

THE EMBODIMENT THESIS

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ABSTRACT. In this essay I articulate and defend a thesis about the nature of morality called “the embodiment thesis”. The embodiment thesis states that moral values underdetermine the obligations and entitlements of individual persons, and that actual social institutions must embody morality by specifying these moral relations. I begin by presenting two thought experiments that elucidate and motivate the embodiment thesis. I then proceed by distinguishing the embodiment thesis from a Rawlsian doctrine about the nature of justice, from the doctrine of moral relativism, and from solutions to the coordination problem of rational choice theory.

KEY WORDS: basic structure of society, coordination problem, embodiment, fairness, John Rawls, moral relativism, moral values, social institutions.

1. TWO EXAMPLES

I seek to articulate and defend a thesis about the nature of morality. This thesis is, by virtue of its abstractness, somewhat elusive. The purpose of this paper is as much to elucidate the thesis as to argue for it. I call this thesis the “embodiment thesis”:¹

The Embodiment Thesis. Moral values underdetermine the obligations and entitlements of individual persons in some moral domains, and actual social institutions must embody morality by specifying these moral relations.

This thesis asserts that many of the moral relations among individuals are systematically indeterminate in the absence of an appropriate kind of social structure. It asserts that

¹ For a similar use of the term “embodiment”, see Chapter 5 of Onora O’Neill (1996). For more detailed arguments in support of the embodiment thesis, see Jon Garthoff (2003) and *The Embodiment of Morality*, my doctoral dissertation in progress.

social institutions must remedy this indeterminacy by specifying individuals' obligations and entitlements in a way that is consonant with the values that produce these relations.

I believe the embodiment thesis is true because I believe that in some moral domains the content of an individual's moral obligations and entitlements depends on the content of the obligations and entitlements of others in his society, and that in these domains an individual's obligations and entitlements are determinate only when they are cognizable as a fair share of a societal system of obligations and entitlements.² I believe further that such a societal system is in place only if actual social institutions embody morality by authoritatively proclaiming the content of each individual's obligations and entitlements. I believe also that there are many acceptable but mutually incompatible systems of moral relations that might obtain among individuals and that different acceptable social structures may therefore proclaim very different obligations and entitlements for any particular individual.

These claims are all rather abstract. Let us briefly consider two examples of the sort of indeterminacy I am concerned about, so that we may get a firmer grip on the notion of embodiment I deploy. These examples are from different moral domains, and so they will illustrate that the need for social embodiment of moral values is a widespread phenomenon. The examples are intended to serve only as illustrations, however, to help us understand the content of the embodiment thesis. My purpose in this paper is only to clarify this thesis and to point to some considerations that militate in its favor.

Our first example addresses a question of fair treatment: what penalty is it fair for a teacher to assign to a student who turns in a late paper? Imagine a pair of individuals

² I do not claim that all obligations and entitlements require social specification. The usual prohibitions against the deception, coercion, and destruction of persons can be specified by moral values alone.

Allison and Trey. Allison is a college undergraduate enrolled in an introductory course in ethical theory, and Trey is the teaching assistant who leads the discussion section in which she participates. A faculty member delivers lectures for this course twice a week, with Trey and four other graduate students each leading a weekly discussion section of twenty undergraduates. A substantial percentage of the grade for this course is to be determined by student performance on a term paper. Allison submits her paper two days late, though she neither has nor offers any adequate excuse for this tardiness. Trey must now decide how to treat Allison's paper. Fairness demands that Allison be penalized, since those who complied with the due date would otherwise be placed at a competitive disadvantage; giving Allison a failing grade, however, would be draconian. Some middle course is called for, but within this middle ground there is little to recommend any particular penalty over another that is slightly more or less severe. It would be a waste of Trey's time to spend hours in reflection about the optimal late penalty.

It would not be a waste of time, however, for Trey to consult with the other teachers. The students will be assigned grades for the course, and these grades are supposed to reflect their performance relative to the demands of that course, so there is reason for the teachers of the course to standardize their evaluations across the discussion sections. Once we appreciate this, it becomes apparent that what is of overriding importance is not that the teachers of the course adopt this or that late penalty within the acceptable range, but that they all adopt the same late penalty. This is not the only demand of fairness, since some late penalties may be ruled out as unfairly lenient or severe. But once we have eliminated these unacceptable candidates, uniform treatment of the students is the most important consideration.

