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INCEST IN ALL INNOCENCE

Are certain actions inappropriate or immoral, even if they have not caused anyone any concrete harm? Are these victimless moral crimes?

SCENARIO

Julie and Mark are brother and sister, both of them adults. They spend their holidays together in the South of France. One evening, happening to be in a chalet by the sea, they say to each other that it would be interesting and amusing to try to make love. Julie has been on the pill for some time, so that the risk of her becoming pregnant is negligible. Yet to make doubly sure, Mark uses a condom. They derive pleasure from making love but decide not to repeat the experiment. They recall with fondness a night that gave them a sense of being closer to each other, but keep their secret to themselves.

What do you think about this? Was it morally permissible for them to make love?[1]

These questions have been put to population samples differing in "culture," social origin, age, gender, religion, and so on.[2] The spontaneous judgments were on the whole convergent. The majority of respondents voiced their immediate disapproval. Yet their more considered justifications were ill formed.

In order to explain why what Julie and Mark did was not "appropriate," they evoke the possibility of Julie becoming pregnant and giving birth to a handicapped child. The experimenter then reminds them that the couple had taken every precaution to avoid such an outcome.

The respondents then resort to another justification: the relationship could inflict a psychological trauma. The experimenter reminds them that no such thing occurred.

They change tack once more: the relationship might offend society. The experimenter again specifies that it will remain secret.

In the end, the respondents are obliged to admit that they have run out of reasons, which does not prevent them from continuing to voice their disapproval: "I know it's wrong, but I cannot say why."

As in The Killer Trolley experiment, there is a sort of dissociation between the spontaneity and vigor of the judgments and the inadequacy of the rational justifications.[3]

But in the case of incest, the judgments of spontaneous disapproval are so robust, so resistant to argument, and also so universal that it is not altogether absurd to suppose that they are just, natural, and innate.

This, however, is a hypothesis that stands in need of verification. From the fact of a response being universal, it does not follow that it is innate. It could be inculcated by force into all human societies for the very same reasons (such as the need to extend the circle of social exchanges outside the family, narrowly defined, by taking sexual partners and spouses elsewhere and so on).[4]

In order to add a slight note of skepticism, I would also venture to point out that some researchers reckon that the question is badly phrased, for in their view it is not true that incest and cannibalism (to give another example of a supposedly universal prohibition) are everywhere and always disapproved of. They assert that many societies tolerate or even advocate incest (to varying degrees of proximity) or cannibalism (by, for example, authorizing or requiring the consumption of those one has slain in battle, but not of others).[5]

Is it true that universal moral prohibitions exist?

Is it true that our intuitive responses are independent of our considered judgments?

Is it true that our intuitive responses are natural and innate?

These are interesting questions of fact to which different answers are possible.

Nevertheless, this type of research does not have particular moral implications, aside from the general and banal conclusion that if our intuitions are innate and not susceptible to being modified, any moral conception that did not take them into account would be unrealistic.[6]

But what interests me in this thought experiment are its particular implications for moral philosophy. From this point of view, the questions raised by Incest in All Innocence are the following:

Is it true that, for the majority of people, certain actions are inappropriate or immoral, even if they have not caused any concrete harm to anyone?

Can one legitimately consider victimless crimes to be immoral?

THE PROBLEM OF "VICTIMLESS MORAL CRIMES"

In order to describe actions judged to be inappropriate or immoral, even though they have not *caused any nonconsensual harm to any concrete persons*, one can speak of "victimless moral crimes" or "victimless moral wrongs."[7]

This category includes personal relationships between consenting adults (incest, homosexuality, prostitution), violations of abstract entities (blasphemy against gods or ancestors), and action directed at the self (suicide, the control of hair or of sexual secretions).[8]

A number of studies of moral psychology have addressed this question of "victimless crimes." In fact, two major conceptions are opposed in this regard:

1. We tend to judge only crimes *with* victims to be immoral.
2. We tend to judge some victim*less* crimes to be immoral.

The first conception may be termed "minimalist," because it presupposes our underlying morality to be impoverished through the fact of its excluding victimless crimes.

