence Nietzsche’s attack on morality can be understood as one on what we are commanded to do, not on what we ought to do. It also follows from the distinction that the absence of an authority does not mean that nothing can be said about what we ought to do, that morality loses its force. [↑](#footnote-ref-70)
71. John Dewey, ‘The Need for a Recovery of Philosophy,’ in Jo Ann Boydston (ed.) *John Dewey: The Middle Works, 1899-1924*, Vol. 10 (Carbondale and Edwardsville: Southern Illinois UP, 1980) p. 46 [↑](#footnote-ref-71)
72. Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation* (New York : Vintage Books, 1989) [↑](#footnote-ref-72)
73. If Bok’s transparent world were considered insufficiently like our own to reliably guide our intuitions, Hume’s claim that justice would be unnecessary in a world containing neither selfish people nor scarcity provides a more down-to-earth example. See David Hume, *A Treatise of Human Nature*, ed. LA Selby-Bigge, 2nd edn, rev. PH Nidditch (Oxford: Oxford UP, 1978) III, ii, 2, p. 495. See also 4.2.2 [↑](#footnote-ref-73)
74. See Stephen Toulmin, *An Examination of the Place of Reason in Ethics*, Cambridge: Cambridge UP, 1950) [↑](#footnote-ref-74)
75. José Saramago, *Blindness*,trans. Giovanni Pontiero (London: Vintage, 1997) [↑](#footnote-ref-75)
76. Jonathan Bennett, *The Act Itself* (Oxford: Oxford UP, 1998) pp. 14-15 [↑](#footnote-ref-76)
77. Jonathan Bennett, ‘The Necessity of Moral Judgments’, *Ethics*, 103, 3 (1993) 458-472, p. 461 [↑](#footnote-ref-77)
78. Geoffrey Sayre-McCord, ‘Moral Theory and Explanatory Impotence’ in *Essays on Moral Realism* (Ithaca: Cornell UP, 1988) 256-281 [↑](#footnote-ref-78)
79. S Darwall, A Gibbard and P Railton, *Moral Discourse and Practice: Some Philosophical Approaches*,(New York and Oxford: Oxford UP, 1997) pp. 34-35 [↑](#footnote-ref-79)
80. John M Doris and Stephen Stich, ‘As a Matter of Fact: Empirical Perspectives on Ethics’ in F Jackson and M Smith (eds.) *The Oxford Handbook of Contemporary Analytic Philosophy* (Oxford: Oxford UP, 2005) 114-152, p. 114 [↑](#footnote-ref-80)
81. Williams, *In the Beginning*, p. 23 [↑](#footnote-ref-81)
82. Benjamin Libet, ‘Unconscious Cerebral Initiative and the Role of Conscious Will in Voluntary Action’, *Behavioral and Brain Sciences*, 8 (1985) 529-566. CS Soon, M Brass, H-J Heinze and John-Dylan Haynes, ‘Unconscious Determinants of Free Decisions in the Human Brain’, *Nature Neuroscience*, 11, 5 (2008) 543-545. [↑](#footnote-ref-82)
83. Raymond Tallis ‘My Brain made me do it, Your Honour’ *The Philosophers’ Magazine*, 55 (2011) 31-41 p. 39 [↑](#footnote-ref-83)
84. Press release of the Max-Planck-Gesellschaft (14 April 2008) www.mpg.de/567905/pressRelease20080414 [↑](#footnote-ref-84)
85. Interview with Alfred Mele, 5 January 2010 http://bigthink.com/ideas/19229, accessed 12 September 2010 [↑](#footnote-ref-85)
86. BBC Television: Horizon, ‘Are You Good or Evil?’ (7 September 2011) [↑](#footnote-ref-86)
87. Peter Strawson, ‘Freedom and Resentment’, in Gary Watson (ed.) *Free Will* (Oxford: Oxford UP, 1982) 59-80, p. 62 [↑](#footnote-ref-87)
88. Strawson, ‘Freedom’, p. 68 [↑](#footnote-ref-88)
89. Strawson, ‘Freedom’, p. 74 [↑](#footnote-ref-89)
90. Another influential means of defending moral responsibility involves the claim that responsibility is *compatible* with determinism. This would not be the case if what is sometimes called ‘the principle of alternate possibilities’ (‘the PAP’) is true. The PAP affirms that someone is morally responsible for what she has done only if she could have done otherwise. Harry Frankfurt sets out to disprove the PAP by constructing thought-experiments in which even though an agent is not coerced into doing x, and could not have done otherwise than x, he is still responsible for x. See Harry G Frankfurt, ‘Alternate Possibilities and Moral Responsibility’, *Journal of Philosophy*, 66 (1969) 828-839. [↑](#footnote-ref-90)
91. John Plamenatz, *Ideology*, (London: Macmillan, 1971) p. 15 [↑](#footnote-ref-91)
92. These points are explained in Chapter Eight [↑](#footnote-ref-92)
93. The terms ‘free-market (or economic) liberal’ and ‘(right-wing or conservative) libertarian’ cover much the same set of beliefs. Libertarianism also overlaps with the notion of methodological individualism. [↑](#footnote-ref-93)
94. Hans Eysenck, *Sense and Nonsense in Psychology*, (London: Penguin Books, 1956) [↑](#footnote-ref-94)
95. See, for example, William Galston, *Liberal Purposes*,(Cambridge: Cambridge UP, 1991). [↑](#footnote-ref-95)
96. For example, Norman Barry laments the introduction of substantive argument about appropriate ends into political analysis, writing ‘Gone is that modesty and reticence that were once features of political philosophy whenever normative questions were raised’. However, his subsequent arguments are underpinned by the (largely undefended) assumption that free-market ideology is unassailable. (Norman **Barry, ‘Political Morality as Convention’,** *Social Philosophy and Policy*, 21 (2004) 266-292, p. 267). [↑](#footnote-ref-96)