This case illustrates the need for coordination among teachers of this sort of college course, and hence suggests that it is morally required that instructors serve as coordinating authorities for their teaching assistants. This should be of interest to philosophers qua instructors. But more importantly for our present concerns, this case illustrates that late penalties call for the embodiment of morality, and that should be of interest to philosophers qua moral theorists. The assignment of late penalties is a moral matter: it is a consequence of our moral obligation to treat our students fairly that we must treat them uniformly, at the relevant level of abstraction, in applying late penalties to them. The appropriate late penalty to assign is indeterminate, however, in the absence of a course policy. Late penalties cannot be fairly assigned, therefore, without an institutional structure that specifies what students are obligated to do and what penalties will attach if they fail to meet these obligations. In this case the institutional structure that is needed is quite easy to create: a sentence on a syllabus suffices to create it, if the teachers make a good faith effort to implement the policy stated in that sentence.

For our second example of the embodiment of morality, let us consider a question concerning the problem of extreme need: what do those who have ample goods owe to those who, through no moral failing of their own, lack basic goods like food and shelter? Let me again invoke a pair of imaginary individuals, to make clear the sort of case that I have in mind. Suppose that as Oona the oncologist walks down the street on her way to the hospital where she works, she is accosted by Paul the panhandler. Paul is unemployed, homeless, and starving. He has tried on many occasions to find gainful employment, but lacks the skills needed to succeed in even the most menial of jobs. He also lacks close friends or family with the means to support him. Paul asks Oona for

some spare change in order to get something to eat. Oona, we suppose, is a conscientious moral agent willing to discharge her moral duties to the best of her ability.

It is difficult for Oona to get a grip on her obligations with respect to Paul, in the absence of a social institution that specifies these obligations. She has some sense of his need, and of her ability to provide. But more facts than these are relevant to Oona's obligations. Oona's obligations are shared with the others in her society who have ample goods, and this provides a constraint on the extent of her obligations: the content of her obligations must be a fair share of what is required of all those who share her circumstances. The share of the provision that it is fair for Oona to be charged with is not uniquely picked out, however, in the absence of a social structure that specifies the content of her obligation to provide.³ To be morally adequate, a society must contain a structure of social institutions that embodies morality by specifying the obligations of those with ample goods to provide and the entitlements of the needy to receive.

These examples illustrate my claim that in various domains morality is systematically indeterminate, and that in these domains actual social structures are called upon to resolve this indeterminacy by specifying the moral relations among individuals. Having said a few words about the claims the embodiment thesis makes, I now want to say a few words about the claims it does not make.

2. RAWLS'S THEORY

The embodiment thesis may appear to be a Rawlsian doctrine. And so, I suppose, it is. It places an emphasis on major social institutions – what Rawls calls the “basic

³ I present my arguments for these claims in Chapters 2 and 3 of *The Embodiment of Morality*, my doctoral dissertation in progress. I mention them here only to clarify and motivate the embodiment thesis.

structure of society”⁴ – and claims, with Rawls, that these institutions play a distinctive role in moral theory. Indeed, the similarity is deeper than this, for in *A Theory of Justice* Rawls explicitly allows that the actual institutions of society specify the content of individuals’ obligations and entitlements of justice, so long as they fall within the range of satisfactory social systems. Rawls first makes this claim when discussing his four-stage sequence for putting the principles of justice into practice. He writes that the four-stage sequence

... sets out a series of points of view from which the different problems of justice are to be settled, each point of view inheriting the constraints adopted at the preceding stages. Thus a just constitution is one that rational delegates subject to the restrictions of the second stage would adopt for their society. And similarly just laws and policies are those that would be enacted at the legislative stage. Of course, this test is often indeterminate: it is not always clear which of several constitutions, or economic or social arrangements, would be chosen. But when this is so, justice is to that extent likewise indeterminate. Institutions within the permitted range are equally just, meaning that they could be chosen; they are compatible with all the constraints of the theory. Thus on many questions of social and economic policy we must fall back upon a notion of quasi-pure procedural justice: laws and policies are just provided that they lie within the allowed range, and the legislature, in ways authorized by a just constitution, has in fact enacted them. This indeterminacy in the theory of justice is not in itself a defect. It is what we should expect. (Rawls, 1971, pp. 200-201)

I quote so extensively because I believe there is some tension between this passage and the content of the theory of justice that Rawls has already articulated at this point in his book, and because I believe that examining this tension will help us to understand the import of the embodiment thesis.