By the same token, the second conception may be termed "maximalist," because it presupposes our underlying morality to be rich inasmuch as it admits many victimless crimes.[9]

MINIMALISM

Various different experimental studies lend credence to the thesis of the poverty of our underlying morality. The most important are those by Elliot Turiel and Larry Nucci.[10]

One such study consisted of interviews with young or very young subjects (from the age of five to adolescence) who had had a strict religious education in milieux relatively untouched by the liberal values surrounding them (Amish-Mennonites, Calvinist Protestants, conservative and orthodox Jews).[11] This study was concerned with the spontaneous judgments and justifications given by respondents as regards the following subjects:

Moral rules: is it permissible to steal, to strike, to speak ill of someone, to destroy their property, and so on?

Nonmoral rules linked to religious authorities and rituals: is it permissible not to respect the Sabbath, the obligation to cover or uncover oneself, or dietary prohibitions, as well as not to practice circumcision?

Where religious rules, such as those concerning circumcision or kosher food, are concerned, answers tended on the whole to converge.

1. Religious rules are inapplicable to the members of other religions. They only apply to those who share the same faith. Those who are not Jews are not obliged to be circumcised or to eat kosher food!
2. If there were no reference to these obligations in the Bible, or if no religious authority prescribed them, there would be no need to abide by them.

Where moral rules are concerned, the answers likewise all tend to converge.

1. Moral rules are applicable to the members of other religions. They apply to everyone.
2. Even if there is no reference to these obligations in the Bible, one should nonetheless abide by them.

These general tendencies are presumed to establish that the young distinguish between what pertains to morality and what forms part of the religious domain.

In the moral domain, the rules are presumed to be universal and in no way need to be guaranteed by a human authority, a sacred text, or a supernatural being. According to the respondents, it would be wrong to steal or to strike someone, even if there were no mention of a ban upon such acts in any passage from the Bible.

Turiel finds an answer given by an eleven-year-old conservative Jew to be particularly representative.

He is asked the following question:

"Would it be permissible to steal if it were written in the Torah that it is *obligatory* to do so?"

The boy replies:

"Even if God says it, we know he can't mean it, because we know it is a very bad thing to steal . . . maybe it's a test, but we just know he can't mean it."[12]

When asked to explain why God would not mean it, the boy replies: "Because we think of God as very good—an absolutely perfect person."

Where this boy is concerned, it is the good in a moral sense that is the measure of what *God can think*. For him, religion is not the measure of what is good in a moral sense.

Young people raised within the Calvinist religious tradition are supposed to honor the divine commandments. Yet they too think that, if God commanded one to steal, the act of theft would not thereby be rendered good, and that in any case God could not ordain such a thing.

Like the young Jewish boy, the young Protestant, who is fifteen years old, says that God could not ordain such a thing "for he is perfect and if he said that we should steal he would not be perfect."

To summarize, these answers show that, for the respondents, religious commandments are only obligatory for the members of that faith, whereas moral obligations are binding for everyone.

These answers lend weight to the hypothesis concerning the independence of the moral and the religious domains. They also show that when there is interference between these two domains, it is not always religion that dictates what is good. It is the moral ideas that serve to evaluate the religious rules and not vice versa. Finally, these answers show that, for these children, the rules that are supposed to apply to

everyone and not only to their own community are minimalist. They only concern actions that, like stealing, are presumed to harm others.

In short, according to this theory, when we are young we do not see morality everywhere but only in a specific domain: that of our relationships with others and, more precisely, of wrong done to others.

The hypothesis that a long social apprenticeship is needed in order to become a "moralizer" in every domain, including one's relationship with oneself, becomes plausible.

These studies have been reproduced in various countries, Western and non-Western alike, in order to evaluate the scope of these results. They have been conducted among subjects professing different religious beliefs.

They have culminated in the elaboration of the most interesting and most controversial theory of moral development to be encountered today.[13]

No matter what the social or cultural milieu, we would very early on make a distinction between three different domains:

1. The *domain of morality*, from which we universally exclude those actions that involve harming others.
2. The *domain of conventions*, from which we exclude certain actions whereby the harm done to others is not obvious, as with eating pork or dressing in pink at a funeral. These rules are only valid for the community in question and are justified or guaranteed by a sacred text or a word uttered by authority.
3. The *personal domain*, which is only supposed to concern oneself and which has to do with individual preferences (it could, for example, involve a liking for some sport or another or for some kind of bodily decoration).

