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### III. THE REALM OF THE MORAL

JAMES R. FLYNN

THE problem of justification has taken centre stage since World War II, particularly the problem of how humane men can justify their ideals against non-humane and elitist opponents. I wish to analyze three thinkers, S. E. Toulmin, Kai Nielsen, and Kurt Baier, all of whom share, it seems to me, a certain approach: they use delineation of the realm of the moral against their ideological opponents—they attempt, whether explicitly or implicitly, to exclude Nietzscheans, Social Darwinists, elitists in general from the realm of the moral.

To clarify this approach, I must emphasize the distinction between a criterion of the realm of the moral (which separates the moral from the non-moral) and a criterion of the morally right (which separates the morally right from the morally wrong). Most of us do not think of our ideological opponents as having no morality, rather we think they have a competing morality, a competing criterion of the morally right, albeit one we hold to be vicious and (if we think we can make a rational case against them) indefensible. In other words, we do not deny that a Social Darwinist is a resident of the realm of the moral along with ourselves, we merely condemn his moral principles in terms of our own. On the other hand, we might call a man non-moral if we discovered that he seemed to have no other-regarding principles at all, if he were a mere egoist or sadist. Further, we would not have to confine ourselves to labelling his principles, e.g., someone who looked at the world purely through spectacles of self-interest might be said to lack a moral *point of view*, or someone who never gave anything but his own interests as a reason for his actions might be said to have a non-moral *mode of reasoning*, and so forth.

This brings us to a complication. It is not clear that all three of our thinkers would rule their opponents' principles outside the realm of the moral. For example, Baier says that moral

principles can be true or false and I rather suspect he would classify Social Darwinist or Nietzschean principles as false moral principles rather than as non-moral.<sup>1</sup> However, it is quite clear that an elitist's point of view would be a non-moral one—Baier tells us that a man has a moral point of view only if he agrees that rules and laws must be for the good of everyone alike.<sup>2</sup> Moreover, this is all that counts, for Baier tests principles against what he calls "the moral point of view" and therefore, the elitist's principles are doomed to be "false." It is no favor to Nietzsche to let his principles into the realm of the moral simply to be slaughtered. One could say much the same of Nielsen: he may grant his opponents' principles entry, but he holds their "mode of reasoning" to be non-moral (and holds that they have misconstrued the "functions of moral discourse") and it is the latter which he uses against them in ideological debate.

In sum, whatever these thinkers hold to be most fundamental in ethics, whatever the problem of justifying oneself against one's opponents turns on, it is this that they rule out (of the realm of the moral) on behalf of the non-humane or elitist. They can afford to be generous about principles, someone's principles are not likely to last long once cut off from the point of view or mode of reasoning that lends them sustenance. Indeed, our three thinkers levy heavy penalties: Baier says his opponents have principles that are false or not genuine; Toulmin leaves them with no good reasons for their ideals or at best with non-moral reasons; Nielsen describes them as non-moral, only quasi-moral, or at best moral by way of some spurious factual claim. Certainly, if we can pin such labels on our opponents, we will have a tremendous advantage in competing for the allegiance of mankind. As Nielsen says at one point, given a debate over what course of action to follow, if we are committed to a moral point of view, the issue is "already decided" in

<sup>1</sup> Kurt Baier, "The Point of View of Morality," *Australasian Journal of Philosophy*, vol. 32 (1954), pp. 132-133.

<sup>2</sup> Kurt Baier, *The Moral Point of View* (Ithaca, 1958), pp. 207-208.

Toulmin's favour.<sup>3</sup> That is, the audience must choose between abandoning our opponents and abandoning morality and (I would add) it is fair to assume that the overwhelming majority of mankind think of themselves as moral rather than non-moral.

Those who defend the realm of the moral approach often say that surely, it is legitimate to offer some account of what separates the moral from the non-moral. No doubt, but this begs the question of what sort of account we should offer. Few would object to distinguishing morality from art, science, logic, religion, custom, law, or etiquette—and few would object to labelling as non-moral those who have never claimed to have ideals which deserve to take precedence over individual pleasures or tastes, e.g., plain egoists (as distinct from invisible hand egoists) or sadists. Controversy begins when we fail to stop at a broad account of the realm of the moral and go on to a narrow one. By a *broad* account, I mean one that grants entry to all who have attained historical significance as ideologues, as competitors for the allegiance of mankind, whether humane or non-humane, whether elitist or equalitarian, whether they consider the average man precious or expendable. By a *narrow* account, I mean one which excludes those who do not hold a certain set of basic ideals, let us say humane-equalitarian ones. It comes down to whether we find a place for only Jefferson and Marx or also Nietzsche and the many descendants of William Graham Sumner.

This distinction made, and it must be remembered throughout, I can present my case. Like Luther, I have some theses to argue, although only four in number: (1) A narrow account of the realm of the moral must be shown to be non-partisan; (2) It is not clear that the above can be done; (3) Even if the above can be done, the realm of the moral approach will be proved useless in the process; (4) To be useful, it must be transformed.

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*Thesis One:* A narrow account must be shown to be non-partisan.

Under this heading, I want to take a look at

Toulmin and Baier and call attention to a curious fact: although it is quite clear just who they are expelling from the realm of the moral, these outcasts are *never named*. For example, when Toulmin argues for his account of the realm of the moral, he never faces up to even one ideological opponent. His most detailed defence of his account occurs on pp. 160–162 of his book.<sup>4</sup> He reminds us of his two rules or criteria of moral reasoning, assessing acts in terms of an accepted principle or social practice, assessing social practices in terms of “general fecundity,” presumably alleviating suffering with equity. As for the sort of opponent he has in mind, it is someone who might reject one of his criteria in favor of total reliance on the other! Those who ignore criterion two, men who never assess social practices (and elites) in favor of citing them, are said to rely purely on authority and are not reasoning morally at all. Those who ignore criterion one, men who never cite social practices in favor of a “universal test of consequences,” are accused of substituting expediency for morality. And then comes his conclusion: “Consequently, even if all we do is to give up one or other of our present logical criteria, we turn ethics into something other than it is. And if this is the case there is no need for us to go on and consider more drastic alternatives: they can be ruled out at once.” In other words, tampering with Toulmin's two criteria has proved so obviously mistaken, we can forget about our ideological opponents, those who might propose a radically different alternative, e.g., someone who might say that social practices are to be assessed in terms of rewarding superior men and keeping the masses at bay. Every now and then, there are signs of an unwelcome guest, but he is quickly dismissed; for example, we may sometimes be lax enough to “ignore the sufferings of ‘inferior’ people” (clearly a Social Darwinist might do this on principle) but we know “very well” that this is beyond the pale of moral reasoning.<sup>5</sup>

If one wishes to find any non-humane ideologues in Toulmin, one has to dig into his footnotes. Apparently Bertrand Russell told him that his account of the function of ethics would not have convinced Hitler. Toulmin interprets this as a contradictory demand that he produce

<sup>3</sup> Kai Nielsen, “Good Reasons in Ethics,” *Theoria*, vol. 24 (1958), p. 27.