In this passage, Rawls appears to endorse the embodiment thesis. He claims that a range of different social structures may be just, and that when a range of just structures is available, obligations and entitlements of justice are specified by the actual legislature as authorized by the actual constitution. He claims, moreover, that this is a consequence

⁴ See Section 2 of Rawls (1971) and Lecture VII of Rawls (1993).

of the nature of justice itself, and not of some human shortcoming. This posture is precisely that which the embodiment thesis would have us adopt.

When addressing whether his theory of justice supports a private-property or a socialist economic system, however, Rawls writes:

It is necessary, then, to recognize that market institutions are common to both private-property and socialist regimes, and to distinguish between the allocative and distribution function of prices. Since under socialism the means of production and natural resources are publicly owned, the distributive function is greatly restricted, whereas a private-property system uses prices in varying degrees for both purposes. Which of these systems and the many intermediate forms fully answers to the requirements of justice cannot, I think be determined in advance. There is presumably no general answer to this question, since it depends in large part upon the traditions, institutions, and social forces of each country, and its particular historical circumstances. The theory of justice does not include these matters. But what it can do is to set out in a schematic way the outlines of a just economic system that admits of several variations. The political judgment in any given case will then turn on which variation is most likely to work out best in practice. (Rawls, 1971, pp. 273-274)

With respect to this question concerning large-scale market structures, at least, Rawls does not claim that a legislature has a range of satisfactory options. When he claims that both private-property and socialist economic systems are compatible with his theory of justice, Rawls does not thereby claim that any particular legislature could justifiably institute either system. What settles that issue for a society is not that society's actual legislature; it is, rather, facts about the society's history and culture. That sort of indeterminacy is not, however, the sort that the embodiment thesis calls attention to. The embodiment thesis asserts an indeterminacy that is produced by the failure of moral values to specify the relations of obligation and entitlement among individuals, while Rawls's assertion of indeterminacy in this passage is the much more run-of-the-mill claim that we must be attentive to our historical circumstances when we attempt to put principles of justice into practice.

This passage alone does not, of course, establish any tension within Rawls's theory. For all that has been said thus far, we could incorporate the embodiment thesis into the *Theory of Justice* view – as the first quoted passage suggested – but claim that the choice between private-property and socialist economic systems is not one of the domains of justice that calls for embodiment. We would simply have to claim that there are other domains that do call for embodiment.

The problem with this position is that the content of Rawls's theory leaves little room for legislatures to choose social structures. Rawls's theory states that we must institute a maximal equal system of political liberty, that we must ensure equality of opportunity with respect to socially defined offices and positions, and that we must allocate goods to the advantage of the worst off under our system.⁵ The last of these constraints, Rawls's difference principle, is an optimizing principle: it states that we must optimize the condition of those who are worst off under our system.⁶ Like other optimizing principles, the difference principle is what we might call “fully directive”: given two or more possible social structures, and excepting the rare instances that involve ties, the principle always prescribes one of the structures and proscribes the others.⁷ It is the fully directive nature of the difference principle that produces tension with Rawls's claim that justice is often indeterminate. If an economic or social institution is of any importance at all, it will affect the distribution of goods within society. And if an economic or social institution affects the distribution of goods within society, then –

⁵ For Rawls's statement of his own theory, see Chapter II of Rawls (1971).

⁶ Rawls himself explicitly states that he regards the difference principle as an optimizing principle: “... I shall not attempt to measure in any exact way the degrees of injustice. The point to note here is that while the difference principle is, strictly speaking, a maximizing principle, there is a significant distinction between the cases that fall short of the best arrangement.” (Rawls, 1971, p. 79)

⁷ I borrow the term “fully directive” from Seana Shiffrin (1991).

again excepting instances of ties, which can support only a very weak version of the embodiment thesis – it will be either endorsed or rejected by Rawls’s theory. Since historical and cultural considerations determine which structure of social institutions satisfies the difference principle, these considerations uniquely determine the social structure a legislature must adopt.⁸

This does not entail that actual legislatures play no important role in Rawls’s theory. On the contrary, they play a crucial role by securing for individuals mutually justified expectations concerning each other’s behavior. Because having such justified expectations is so important to the formation and execution of a life-plan, Rawls’s theory maintains that we sometimes have a duty to obey the dictates of a social institution even though that institution is not just.