Such a differentiation into three domains may become further refined during moral development, from childhood until the entry into adulthood, but it exists from the earliest years.

MAXIMALISM

The scientific community was obviously never going to be indifferent to so complete and so bold a theory. In order to test its validity, similar

experimental scenarios have been devised.[14] The theory's leading challenger has been Jonathan Haidt, an American psychologist.

His central hypothesis, diametrically opposed to that of Elliot Turiel, is that a natural or universal tendency to restrict the domain of morality to actions that harm others does not exist.

In order to verify this hypothesis, Haidt presented population samples of differing ages, cultures, and socioeconomic levels with a range of "vignettes" recounting stories of behaviors that are deemed to be thoroughly shocking but that cause no direct harm to anyone.

The scientific wager was as follows. If these actions causing no direct harm to others are judged to be "immoral," the theory according to which only actions harming others can be judged to be immoral would obviously be refuted.

More generally, if, for certain populations, there are *victimless moral crimes*, the theory according to which our baseline morality is built upon the idea that there is no victimless moral crime would be refuted.

The samples consisted of individual young adults, rich and poor, from Philadelphia (the United States), Recife (Brazil), and Porto Alegre (Brazil), 360 in all. Eight little stories were printed on the vignettes:

Swing: A little girl wants to play on a swing. But a little boy is already on it. She gives him a violent shove. He falls and hurts himself very badly.

Uniforms: A boy goes to school in his everyday clothes even though he knows that the rule is that one must come in uniform.

Hands: A man always eats with his recently washed hands, both at home and in public.

Flag: The mistress of the house finds an old Brazilian (or American) flag in a cupboard. As she is not particularly keen to keep it, she tears it up into rags, which she uses to clean the bathroom.

Promise: A dying woman asks her son to see her and gets him to promise that after her death he will visit her grave every week. The son so loves his mother that he makes her this promise. But after his mother's death, he fails to keep his promise, having too many other things to do.

Dog: The family dog is killed by a car just outside the house. The members of the family have heard that dog meat is delicious. They decide to prepare the dog for the pot, and dine well off it.

Kisses: A brother and a sister love kissing each other on the mouth. They find a spot where no one can see them so that they can kiss passionately on the mouth.

Chicken: A man goes each week to the supermarket to buy a dead, plucked chicken. Before putting it in the oven, he masturbates in it.[15]

What is important so far as Haidt's hypothesis is concerned is the fact that only the first vignette (*Swing*) presents a story of a crime *with* a victim: the physical harm done to an innocent child. All the others recount *victimless crimes*.

If people exposed to the vignettes having to do with *victimless crimes* find these actions to be immoral, we will be able to conclude that it is mistaken to think that only crimes *with* victims are judged to be immoral.

Haidt calls "permissive" those who limit the domain of legitimate moral judgment to crimes *with* a victim, and "moralizing" those who extend this domain to include certain crimes *without* a victim.

The conclusion of Jonathan Haidt's first studies, published in 1993, is that, strictly speaking, there does not exist any "natural" or "universal" propensity to be moralistic. There is merely a set of more or less significant correlations between economic and social status as well as other factors of the same nature such as "Westernization" and "urbanization" and the scope given to moral judgment.

People whose economic and social status is high and who are "Westernized" are, by and large, less moralistic than those whose economic and social status is lower and who are less "Westernized." The former admit fewer victimless moral crimes than the latter.

When we enter into the statistical details, we find that the poor are more alike from one country to the next than the rich are.

Those people whose economic and social status is the lowest are on the whole moralistic, be they in Recife, Porto Alegre, or Philadelphia. But those people with the highest economic and social status are divided. They are more moralistic, or less permissive, in Recife and in Porto Alegre than in Philadelphia. Apparently it is not only economic and social status that counts: the factor of "Westernization" seems to have a certain pertinence also. But there are so many other factors left unexamined by this kind of study that it is not necessary to rush to endorse this "culturalist" conclusion.