<sup>4</sup> S. E. Toulmin, *The Place of Reason in Ethics* (Cambridge, 1950).

<sup>5</sup> *Ibid.*, p. 164.

a reasonable argument which would convert an unreasonable man, a lunatic blind to logic and evidence.<sup>6</sup> But certainly Russell meant to ask him if he had a case against a non-humane opponent, a rationally defensible case, setting aside whether or not such would actually convince a particular opponent. There is one other footnote which seems relevant: Toulmin imagines someone objecting that his criteria are not exhaustive—that two communities could be equally valuable in terms of promoting “the fulfilment of everyone’s aims and desires” but one could be preferred because its members enjoy poetry while their neighbors enjoy only things like parlor games. He replies that it would be sensible to prefer one on aesthetic grounds, but not on *moral* grounds.<sup>7</sup> We must take considerable liberties with this to make it into a reply to a non-humane opponent, but it is important to note its implications: take an aesthetic elitist, someone who thought that a great cathedral was worth the sufferings of thousands of ordinary men; following Toulmin, we would have to tell him that he was using aesthetic criteria rather than moral criteria—and that for anyone reasoning morally the issue was already decided against him. However, this line of argument, implicit in Toulmin’s account, is quite unconvincing: our elitist would reply that while *knowing* what constitutes a work of art is an aesthetic matter, there is no reason why he cannot make the *achievement* of such things (at the cost of much suffering) a moral imperative.

Baier does no better than Toulmin. Throughout his book, he promises to give reasons for having a moral point of view at all,<sup>8</sup> but in the relevant chapter, he argues only against the thesis that we can use self-interest as the ordering principle of a human society. He says this would lead to a Hobbesian state of nature and that we can easily see that such a world would be worse than one both moral and social.<sup>9</sup> Now such an argument merely poses what I call “the mystery of the vanishing Nietzschean.” When Baier expels men of enlightened self-interest and Nietzscheans and Social Darwinists and elitists of all sorts from the realm of the moral, we

expect to find them waiting for us in the land of the non-moral. But all we find is the man of self-interest, the others have simply vanished into thin air, they seem to be neither within the realm of the moral nor out, as far as troubling to debate with them is concerned.

Baier claims that “...since it has just been shown that moral reasons are superior to reasons of self-interest, I have given a reason for being moral, for following moral reasons rather than any other.”<sup>10</sup> This is plainly false. The assumption is that the only alternative to morality is self-interest: this may be true if we admit elitists as well as egalitarians to the realm of the moral; but by excluding the former Baier has *created* a whole range of alternatives to morality that go beyond self-interest. Certainly elitist ideologues are not men of enlightened self-interest: they have a “point of view” which puts one’s ideals ahead of one’s own personal interests, they sacrifice themselves on the altar of genius or the military virtues or art. And certainly, the act of banishing them has no magical effect, they cannot be men of principle the moment before and men of self-interest thereafter. And finally, it is far from clear that the non-humane ideologue suffers from the same weakness as the man of self-interest, there is considerable *prima facie* evidence that he can use his principles to organize a human society. Baier cannot have it both ways: he cannot deny that non-humane ideologues have a moral point of view; and then ignore them when he comes to arguing against alternatives to a moral point of view.

In articles since *The Moral Point of View*, I can find only one line of argument that may be relevant. Baier argues that we can discriminate between social orders in that all of them are not equally “acceptable.” If some members of a social order find it unacceptable, this will bring on ennui and alienation plus an increased need for sanctions and greater suffering when these are used. The best system is one based on the principle of equity, one which resolves conflicts so that the interests of all are served equally. Baier goes so far as to say that by morality we *mean* a social order “in so far as it purports to be acceptable from the point of view of all its

<sup>6</sup> *Ibid.*, p. 165 and 165 n. 2.

<sup>7</sup> *Ibid.*, p. 137 and 137 n. 1.

<sup>8</sup> Baier, *The Moral Point of View*, *op. cit.*, p. 298.

<sup>9</sup> *Ibid.*, pp. 308–315.

<sup>10</sup> *Ibid.*, p. 310.

members."<sup>11</sup> As it stands, all of this does not come to much. An elitist is likely to consider some alienation a small price to pay to maintain his ideals and goals; and he minds using sanctions and suffering much less than we. One cannot refute him simply by fiat, by talking about what morality "means."

Baier might say that morality consists of giving men reasons, reasons for putting something ahead of their self-interest, reasons which show that their doing this is someone else's business.<sup>12</sup> In rebuttal, the elitist has plenty of reasons, e.g., "cathedrals should come ahead of the interests of ordinary men and it is my business to see that they do." Baier would probably object that morality requires showing all men that it is rational *for them* to put something ahead of their interests and certainly, some men do not desire cathedrals.<sup>13</sup> Again in rebuttal, the solution Baier offers to this problem, the principle of equity, is subject to the very same objection; some men (elitists) do not desire a state of equity and would not think it rational to put it ahead of *their* interests (it may after all call for considerable sacrifices on their part). I should emphasize that it is I who have applied these arguments to the ideologues in question and their apparent weakness may stem from this. Baier himself says nothing of Social Darwinists or Nietzscheans.