These remarks call attention to the fact that the view I advocate differs from Rawls’s in how it characterizes a social structure that is acceptably but suboptimally just. Since I endorse the embodiment thesis but deny that the correct theory of distribution is an optimizing theory, I leave significant latitude for actual social structures to specify the moral relations among individuals. I do not deny that there are morally better and worse

⁸ The difference principle is lexically subordinate to Rawls’s first principle of justice, which states that we must institute a maximal system of political liberty. We might therefore be tempted to account for the first quotation from *A Theory of Justice* by claiming that actual legislatures can embody morality by specifying the system of political liberty, even though they cannot embody morality by specifying the distribution of goods. There are at least two serious difficulties with this approach, however, which I will here only mention. First, the requirement that a system of political liberty be maximal must not itself be an optimization requirement, or the same problem that is encountered in the distribution of goods will be encountered in the allocation of political liberties. And more importantly, the institutions that secure political liberties themselves affect the distribution of goods, and so are at least indirectly subject to the norms of the difference principle. Even if, as Rawls demands, the essential elements of a constitution must be fixed before principles of distribution are selected, it is not clear why actual individuals should not amend their actual constitution in light of its effect on the distribution of goods. If actual individuals can secure as much political liberty as they presently have while better satisfying the difference principle, then it seems to me that Rawls should claim that they are obligated to do so. This possibility illustrates the way in which a fully directive theory of distribution ramifies throughout any political theory into which it is incorporated.

choices among the acceptably just social structures, nor do I deny that there could be a social structure that is optimally just. But I do maintain that, so long as a social structure falls within the range of acceptable options, that system is just in a full-blooded sense: it is as successful at embodying morality as an optimally just structure would be. An account of justice that incorporates an optimizing theory of distribution must maintain that such a structure is not just, since it is by hypothesis not optimal. The theory may describe such a social structure as “tolerably just”, or “not unjust”, but it cannot characterize it as just in a full-blooded sense.

I am tempted to say that this difference between my view of distribution and an optimizing view is that on my view the obligation to obey an acceptably but suboptimally just institution, where it exists, is a part of the ideal theory of morality, whereas on an optimizing view this obligation arises only nonideally, as part of an individual’s reaction to living in a society that is not just. This is not, however, a perspicuous way to explicate the difference between the views. Talk of “ideal” and “nonideal” theory presupposes that a moral theorist’s first order of business is to uncover the optimally just relations among persons. But if we accept the embodiment thesis and deny that the correct theory of distribution is an optimizing theory, then we may deny this. Without foreclosing the possibility that there are morally better and worse structures within the acceptable range, and without foreclosing the possibility that there is a structure that is optimally just, I wish to deny that the identification of the optimally just social structure is a theory of justice’s most important task. I maintain, on the contrary, that a theory of justice’s most important task is to identify the class of satisfactory social structures. On my view, obligations to obey the dictates of acceptably but suboptimally just social institutions,

where they exist, are part of what we might call “satisfactory theory”; on the optimizing view, these obligations are part of what we might call “nonsatisfactory theory”, since they are dictated by a social structure that is not just.

3. RELATIVISM

I endorse the embodiment thesis, and so I claim that in some moral domains the actual institutions in a person’s society help to specify her obligations and entitlements. This is not the pedestrian claim that in action persons must be sensitive to, among other things, the social institutions around them. It is, rather, the much stronger claim that what morality consists in within a society, and hence what it is to stand in morally appropriate relations to other persons in that society, is determined in part by the society’s institutional structure. So stated, the embodiment thesis may appear to be a species of moral relativism.

I can assert without equivocation that the embodiment thesis, as I construe it, is not a relativistic doctrine. It will help, to understand why the embodiment thesis is not relativistic, to make a tripartite distinction among “what is just”, “what justice is”, and “what justice consists in”.