THE NATURALIZATION OF THE "MINIMALISM" VERSUS "MAXIMALISM" DEBATE

Subsequently Jonathan Haidt set off in a different direction, far removed from his initial sociological relativism. He has maintained that studies in moral psychology were often skewed by certain "progressive" and "Westernizing" prejudices.[16] They start from the assumption that the whole of morality can be boiled down to the concern to not cause harm to others, and they admit, without any valid reason, that everyone traces very clear boundaries between morality, religion, and social conventions.

But in every human society, there are obligations and prohibitions that go beyond this minimal concern to not cause concrete harm to other individuals but that, for the members of these societies, do come *under the same type of judgment*.

The majority of prohibitions, whether sexual (the prohibition on incest between consenting adults included) or dietary (not eating pork, shellfish, and the like), are considered by those who respect them as "universal" bans and obligations, that is to say, as rules valid for everyone and not only for the members of a specific community. The same applies to obligations toward our own selves (shaving our heads, letting our beards grow, not drinking alcohol or taking drugs, and so on) and the dead (not burying them, burying them on the bare ground, and so on). *"Moral" obligations or prohibitions are therefore involved.*

However, these obligations and prohibitions concern actions or relations that do not cause any concrete wrong to anyone in particular (even in the case of incest between consenting adults) and seem not to raise questions of justice or of reciprocity.

It may be the case that in the Western world the moral domain has in fact become very narrow. But it may also be the case that it is the cultural prejudices of the researchers that cause them to see things thus.

Be this as it may, if we take the trouble to go and look elsewhere, we realize that a moral system based upon wrongs, rights, and justice is not the only one conceivable. Thus Schweder distinguishes three great moral systems: *an ethics of autonomy, an ethics of community, an ethics of divinity*.[17]

ETHICS OF AUTONOMY

In an ethics of autonomy, the person is viewed as a structure of individual preferences. Their autonomy and their capacity to choose and to control their life are considered to be moral values to be protected.

The moral code here insists upon the notions of wrongs, rights, and justice. These notions are elaborated in a refined fashion in the legal and moral systems of secularized Western societies. This code corresponds exactly to the moral domain as Turiel conceives it.

ETHICS OF COMMUNITY

In an ethics of community, the person is viewed as the bearer of a role in a collective, interdependent venture that transcends him.

The moral code here insists upon duties, respect, and due obedience to the authorities. Actions are supposed to be in accordance with the requirements of the roles attached to gender, caste, age, and so on.

ETHICS OF DIVINITY

In an ethics of divinity, the person is viewed as a spiritual entity who must, above all, remain pure, avoid being defiled, and aspire to sanctity. All sorts of acts that are supposed to defile or degrade the spiritual nature of the person are punished even if they cause no harm to others. This moral code, centered upon bodily practices, seems bizarre to the members of Western societies. Yet it has given birth in India to an unbelievably complex system of rules of purity and defilement, and in the Old Testament to a complex series of sexual and dietary prohibitions.

Haidt's cunning lies in having deposited these three systems in each of us at birth, so to speak. The inhibiting or development of one or another of them would depend upon the social environment.

In his more recent publications, Haidt has taken naturalization a step further. He supposes our minds to be naturally equipped with five modules, that is, autonomous psychological apparatuses with a specific purpose, which act in a quasi-automatic manner, like reflexes, and whose activity is triggered by precisely determined social stimuli:

1. Actions that cause suffering or pleasure,
2. Just or unjust actions,
3. Expressions of betrayal or of loyalty toward the community,
4. Signs of deference,
5. Signs of personal purity and impurity (respect for hygienic, dietary, and sexual rules).

These modules have typical emotional expressions:

1. *Compassion* toward those who suffer,
2. *Anger* toward those who cheat and gratitude toward those who help,
3. *Pride* in the membership group and *indignation* toward "traitors,"
4. *Respect* for prominent personalities,
5. *Disgust* for those who transgress against the rules of decency or of dietary or sexual purity.

These emotions help to nurture particular virtues: generosity, honesty, loyalty, obedience, and temperance (chastity, piety, purity). In each society, they are triggered by specific stimuli: baby seals and soccer teams arouse feelings of compassion or of pride in certain societies and not in others.

In every society they answer to functional imperatives and present advantages from the point of view of the survival of groups or of individuals: protection of the youngest and most vulnerable, the benefits of cooperation and respect for hierarchies, the protection of health, and so on.