However, an omission of this sort simply raises suspicions about the whole approach. It is not difficult to imagine what our ideological opponents, for example, a Social Darwinist, will say against us: "I am not going to tamely submit to being labelled non-moral. All of these attempts to 'delineate' the realm of the moral are not what they seem, they are purely partisan in nature, they are the creations of thinkers with a humane-equalitarian bias and designed to admit them into the realm of the moral while keeping

non-humane men out. I have little sympathy with this kind of game but I can easily learn to play. I can simply use my own ideals and do some 'delineating' myself and then, I think you will find that it is humane men who misconstrue the function of ethics (they don't see that its real function is to promote the survival of the strong rather than the weak), and who reason non-morally, and who lack a moral point of view. Concerning the 'curious' fact that these thinkers expel men like me without acknowledging our existence, there is nothing curious about it. They must get rid of us or the whole approach just will not work; but if they ever admit what they are doing, even to themselves, the partisan character of their criteria would become too obvious to be ignored."

When we turn to academics, most of whom are no doubt impeccably humane, we find that the above suspicion cuts across ideological lines, witness: Mackie—Toulmin sets out criteria which are merely "the dominant ones at present"; Sacksteder—accuses Toulmin of eliminating other modes of reasoning by "arbitrary fiat"; Dykstra—the criteria are really "criteria accepted among a certain class or groups of people, e.g., those at Cambridge"; Nakhnikian—Toulmin ties the evaluative meaning of ethical to a "particular criterion"; and Wadia—Toulmin is actually "expressing a moral preference."<sup>14</sup> I must say that I can see no way of answering the Social Darwinist except to take him at his word, that is, ask him for his account of the realm of the moral, show it to be defective, and do the same with other non-humane ideologues. One cannot convert partisan criteria into non-partisan criteria merely by shoving them up to the level of metaethics—they merely become partisan metaethics.

This raises a problem of method and Nielsen alone attempts to provide a solution. The fol-

<sup>11</sup> Kurt Baier, "Ethical Pluralism and Moral Education" in C. M. Beck *et al.* (eds.), *Moral Education* (Toronto, 1971), pp. 109–110; also "Indoctrination and Justification" in J. F. Doyle (ed.), *Educational Judgments* (London, 1973), p. 87.

<sup>12</sup> Baier, "Indoctrination and Justification," *op. cit.*, pp. 84–87; also "Obligation: Political and Moral" in J. R. Pennock and J. W. Chapman (eds.), *Political and Legal Obligation* (New York, 1970), pp. 134–138.

<sup>13</sup> See Baier's remarks on the flaws of utilitarianism: "Meaning and Morals" in Paul Kurtz (ed.), *Moral Problems in Contemporary Society* (Englewood Cliffs, 1969), pp. 45–46; and "Moral Obligation," *American Philosophical Quarterly*, vol. 3 (1966), pp. 221–222.

<sup>14</sup> See: John Mackie, "The Place of Reason in Ethics," *Australasian Journal of Philosophy*, vol. 29 (1951), pp. 114–124 (see p. 116); William Sacksteder, book review of S. E. Toulmin, *An Examination of the Place of Reason in Ethics*, vol. 62 (1951–1952), pp. 217–219 (see p. 218); V. H. Dykstra, "The Place of Reason in Ethics," *Review of Metaphysics*, vol. 8 (1955), p. 465; George Nakhnikian, "An Explanation of Toulmin's Analytical Ethics," *The Philosophical Quarterly*, vol. 9 (1959), pp. 59–79 (see p. 67); and P. S. Wadia, "Professor Toulmin and 'The Function' of Ethics," *Philosophical Studies* (Ireland), vol. 14 (1965), p. 91.



lowing is something of my own creation, I have had to correlate three separate passages from his early articles and amplify them in the light of his later work. But I think it represents his views on how we can test (using his terminology) various accounts of the characteristic functions of moral discourse: (1) Take stock of certain usages and concepts which we all know pre-analytically to be central to ethics—usages such as recommending how men are to live, laying down rules for dealing with conflicting interests (or demands), allocating praise and blame—concepts such as universalizability, justice (or fairness), happiness, and sympathy; (2) Imagine a wide range of competing accounts, i.e., our own plus those of our ideological opponents; (3) See whether we can make a case that one of these (preferably our own) is uniquely viable—see whether we can show that all the other accounts conflict in some way with the above usages and concepts. This done we would have shown that an account of the realm of the moral can be *both* narrow and non-partisan, narrow enough to be used against our opponents and yet non-partisan in status.<sup>15</sup>

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*Thesis Two:* It is not clear that we can show that competing accounts are non-viable.

In 1957, Nielsen published an important article, "The Functions of Moral Discourse," in which he sets out a number of accounts which might be considered alternatives to his own. Of these, there is only one I would offer if I were a non-humane ideologue:

The characteristic functions of moral discourse are to guide conduct and alter behavior so as to develop a superior class of man for which the rest of mankind are to exist simply as a means. That is, the rest of mankind are not to be regarded as moral agents with a worth of their own.<sup>16</sup>

As for what Nielsen has to say against this account, he makes three points: that to be a man is "by definition" to be a moral agent; that man is the sort of animal to whom moral praise and blame attach; and that any criterion we use to

give certain human beings moral priority over other human beings must be universalizable.<sup>17</sup>

Concerning Nielsen's first point, he says it has to do with the meaning we attach to the word "man"; and man as a moral agent is taken to mean that all mankind have "a worth of their own." If this point is really a verbal one, then the elitist has an easy way out: if he believes that a certain portion of *homo sapiens* are not worthy of regard, he need only stop calling them "men." Indeed, as Nielsen says, this is what elitists have done throughout history, the Greeks called their slaves barbarians, the Germans called the Jews submen, Nietzsche spoke of herd men, and so forth. On the other hand, if the point is not verbal, if it means "all members of the species *homo sapiens* *deserve* to be treated with respect," it is a substantive assertion—and subject to challenge by elitists who do not endorse its substance. Perhaps this is why Nielsen goes on to his second point, which has to do with what men deserve.