The first of these phrases is the easiest to grasp: “what is just”, as I will use the phrase, denotes the actions that justice calls on persons to perform. It was just, modulo concerns about the general justice of prevailing tax laws in the United States, that I pay \$1386 in federal income tax last year; if a public university fires an employee for holding atheistic beliefs, then that is unjust. While it is true that a society’s institutions in part determine what is just in that society, this is not a startling claim. What is just in the

United States is also in part determined by how many hurricanes hit the Carolina coast this year, whether I won or lost on my most recent trip to Las Vegas, and countless other contingencies, since these all help to determine the distribution of moral obligations in the United States. The embodiment thesis is a stronger claim than this.

The second of the three phrases is also a familiar philosophical usage: “what justice is”, as I will use the phrase, denotes the nature of justice. To give an account of what justice is, therefore, is to give an abstract characterization of what features a policy or action must have in order to count as just. It is when inquiring into what justice is that conceptual analysis of the notion of justice is most useful, though we no doubt also have access to what justice is via means besides analysis. We know from our understanding of justice, for example, that a person cannot be justly obligated to perform an action unless another person in relevantly similar circumstances would also be obligated to perform a relevantly similar action. The embodiment thesis does not entail that social institutions in part determine what, in this sense, justice is. If the embodiment thesis were to entail that, it would be a relativistic thesis, for it would then claim that the ultimate nature of justice varies with the actual institutions that purport to secure justice.

The last of the three phrases is the least familiar, but it is the one that provides the content of the embodiment thesis. The embodiment thesis states not that actual social institutions partly determine what justice is, but rather that these institutions partially determine what justice consists in. On the moral theory I advocate, rational capacities are the source of the moral requirements of justice, regardless of what social institutions there are. The value of rational capacities obligates persons to treat other persons justly in action and in the adoption of projects. Institutions play an important and indispensable

role in securing justice, however, for there are many acceptable and mutually exclusive ways to treat others justly: rationality and humanity do not pick out a uniquely acceptable way for persons to treat one another. Moreover, we cannot each simply choose a preferred method for treating others justly, since our success at treating others justly is caught up with the actions and policies of others. If some of us choose one method, and others choose a different method, then we may all fail to treat one another justly, even though we have each lived up to the requirements of a system that would be adequately just if it were universally implemented. Actual social institutions help to solve this problem by specifying the system of justice that is to apply in a society. As I will use the phrase, “what justice consists in” denotes, for a society, the dictates of the system of justice governing that society. So long as a society’s system of justice falls within the range of adequate systems circumscribed by moral values and the nature of justice, the actual institutions that this system comprises can authoritatively proclaim what is just within that society. The actual institutions in our society are thus able, in a nonrelativistic way, to weave the fabric of our moral lives.

On this view, social institutions are the servant of morality, and not its master. They can proclaim what justice consists in only by constituting social structures that do in fact respect the rational capacities of all persons. If a society attempts to proclaim that two persons can be justly entitled to differing economic opportunities on the basis of their differing sexual orientations, it will fail. Such a policy cannot be part of an acceptable system of justice, for it attempts to settle a question of justice on the basis of irrelevant considerations, and thereby fails to adequately respect the members of the group to which it accords more limited opportunities. When actual institutions determine what justice

consists in, they solve a problem of underdetermination, and not a problem of vacuity: they specify moral relations, but they do not create them *ex nihilo*.

The embodiment thesis is thus not a relativistic doctrine. I regard it as a virtue of the thesis, however, that it helps to account for why many find moral relativism to be an attractive view. If the embodiment thesis is correct, then the appeal of relativism is evident: it underscores the fact that reason and human nature fail to pick out a uniquely acceptable system of moral relations among individuals. The embodiment thesis vindicates this fact without inviting the paradoxes and putative refutations associated with moral relativism.

4. THE COORDINATION PROBLEM

In the second section we saw that while the embodiment thesis is in some important respects Rawlsian – it places emphasis on the basic structure of society, and entails that this basic structure must meet the demands of quasi-pure procedural justice – it is in some tension with Rawls's difference principle. If neither the difference principle nor any other optimizing account is the correct theory of distribution, however, then the embodiment thesis will be a much more interesting view, for then moral values will then allow actual social institutions more latitude in specifying what justice consists in.