All in all, these reactions that are "innate," "natural," "automatic," "intuitive," and "emotional" in character underlie more complex cognitive constructions, which for their part are the concern of a process of socialized apprenticeship, which might explain the divergences in the public conceptions of the scope of the domain of ethics.

Even more recently Haidt added two other modules to those he had already described, which means that he has got to seven, although I should add that he has been assisted by a colleague.[18] With a little imagination they will find others, for there is not really any reason to stop.[19]

To summarize: For Haidt, our basic morality is very rich. We develop very early a tendency to judge as immoral all kinds of actions without clearly identifiable victims: homosexual relationships between consenting

adults, blasphemy, suicide, profanation of tombs, the consumption of impure food, ways of dressing ourselves or treating our bodies that are deemed to be impure, and so on. Haidt went so far as to maintain that the sheer incomprehension with which liberals greet this natural morality is at the origin of profound scientific and political errors. But the principal question remains that of knowing whether Haidt has really succeeded in proving that entire populations tend to judge certain victimless crimes as "immoral" and not simply as contrary to religious or social rules.

THE CASE OF FEMALE GENITAL MUTILATION

There is no shortage of people who reject female genital mutilation. What is this rejection based upon? Haidt reckons that the following judgment, recorded in the course of an investigation, is particularly significant: "It is an obvious example of child abuse. Not protecting these young women from these barbaric practices, which deprive them forever of the right to the physical wholeness God has given us, is a form of inverted racism."[20]

According to Haidt, this judgment, though apparently simple, brings into play several different reactions that involve independent or "modular" psychological mechanisms or micro-operations of the mind: one mechanism sensitive to the physical sufferings of others, and other mechanisms, each independent, sensitive to injustice, to the fact that a divine commandment protecting physical integrity has been violated, or that personal purity has been defiled.

What would give moral disapproval of excision so profoundly intransigent a character would be not only the fact of its causing a concrete physical wrong to a particular individual, but that of its infringing a divine commandment and values of physical integrity and of personal purity. This reaction would be irreducible to the indignation aroused by a concrete wrong inflicted upon a flesh-and-blood individual.

But the minimalists could object that it is the revulsion at the wrong done to another that in reality bears all the weight of the moral judgment. The reactions of indignation at the infringement of the physical integrity and personal purity that God protects by an inviolable law would, admittedly, be important but they would have a religious, and not a *moral*, character.

Finally, the choice between the two interpretations depends not upon the facts but upon the theory used at the outset. If we reckon that the moral and the religious domains are entirely independent of each other, the minimalist interpretation will seem to be preferable. We will say that what is ostensibly a moral reaction is simply revulsion at the wrong done to another. The remainder pertains to what is not moral.

If we judge, on the other hand, that the moral and the religious domains are not entirely independent from each other, the maximalist interpretation will then become plausible. We will be justified in saying that the feeling that a divine commandment has been breached, or that personal purity has been profaned, does itself come under the heading of a moral reaction.

Can we distinguish between moral conceptions in terms of their propensity to invent victimless moral crimes (such as homosexual relationships between consenting adults)?

How far could a moral system go in inventing victimless moral crimes? Could it go so far as to judge certain ways of dressing or doing our hair to be immoral?

How far could a moral system go in excluding victimless moral crimes? Could it go so far as to leave people free to do as they wish with their bodies, including the selling of it as separate body parts?

In the light of recent research in moral psychology, we might be led to suppose that human beings are not only more moral than they have usually been taken to be, but much more moral, that is to say, far too much inclined to judge others, to act as moral policemen, to nose around in other people's affairs, and to take themselves to be saints.

This is what John Stuart Mill was implying when he wrote: "it is not difficult to show, by abundant instances, that to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual, is one of the most universal of all human propensities."[21] Yet it is a controversial claim. In reality, researchers entertain two opposed hypotheses.

For some, our basic morality is poor, indeed, minimal, and a considerable social labor is needed to turn us into moralizers unable to tolerate styles of life different from our own and always tempted to poke our noses into other peoples' affairs.

For others, our basic morality is rich, and a considerable social labor is needed to turn us into liberals able to tolerate styles of life different from our own and respectful of the intimate lives of others.

Which is the more convincing hypothesis?

We do not yet know.