His second point is that man is a certain sort of animal, the sort capable of reflective choice it appears (except when he is an infant, senile, etc.), and that we must judge him in terms of praise and blame. This raises an important question, whether or not non-humane ideologues possess a standard of justice, for we would not call someone just if he allocated boons and ills to people without using praise and blame, or at least saying something about their merits. Let us give a Social Darwinist a chance to comment: "As for using praise and blame, I praise and blame men a good deal more vigorously than you do. I realize that you humanists are not necessarily crude equalitarians, that you recognize certain exceptions to equal treatment such as 'women and children first' and rewards for unusual merit. Nonetheless, you cling to the notion that just because someone is born into the species *homo sapiens* he has a right to a certain basic level of consideration. I rather think a man must *pass* a more demanding test than *that!*—he must earn even a minimal level of respect by proving himself tough, energetic, and intelligent. My ideal is the soldier who is also a tactician, a man who

<sup>15</sup> See: "Good Reasons in Ethics," *op. cit.*, pp. 16–17; "Justification and Moral Reasoning," *Methodos*, vol. 8 (1957), pp. 99–100; and "The Functions of Moral Discourse," *The Philosophical Quarterly*, vol. 7 (1957), pp. 243–244.

<sup>16</sup> *Ibid.*, p. 244.

<sup>17</sup> *Ibid.*, p. 245.

proves his worth in a competition more subtle, and perhaps more demanding, than war. Those who fail are blameworthy all right, so blameworthy that they are worthless—they deserve punishment rather than compassion and some of them just deserve to go under. It is *because* I think of men as moral agents in terms of praise and blame that I deny they have any ‘worth of their own’.”

The humanist would hardly let the argument go at that and certainly Nielsen would not. In a recent work, he takes up the question of departures from equal treatment and says that such departures must be fair—one cannot allocate advantages and disadvantages to men “at least for the vast majority of cases, on grounds by which a person by his own good effort could not be in a position to achieve.”<sup>18</sup> The themes of fairness and justice as fairness are struck in a number of Nielsen’s later works and they open up an obvious line of attack: that if the Social Darwinist has as his goal a never-ending process of “perfecting” mankind, he must weed out a certain number of the “unfit” from every generation—he must set a test that some men cannot pass no matter how hard they try; and that the Social Darwinist has never seemed particularly concerned with giving all men an equal chance to pass his test—he seems content to let the social environment favor certain children over others as they prepare themselves for the competition to come. In effect, Nielsen might accuse his opponent of cheating men of the right to *at least be judged* in terms of praise and blame, by condemning them for what they cannot help and therefore for what they cannot be blamed.

To give the Social Darwinist a right of reply: “There are a lot more people capable of transcending an unfavorable environment than you humanists like to admit—for every ten men who have not I can point to one who has, a man of average intelligence and talent who decided to stand and fight, and the existence of that one man implies that the other ten are blameworthy. Further, I would call the sort of environment you want for everyone just as crippling as an over-harsh environment, a pleasant and sentimental upbringing produces pacifists and humanists rather than men who are tough and competitive. However, I do not wish to be mis-

understood. Concerning the unfit, I know they suffer and I am not a sadist—I set no value on suffering for its own sake. If I had a magic wand that could tell me who the unfit are (in advance of their being tested), could give them bliss from the act of breathing, and could make sure they did not reproduce, I would use it. But pain exists, it is hard to eliminate, resources are limited, and further, thousands of things are more important than the elimination of suffering, things that fire the imagination, the race for space, the chance to rival the pyramids, giving our armies, and athletes, and industries all they need to compete successfully, and so forth.

“Concerning fairness, the same holds true. I know that some men, given their limitations, are blameless and I set no value on punishing *them*. But if one makes an idol of fairness, one ends up sacrificing too much that is important on its altar. The task of levelling all environments so as to give all men an equal chance is immense. And even then, we would not have begun to satisfy the appetite of fairness. It is unfair that some men suffer from what is not their fault, that one is lucky in marriage and another is not, that one is intelligent and another stupid—perhaps we should reserve the most desirable mates for the latter as partial compensation. It is unfair that some men are born deformed or mentally defective—perhaps we should render every child defective so that we will all begin life as equals. If we are really serious about fairness, we would have to deprive every man of every advantage he has not earned.

“My main point is this: justice as fairness is important, there can be no competition without rules and certainly we must be fair in establishing guilt in criminal cases; but justice as fairness is not everything. There is another sort of justice, justice as rewarding excellence, which is no less venerable and in my opinion, a good deal more important. Even our schools, which have been influenced far too much by humanists, give a mark for achievement as well as a mark for trying. If espousing justice as rewarding excellence puts one outside the realm of the moral, we had better start with Plato. I have every right to place fairness (particularly to the unfit) on a list of priorities and to place it well down the list. And when I say that some things are more important than others on this list, I mean to say

<sup>18</sup> Kai Nielsen, *Ethics Without God* (London, 1973), pp. 82–83.

that it is a list of moral priorities. I feel a moral obligation to put things ahead of fairness, and a moral obligation to reward excellence, and a moral obligation to promote excellence. I have before my eyes a vision of the future, men strong, energetic, and intelligent locked in a competition in which the winners are admired and the losers are respected for asking no quarter."

A Nietzschean would want to add to the above: "The Social Darwinist has spoken about justice as fairness and justice as rewarding excellence and has ranked them in terms of importance. But he neglected something much more fundamental, he did not make explicit the criterion of importance he used to rank these two. I suspect his criterion is rather like mine, a *criterion of what constitutes a significant form of life*. Indeed, I challenge anyone to dispute this claim: however much he hides from it, however much he denies it, every thinker has such a criterion and builds his ethics on it. No doubt, there are a few who hold a truly equalitarian criterion, who consider the life of an ant just as important as that of a human being; but even most humanists are elitists, they think it right to sacrifice the interests of other animals to those of homo sapiens—the very phrase 'all men and their desires to be taken as of equal importance' implies that all *species* are not of equal importance. Now, I happen to have a criterion of importance, a criterion a living thing must meet in order to merit real consideration of its well-being, which most homo sapiens cannot pass. Look at the average man braying at a TV programme like 'This Is Your Life,' do you really think that fairness to such a creature even compares with furthering the existence, aims, and achievements of great men? In a word, fairness to superior men is important because *they* are important; fairness to others is not because they are not.

"Not that I am a Social Darwinist; he puts the 'soldier' ahead of the creative genius; and perhaps as a result, he is too much interested in perfecting mankind in general—why not be satisfied with a few great men and keep available a mass of mediocre men to serve as means to their ends? You may tell me that I underestimate the number of great men hidden amongst the masses and that if I improved their lot, this would give such men a chance to develop. This

argument appeals to me, for it implies that I have won you over—you are arguing in my terms, that any concern for the masses is justified solely out of fairness to the great. And finally, I hope no one is going to tell me I am mistaken about 'man'; I can describe man's behavior quite as well as you and can use the term in accord with any rules you care to lay down."