In the last section we saw that while it does entail that what justice consists in may vary among societies, the embodiment thesis is not a deeply relativistic doctrine. It is relativistic only in the sense that it allows the basic structure of a society to proclaim, within constraints given by moral values, the terms of just interaction within that society. It does not entail that moral values are themselves determined by these institutions.

I want now to distinguish the embodiment thesis from another view in the philosophical literature: the view that many social institutions, including especially the institution of law, have as their primary purpose the resolution of problems of coordination. In our Trey and Allison example we noted the importance, when attempting to treat persons fairly, of treating like cases uniformly. We noted further that the fact of agreement among individuals on a single policy, which is often necessary for such uniform treatment, can be of far greater importance than the details of what is agreed upon. This suggests that the primary role played by social institutions when they embody morality is that of coordinator. The classic example of a coordination problem is a society's choice of which side of the road to drive on. In the absence of a convention one way or the other, there is little to recommend driving on the right side of the road as opposed to the left. While we could imagine psychologists favoring one convention over the other on the basis of an idiosyncrasy of human perception, it is clear that the reasons for choosing one over the other are swamped by the reasons for collectively settling on a single option. One might wonder whether the "embodiment of morality" is just an overblown label for the problem of coordination.

Although the cases of embodiment that we have considered include an element of coordination, they are importantly different from classic coordination problems. In the United States the driver coordination problem has been solved with a convention of driving on the right side of the road, and so it is typically impossible to drive safely in the United States without doing so. Nevertheless, it is not correct to say that safe driving in part "consists" in driving on the right side of the road. Driving safely consists, rather, in driving so as to avoid undue risk of injury to persons or damage to property. To call a

mode of driving “safe” is thus to describe the expected or typical outcomes of driving in that mode. Driving on the right side of the road in the United States is safe not by virtue of its being right-side driving, but because it is typically only by driving on the right side that a person avoids undue risk of bad outcomes. The role of the social convention in this case is not to inform as to what safe driving consists in for drivers in the United States; it is, rather, to enable persons to drive safely by providing them with a justified expectation concerning the driving behavior of others.

In this respect, our cases of embodiment differ from the driver coordination problem. When the instructor whom Trey assists proclaims that papers will be marked down one-third of a letter grade for each day that they are late, she is not merely adopting a policy that will enable Trey and the other assistants to produce outcomes that are fair. She is also determining what a fair outcome consists in. If Allison complains that she has been unfairly treated because she was docked a full letter grade for a paper that was submitted only two days late, her complaint must be assessed against the course policy. There is no independently identifiable outcome that this policy is seeking to produce; it is simply stating what penalties are fair within the bounds of the course. It is thus entirely appropriate, in the context of this course, to say that fairness consists in each late paper being marked down one-third of a letter grade for each day that it is late.

This does not entail, of course, that any late policy chosen by the instructor would be fair: it is compatible with the claim that fairness rules out a range of policies to claim that what fairness requires is constituted by the choice of a policy within the acceptable range. Furthermore, it is compatible with this claim to maintain that when a policy choice is made among the acceptable options, it is made by reference to the moral value

of fairness. Imagine Trey meeting with his instructor and his fellow teaching assistants before the first lecture, and debating with them the relative merits of more and less stringent late penalties. It would not be a misuse of language for Trey to argue that “a penalty of one-third of a letter grade per day, though it would be an adequately fair policy if we were to adopt it, would be less fair than if we were to adopt a penalty of one-sixth of a letter grade per day, since it might prove less burdensome on students who have full-time jobs”. Trey might or might not be right to advance such an argument. But what is vital here is that he would not be making a conceptual mistake in so arguing. What is more, Trey might claim at this meeting that “a one-sixth of a letter grade penalty is more fair than a one-third of a letter grade penalty”, and then coherently claim during the course to a student with a day-late paper requesting leniency that “I cannot give you a penalty of one-sixth of a grade instead of one-third of a grade, since that would be unfair to your fellow students”. The first claim is about the fairness of the policies, while the second claim is about the fairness of treating a student in a certain way, given the policy decision already made by the instructor. These claims are consistent because choosing a policy for late papers involves embodying fairness within the bounds of a course, and so involves specifying the obligations and entitlements of fairness within that course.⁹

Similarly, when members of Paul and Oona's society adopt a social structure for addressing the problem of extreme need, they in part determine what fairness consists in with respect to the distribution of goods. They may coherently debate the merits of various structures on grounds of fairness – “this structure is unfair because it fails to allow individuals to keep enough of what they have earned” or “this structure is unfair because it permits gross differences in income and wealth” – and yet contend that what a

⁹ A classic statement of this point is found in Rawls (1955).

fair distribution consists in within their society is determined by the actually adopted structure, regardless of whether it is optimal, so long as it is acceptable.