In the author's opinion, the Social Darwinist and the Nietzschean have made a good case (for inclusion in the realm of the moral), particularly impressive being the latter's contention about a criterion of what constitutes a significant form of life. Concerning the Social Darwinist's point, that justice as fairness is not everything, Nielsen himself eventually came to concede this (after a lapse of sixteen years):

But while justice is a central moral consideration, it is not the only relevant moral consideration and sometimes the claims of justice, where acting on them would cause great misery, should be set aside. In such circumstances, the innocent must suffer un-deservedly because, unless they do suffer, a far greater total suffering will ensue.<sup>19</sup>

It is worth noting that Nielsen does not dodge the fact that he is putting an ideal ahead of justice as fairness, for humanists sometimes try to obscure this. They say that the above comes to no more than sacrificing fairness to a *few* men, so as to promote the happiness of *many* men or even mankind in general. In reply, this is not a matter of sacrificing fairness to a few on behalf of fairness to all—promoting happiness in general has (on the face of it) nothing to do with fairness. When humanists endorse such a goal, they make no direct reference to praise or blame, that is, they do nothing to show that mankind *deserves* happiness. In fact, it is hard to imagine any humanist worthy of the name who would calculate the comparative virtue of mankind at one time and another and then raise or lower the general level of suffering to match. The humanist ideal of alleviating suffering is something in addition to justice as fairness and each of us must ask himself just when the former takes priority over the latter.

There are some humanists, e.g., Elizabeth Anscombe, who would answer "never," but Nielsen is not one of these. And he objects strongly to the notion that he should be read out of the realm of the moral on these grounds,

<sup>19</sup> *Ibid.*, p. 101.



that is, he thinks Anscombe (given her convictions) should say he has an "immoral morality," not that he has no morality at all.<sup>20</sup> I would add that if putting humane ideals ahead of fairness does not take one out of the realm of the moral, why should giving priority to non-humane ideals? And I take it that once the notion of putting non-humane ideals ahead of fairness is accepted, the way is clear not merely for the Social Darwinist (and the Nietzschean) but also for other non-humane ideologues, e.g., the aesthetic elitist, the man who would build one great cathedral at the price of undeserved suffering on the part of a thousand peasants.

We must take up Nielsen's third argument, that any criterion we use to give certain human beings priority over others must be *universalizable*. The rule of universalizability is complex, but in this context I take it to mean simply that if a man states a criterion of who deserves or merits preference, he must stand by it with logical consistency. Now some of our ideological opponents cannot pass this test. The racist is vulnerable because fundamentally, he faces the following dilemma: either he must assert correlations between color and personal traits (stupidity, laziness, etc.) in which case he can be routed by empirical evidence; or he must say that differences in color *alone* justify differential treatment of human beings. In the latter case, we can use logic to embarrass him in a number of ways. For example, and this is only one example, we can say: imagine you took a pill that turned you black but left you unchanged in every other way; do you really believe you should then go under, despite the fact that you remain the kind, intelligent, brave, witty fellow you are? Or imagine that everyone who is white turned black and vice versa; do you really believe that although they are totally unchanged in terms of life history, achievement, character, and personality, they should trade places?

However, a non-humane ideologue need not be a racist: the account of the functions of moral discourse Nielsen presents (on behalf of a Nietzschean) makes no reference to race; I certainly did not intend my Social Darwinist or Nietzschean to be taken for a racist. And this makes a crucial difference. We asked our racist to imagine himself going under with no change in his personal traits; but the above ideologues

state their criteria in terms of personal traits *themselves* and therefore, they need have no fear of questions about changing places with the unfit. When we ask a man who is strong and energetic and intelligent if he ought to go under if he were weak and lazy and stupid, it is really like asking him if he should go under if he were *somebody else*! We are asking him to imagine himself changed into someone radically different from the sort of man he is, changed into the kind of man he loathes. He is likely to answer: "Yes, I certainly should go under if I were like that, but do recall, I am not really like that at all."

Some thinkers believe they can win an easy victory over all elitists, non-racist as well as racist. However, they believe this because they link the rule of universalizability with one or more of the following: that one must have an equalitarian criterion of justice—accord all men a certain basic level of respect; that one must espouse justice as fairness rather than justice as rewarding excellence; that one must not only espouse justice as fairness but also give it priority over all other ideals. It is clearly a mistake to identify universalizability with these assertions or to think it logically entails such assertions. All of the above are *substantive* in character, they recommend one criterion of justice rather than another, or one kind of justice rather than another, or a certain criterion of importance; and universalizability is a purely *formal* rule, it must be supplied with a substantive principle before it can go to work (before it can demand that we stand by our principles with logical consistency). In my opinion, it is also a mistake to think that universalizability "suggests" equalitarian principles, the notion being that there is some sort of connection weaker than entailment. If an elitist can universalize his principles, it is hard to see why this will suggest anything non-elitist to him. He will claim that he stands by all three of his criteria, fairness, excellence, and importance, and that he can use his criterion of importance to be consistent about when he puts excellence ahead of fairness and fairness ahead of excellence. It is up to us to prove that he is wrong. *Perhaps* we can but if so, we will have to do it the hard way, after a full and fair debate using logic and empirical evidence as our principal weapons.

Thus far, I have used Nielsen's later works

<sup>20</sup> *Ibid.*, p. 91.

mainly to supplement the arguments used in his first major article, "The functions of moral discourse." However, some of these later works introduce new lines of argument and it is to these that I now turn. Here I will have to be selective. Two in particular appear relevant to our debate with elitists: when reasoning morally, some men build on a foundation of either scientific or metaphysical myths; others ignore the role of sympathy in moral reasoning.

Nielsen criticizes a variety of racists and sexists as assuming a mythical anthropology or sociology and, when imagining a Buddhist saying we should strive for nirvana, remarks that this makes sense only in terms of some "wildly metaphysical scheme."<sup>21</sup> I have no desire to defend the concept of nirvana, but I had better say something more on behalf of my Social Darwinist. Given the long-standing historical connection between his ideals and racism, he may seem to have got off rather lightly.