Once we see how cases of embodiment differ from solutions to the coordination problem, we can also see that the embodiment thesis is not subject to the primary objection to viewing the law as a solution to a coordination problem. According to rational choice theory, I face a coordination problem when what is best for me depends on what others choose, and what is best for others depends on what I choose, in such a way that an acceptable outcome can be reached only through coordinated behavior. The driver problem is like this: universal right-side driving and universal left-side driving are both acceptable outcomes, but an individual driver can produce an acceptable outcome only when she knows in advance what other drivers are likely to choose. It is a hallmark of coordination problems that the participants have no incentive to adopt non-coordinated behaviors, since departing unilaterally from a mutually acceptable convention is always worse for each participant. In the driver problem, for example, there is no incentive to drive on the left side of the road once one is aware of the convention of driving on the right. Some philosophers of law have seized on this model from rational choice theory and attempted to show that the primary purpose of the law is to serve as a solution to coordination problems of this kind. Their accounts are subject, however, to the telling objection that it is often in an agent's interest to disobey the law, while it is never in an agent's interest to depart from a conventional solution to a coordination problem.¹⁰

Whatever the merits of this criticism with respect to such accounts of the law, the embodiment thesis is not subject to this criticism, for embodiment differs importantly

¹⁰ For accounts of the law as a solution to a coordination problem, see John Finnis (1980) and Chaim Gans (1981). For a criticism of this approach, see Leslie Green (1983).

from solutions to the coordination problem of rational choice theory. The embodiment thesis requires coordination with respect to the content of moral obligations and entitlements, and not coordination with respect to the expected payoff for each participant. There is thus no reason to expect that, in general, each aspect of the social system that embodies moral values in a society will work to the advantage of every member of that society. It is therefore consistent with the embodiment thesis that some members of society have a self-interested reason not to comply with its structure of social institutions.

5. CONCLUSION

In this paper I have attempted to elucidate and motivate a thesis about the nature of morality. This thesis states that in some moral domains there is a fundamental indeterminacy in the relations of obligation and entitlement among individuals, and that in these domains the content of these moral relations must be specified authoritatively by a structure of actual social institutions. When social institutions specify moral relations in this way, I say that they “embody” morality. As we have seen, the embodiment of morality differs from sensitivity to historical and cultural circumstances in the application of moral principles. We have seen also that the embodiment thesis differs from the relativistic view that the nature of moral values is itself determined by social circumstances. Finally, we have seen that the need for the embodiment of morality differs from the need for authoritative coordinators that arises out of mutual self-interest.

I have not attempted, in this paper, to present decisive arguments in favor of the embodiment thesis. That must wait for another occasion. I hope that the embodiment

thesis is central enough to the projects of moral and political theory, however, to make these comments stimulating and illuminating.

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REFERENCES

- Finnis, J., *Natural Law and Natural Rights*, Oxford: Oxford, 1980.
- Gans, C., "The Normativity of Law and Its Co-ordinative Function", *Israel Law Review* 16(3) (1981), pp. 333-349.
- Garthoff, J., "Zarathustra's Dilemma and the Embodiment of Morality", *Philosophical Studies* in press (2003).
- Green, L., "Law, Co-ordination, and the Common Good", *Oxford Journal of Legal Studies* 3(3) (1983), pp. 299-324.
- O'Neill, O., *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*, New York: Cambridge, 1996.
- Rawls, J., "Two Concepts of Rules" (1955), in Samuel Freeman (ed.), *John Rawls: Collected Papers*, Cambridge, Massachusetts: Harvard, 1999, pp. 20-46.
- Rawls, J., *A Theory of Justice*, Cambridge, Massachusetts: Harvard, 1971.
- Rawls, J., *Political Liberalism*, New York: Columbia, 1993.
- Shiffrin, S., "Moral Autonomy and Agent-Centred Options", *Analysis* 51(4) (1991).