I have heard a sophisticated Social Darwinist hold forth as follows: "In the long run, racism is an impediment to Social Darwinism—it posits an absurd criterion of human excellence as a competitor to the criterion we hold, it retards giving the strong the rewards and resources they merit and it saves many from going under who certainly ought to do so. However, historically there is no doubt we owe a great deal to racism, whether that of the common man or that of the late nineteenth century scholar who made metaphysical hash out of evolutionary biology; for these doctrines did much to condition men to accept the notions of a competitive social struggle and the superiority of the winners of such a struggle. But don't feel too superior. Many of your historians believe that the absurd metaphysics of Christianity performed a similar service for humanism, it conditioned men (however irrationally) to accept equalitarian ideals; and they still debate about whether humanism is strong enough to stand on its own feet. Racism has been an effective school for elitists—perhaps we are now strong enough to do without it or we may continue to need it for a substantial transitional period. At any rate, while I cannot speak for my followers, I am an empiricist and

not a metaphysician; and I prefer my anthropology scientific rather than mythical."

As for the argument from sympathy, Nielsen begins by granting that universalizability is a purely formal principle, that one can "with impeccable logic" calmly assert that men unlike oneself should go under. However, he thinks we have a right to ask such an opponent to go beyond universalizability and engage his *emotions*. We can ask him to vividly imagine the plight of his victims, to empathize with them, to identify with them, to imagine he was like them and that was *him* going under—and see if this does not awaken a feeling of sympathy and convince him he should take into account what his victims want. Nielsen believes that if our opponent is capable of understanding and appreciating the feelings and wants of others, our tactic will work; and argues that if he is not capable of this, he is simply not reasoning like a moral agent.<sup>22</sup>

In my opinion, If we used our tactic, a Social Darwinist would answer as follows: "What you forget is the psychological distance between myself and someone who is weak, lazy, and sentimental. It is not that I am incapable of empathizing with him—it is just that I can not *both* empathize with him and remain myself! If I am to imagine myself going under, I have to fall short of identifying with him—that certainly does awaken outrage, but so what: my principles don't demand my sort going under. And when I truly identify with him 'I' disappear entirely and what I experience is *him* going under, *not me as him* (how could I be like him and still be like myself!) And thus, empathy hardly leads to sympathy, recall he is the sort of man I loathe. However, just for the sake of argument, let us assume something new happens: that I am in fact overcome by sympathy. Does this show I *ought* to be? Does it not merely raise the question of whether he merits sympathy—and the question of whether it is a defect in me to feel it? Or assume something more: that when overcome by sympathy, I feel that such men ought not to go under. Do I not have the right to return to normal and make my moral assessment in a sober and calm state of mind? This is all conjecture, but if I did so, I believe I would

<sup>21</sup> Nielsen: "Justification and Moral Reasoning," *op. cit.*, pp. 105–108; "On Moral Truth" in Nicholas Rescher (ed.), *Studies in Moral Philosophy* (Oxford, 1968), pp. 17–19 and 23–24.

<sup>22</sup> Kai Nielsen, "The Good Reasons Approach Revisited," *Archiv für Rechts und Sozialphilosophie*, vol. 50 (1964), pp. 478–480.

say: 'how could I have been so weak as to be swayed by sympathy?—at any rate, I must not let it interfere with what I know to be right'."

In other words, the author believes that Nielsen's questions are in order. If a Social Darwinist is not willing to assess the consequences of his principles, we have a right to be suspicious; and to assess the consequences of his principles, he must know both the amount of suffering they entail and the sort of man they condemn—he might get to know the former in the dentist's chair (or through a series of personal misfortunes) but for the latter, he needs empathy. However, I also think that the Social Darwinist's reply is plausible and psychologically sound. As Katz points out, empathy involves a two-step process: when we actually identify with someone else, the "I" does disappear; and then, when we break off the relation of identity, the "I" re-emerges and we *assess* what we have experienced.<sup>23</sup> It is quite possible to have real empathy with someone and then, when the spell is broken, be disgusted by the personality we entered into—as every actor who has lived the part of Hitler on stage knows. Or take Charles Dickens, he certainly "understood" Uriah Heep, but he did not "appreciate" him, did not respect him. Empathy is feeling what others feel, sympathy is that plus having positive feelings towards others. The two are not the same and I am unwilling to allow Nielsen to make sympathy (for *all* men—an elitist may feel sympathy for his peers), much less being swayed by sympathy, a prerequisite for reasoning like a moral agent. In order to bridge the gap between them, Nielsen lays great stress on what the elitist is likely to feel when under the spell of empathy, after all, when he is actually identifying with his victim, won't he at that moment not want to go under? But I doubt that any elitist ever thought his victims wanted to go under, he just does not believe that what some men want counts for very much.

Well then, at this point in the debate at least, the realm of the moral approach has led to an unsatisfactory result. It has merely provoked a variety of accounts, humane, Nietzschean, Social Darwinist, aesthetic elitist, no doubt we could add others, all of which seem partisan and none of which seem to be uniquely viable. Nielsen himself may have concluded that his arguments are not decisive. In 1968, he published an extraordinary article in which he expresses scepticism about the notion of human rights—on the grounds that he doubts his ability to show that "a Nietzschean concept of morality" is mistaken! He goes so far as to say that a "Master Morality" qualifies as a moral point of view, thanks to being universalizable and embodying some kind of social concern (concern for at least some persons other than oneself).<sup>24</sup> If Nielsen were really to accept this last, the whole of the realm of the moral approach would begin to erode: the choice would no longer be between being Nietzschean and being moral. Nielsen would have to broaden his criteria for the realm of the moral and for every ideological opponent allowed to enter (with no strings attached), the approach would be just that much less useful in solving the problem of justification.

It is, therefore, hardly surprising that his scepticism article has attached a long and agonized footnote. And it seems to have had a long-range effect on Nielsen's confidence: beginning in 1971, articles citing the moral point of view with apparent confidence<sup>25</sup> alternate with those expressing grave doubts about our ability to answer the sceptic<sup>26</sup> and sometimes, these two themes are struck in the same work.<sup>27</sup> Most moving of all is a passage in which Nielsen reveals how much it means to him to refute the sceptic, he thinks of scepticism as a bulwark of bourgeois individualism and as destructive of fundamental criticism of our social ills.<sup>28</sup>

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<sup>23</sup> Robert L. Katz, *Empathy: Its Nature and Uses* (New York, 1963).

<sup>24</sup> Kai Nielsen, "Scepticism and Human Rights," *The Monist*, vol. 52 (1968), pp. 579–584—also pp. 592–593.

<sup>25</sup> Kai Nielsen, "When Are Immoralities Crimes?" *Philosophia*, vol. 1 (1971), pp. 135–136; and "The Enforcement of Morality and Future Generations," *Philosophia*, vol. 3 (1973), pp. 443–444.

<sup>26</sup> Kai Nielsen, "Anthropology and Ethics," *The Journal of Value Inquiry*, vol. 5 (1971), pp. 265–266; "Varieties of Ethical Subjectivism," *Danish Yearbook of Philosophy*, 1972, p. 87; and "On Locating the Challenge of Relativism," *Second Order* (1972), pp. 14 and 22–24.

<sup>27</sup> Kai Nielsen, "On the Choice Between Reform and Revolution" in Virginia Held, Kai Nielsen, and Charles Parsons (eds.), *Philosophy and Political Action* (New York, 1972)—compare p. 45 with p. 47. Also *Ethics Without God*, *op. cit.*—compare pp. 59 and 62–63 with p. 91.

<sup>28</sup> Kai Nielsen, "Is Empiricism An Ideology?" *Metaphilosophy*, vol. 3 (1972), pp. 269–273.

*Thesis Three:* Even if we can show that competing accounts are non-viable, the realm of the moral approach will be proved useless in the process.

In the last section, I tried to show that Nielsen's arguments do little to embarrass the Nietzschean or Social Darwinist and I think that this is worth showing. However, the fact that Nielsen's arguments have failed does not mean that further argumentation would fail, indeed, I myself believe that carrying the debate some steps further might pay dividends. And this raises a question: am I merely saying that the realm of the moral approach has not been vindicated thus far—and that better arguments might do so; or am I saying that there is a defect in the approach which allows us to reject it with some finality? I want to assert the latter and thus my third thesis.

We must take another look at the arguments Nielsen uses when debating against competing accounts of the realm of the moral. He tried to convict his opponents of misusing words, ignoring the facts of human nature (man is "the sort of animal to whom . . . moral blame and praise attach"), logical inconsistency, ignoring empirical evidence, bad metaphysics, and lack of empathy. What strikes one about these arguments is the overall pattern, the *familiarity* of the pattern; these are exactly the kind of arguments one might use when debating moral principles or, for that matter, aesthetics or even Freud versus Skinner. Which is to say that if Nielsen had won his debate about competing accounts of the realm of the moral, he could have used the very same arguments to win a debate about moral principles. Take the Nietzschean account, "using most of mankind simply as a means to the ends of superior men." If we can use the above arguments effectively against this assertion stated as an account of the function of ethics or as an account of the moral point of view, we could use them against the very same assertion stated as a moral principle. If it misuses language, or distorts human nature, or leads to logical inconsistencies, and so forth, certainly it is discredited in any event.

Just to spell all of this out: The realm of the moral approach is supposed to help us rout our ideological opponents. But to use it, we must argue for our own account or criterion of the realm of the moral. Let us imagine the optimum result; we argue down every one of our oppo-

nents and show that their accounts are non-viable. Now we can use the realm of the moral approach, but only because we have *already won* the debate against our opponents! We cannot use it when we need it (before we have won) and we can use it only when we no longer need it (after we have won). Moreover, in arguing about accounts, we have not come up with anything really new—we argue just as we would if we were arguing about moral principles. So we might just as well stick to arguing about moral principles and forget about "various accounts of the function of ethics" and "conflicting accounts of the moral point of view." In vindicating the realm of the moral approach, we have proved it useless in the process.

The assumption of this, of course, is that while Nielsen or Toulmin or Baier may do better using variations on the arguments listed above, they will not come up with any really new pattern of argument in the future. I cannot prove such a thing, I can only give my reasons for being pessimistic. When we argue for an account like "the function of ethics is to maximize happiness with equity," we are arguing for something just as *narrow* as a moral principle—or at least as narrow as our basic ideals or first principles. And I suspect that such a debate is very much determined by the content of what is being debated, same content, same opponents, same arguments likely to be effective against these opponents. It may be that a *broad* account can be defended by some very different pattern of argument, but that just will not do—it is not relevant to my point. At any rate, the burden is on our three thinkers to develop a new pattern of argument and show that it owes something to the approach they share. Until that time, I say that adopting something like "maximizing happiness with equity" as an account has only one effect: it transforms an argument which would normally be about first principles into an argument about competing accounts of the realm of the moral—and then we must cover exactly the same ground in terms of argumentation that we would have covered in the first place. So what is the point?

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*Thesis Four:* If the realm of the moral approach is to be useful, it must be transformed.

In order to defend this thesis, I must present a list. Initially I am willing to call it a list that



delineates the realm of the moral; before we are finished it will have evolved into something else, a list of items likely to come up in moral debate. For the moment, however, let us say that in order to enter the realm of the moral, a man must:

- (1) Have ideals that take priority over his whims or desires—when “I ought” conflicts with “I want,” he must do the former or plead moral weakness.
- (2) Continue to hold his ideals when he gains a reasonably full knowledge of what they mean in practice—to do the latter, he will need empathy with other men (but not sympathy).
- (3) Be willing to universalize his ideals—be willing to give reasons for his moral assessments, at least until he reaches his first principles, and stand by his ideals with logical consistency throughout.
- (4) Have concern for the welfare of a group of men (the group may or may not include all mankind) rather than himself alone—this rules out pure egoism as distinct from invisible hand “egoism.”
- (5) It also rules out sadism which is a form of egoism.
- (6) He must possess some criterion of justice, at least justice as fairness, and he will probably have a criterion of justice as rewarding excellence as well—if so, he must have something to determine the balance between the two with logical consistency, e.g., a criterion of importance or significant life.
- (7) Use his ideals to pass judgment on his own (personal) way of life *in toto* as well as bit by bit.
- (8) Be willing to argue that his ideals, or a blueprint which aims as close to them as reality allows, are capable of ordering a human society.
- (9) Welcome the remaking of mankind in general in the light of his ideals—a certain diversity can of course be written into them.
- (10) Give happiness an important place—he need not give it top priority and certainly need not endorse the happiness of all mankind.

As the reader knows, the thinkers examined in this paper attempt to add items to this list, for example, an (11) about taking the interests of

every man into account, or a (12) about having to possess sympathy for mankind in general. And I have tried to drive them into a corner—they can add these items either by way of fiat or by arguing for them. I have said enough about the pointlessness of arguing for them, arguing for them as criteria of morality rather than being content to argue for them as moral principles. And if they add something like (12) by fiat, they merely invite an opponent to reply: “Ah well, if *that* is the only sense in which I fail to qualify as moral, you have won me over. Apparently, I pass everything else on your list so I can go forth with the message that my ideals are worthy of sacrifice, viable in the light of full knowledge, universalizable, alternatives to egoism and sadism, accord with justice, and provide men with a vision to order themselves, their society, and their species. All of this is enough for me—I have *no desire* to claim sympathy for all mankind! You will, however, excuse me if I draw a distinction between Morality I and Morality II and merely grant that I am non-moral in the first sense but not the second. You think you gain something by writing a humane criterion into your test for the realm of the moral, but all you do is get me to admit I am not humane—a price I am happy to pay.”

This reply shows why I have not worried too much about certain items on my own list. Items (9) and (10) are certainly subject to challenge, but I am willing to let anyone delete them who wants to pay the price they carry. If a non-ideological type feels ill-done by (9), and if he is a Calvinist as well and feels ill-done by (10), I will concede him the right to reply as above—“apparently the only sense in which I fail to qualify as moral is that I refuse to give happiness an important place and don’t care much about remaking mankind in general”—and I will concede him the same sort of distinction between Morality I and Morality II. Under these conditions, he should not resent the length of my list. If I were a realm of the moral thinker, that of course would be a different matter. Toulmin and Baier tend to treat this realm as if it were a nation-state. They want to define its boundaries, toss their opponents out, and strip them of all the privileges of citizenship. Nielsen is more complex. He sometimes prefers to convict his opponents of irrationality or factual error, rather than classify them as non-moral, but even he seems to think it terribly important to de-

termine where the “real” boundaries of the realm of the moral lie and use that as a weapon against his ideological opponents.

And now my secret is out. As far as the problem of justification is concerned, I do not care *where* we as philosophers, trying to delineate the realm of the moral, draw a line on my list, whether after (10) or (8) or even after (1). The *list itself* is all important. I care where an opponent draws a line, but only because of the items on the list and the prices attached to each. If he crosses (2) off his list, we could say something like “he recommends his ideals only because he averts his eyes from the suffering they cause.” If he omits (3), we can say that he does not take his ideals seriously enough to stand by them with logical consistency. If he omits (4) or (5) or (6), we can say (among other things) that he refuses to give us any help in assessing what men either deserve or merit. And if he crosses off (7) or (8), we can ask him if his ideals are irrelevant to organizing his own life and to ordering a human society. These are the prices that count, not something called “lacking a moral point of view” or “not reasoning morally.” If any of my ideological opponents wish to pay the prices attached to (1) through (8), all the better—it is just that I have difficulty finding any of historical importance who have chosen to do so.

I want to call attention to two advantages of our list: it will clarify *communication* with our opponents and it will clarify the problem of *justification*. As for communication, when someone uses terms like “moral” and “non-moral,” a perfectly sensible thing to do, we can ask him how many of the items on our list he means to imply (he may of course want to add items as do our three thinkers) and then, we will have a precise notion of his usage. As for justification, where he draws his line on our list will usually tell us something of crucial importance—it will tell us what prices he means to contest and which he means to forfeit. And best of all, our list will keep us from being confused by an eccentric use of terms. Nietzsche for example did not like to call his ideals “moral”—and this has led many to assume (including the author at one time) that he would not try to justify himself in moral debate. But if we read Nietzsche carefully, and read him in the light of our list, we can see that he has no intention of letting any price on our list go by default. He was most interested in showing that he put his ideals

ahead of his desires (he loathed the hedonist), that he had faced up to their consequences, that he was being logically consistent about them, that he had a standard of “justice” (he focused mainly on excellence but fairness comes in for supermen), and that his ideals could be used to order a society (his new Europe). Nietzsche wanted to show these things because such prices can *stand on their own feet*—they are serious enough in themselves and if a man must pay them, it adds nothing to say “and besides that you are outside the realm of the moral.” I sometimes think this last is what Nietzsche was getting at and if so, he was quite correct.

The core of truth in the realm of the moral approach is this: there is a structure to moral and political debate, there is an agenda men usually cover when they debate about their principles, and it is useful to have that agenda made explicit and to see why even bitter opponents, such as Nietzsche and a humanist, can agree to adopt it in common. After all, if we think about what actually happens, the parties to moral debate do not omit items from our list—rather they both *claim* that they need not pay the prices attached and then, each tries to show that *in fact* his opponent must. For example, the non-humane are likely to turn on us and accuse us of not really facing up to the consequences of our ideals (“it is your sort that allow haemophiliacs to live and reproduce”), and not really being logically consistent (“how do you square your admiration for genius with your equalitarianism”), and not really being able to order a human society (“you socialist-humanists would wreck any society foolish enough to let you rule”). The argument that ensues, about whose principles carry what prices, is the very soul of moral debate.

On the other hand, the realm of the moral approach must be transformed and now the reader can see what I mean by that. Our three thinkers make their mistake not in compiling a list but in how they tend to use it. They want to add items until they reach a certain boundary, a boundary narrow enough to exclude their opponents, and this last leads straight towards either an escape from real debate (as with Toulmin and Baier) or real debate about an artificial issue (as with Nielsen). We must give up the preoccupation with boundaries, give up arguing with Nietzsche about the function of ethics, and give up the notion that there is

something meaningful at stake called being non-moral. Rather we must use our list as an agenda, we must argue about ideals and principles and the many prices attached to the specific items on our list. It may be said "what if an opponent refuses to call it a list having anything to do with morals, or even denies its whole relevance to moral debate?" But we already know the answer to this—he can call it anything he likes

and ignore it at his peril—I will go on using it against him in any event.

It is not that Toulmin and Nielsen and Baier never argue as I recommend. If I am correct about the structure of moral and political debate, they could hardly help but do so. But they should argue only in that way and give up all that is distinctive about the realm of the moral approach.

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