

# Impartiality and Morality

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ABSTRACT. It is not generally recognized that impartiality is a complex concept that needs further specification in order to be properly understood. The following is a definition of basic impartiality, the kind that is required of umpires, referees, and judges. *A is impartial in respect R with regard to group G if and only if A's actions in respect R are not influenced at all by which member(s) of G are benefited or harmed by these actions.* The respect in which morality requires impartiality is only when considering violating a moral rule. But morality requires impartiality in an extended sense, i.e., one cannot make special exceptions for oneself, or anyone else, concerning who is allowed to violate a moral rule. Everyone agrees that morality requires impartiality with regard to a group that contains all moral agents, i.e., those who are required to act morally, but people disagree about who else is included in the group with regard to which morality requires impartiality. There is disagreement about whether fetuses or mammals such as dolphins should be included in the group. This disagreement cannot be settled impartially because the group to which morality requires impartiality cannot be picked out impartially, since impartiality only applies after a group has been specified.

## Impartiality

Before one can usefully talk about how impartiality is related to morality, it is necessary to provide an account of impartiality. This is so obvious that the only explanation that seems plausible for the almost total lack of attempts by philosophers to provide an analysis of impartiality is that they regard the concept of impartiality as so clear and simple that no analysis of it is needed. This explanation is supported by the over simple characterizations of impartiality often offered by philosophers. The inadequacy of the common philosophical characterizations of impartiality can be seen most clearly by looking at how some of these characterizations apply to referees or umpires in a game, for the impartiality that is required of these officials is the paradigm of impartiality.

One common philosophical characterization of impartiality is “to be unbiased by one's personal preferences or interests in one's judgments.” Although this characterization sounds like a truism, explaining impartiality by use of the term “unbiased,” it is in fact quite misleading. A baseball umpire who prefers a high-scoring game to a low-scoring one may call a pitch a ball unless it is within a very narrow strike zone, as small as is allowed by an acceptable interpretation of the rules. This makes it more likely that batters will have better pitches at which to swing. Such an umpire can be completely impartial with regard to the two teams in calling balls and strikes, yet he is not unbiased by his personal preferences and interests in his judgments. He may not be impartial with regard to batters and pitchers, but that does not affect his impartiality with regard to the two teams, which is the impartiality that is required of umpires.

The most common philosophical characterization of impartiality is that it requires that “like cases be treated alike.” This latter characterization is taken as trivially true by many philosophers, but unfortunately it is also mistaken. Consider a baseball umpire who is upset because he believes that umpires are not properly appreciated. While staying within the acceptable interpretations of the rule, he decides to vent his displeasure by changing the strike zone every three innings, starting with the narrowest zone, going to the widest one, and then returning to the narrowest one. This certainly makes him a bad umpire, and may even lead many to suspect him of not being impartial with regard to the two teams. But if he simply decides to change the strike zone every three innings without being influenced by which team benefits or is harmed by this change, then he does not cease to be impartial with regard to the two teams in calling balls and strikes. This is true even though he does not treat like cases alike; for the same pitch that he calls a ball in the first inning, he calls a strike in the fifth inning.

A die-hard defender of the view that impartiality requires treating like cases alike might claim that the inning in which the ball is pitched has to be included in determining what counts as a like case. But the example can be changed so that the umpire can decide to change the strike zone whenever he hears a certain sound, or even whenever he feels like it. If he is not influenced by which team is benefited or harmed by this erratic change in the strike zone, he remains impartial with regard to the two teams. He will not be consistent, but impartiality should not be confused with consistency. An inconsistent umpire is a bad umpire and probably will be suspected of not being impartial, but if he is not influenced by which team is benefited or harmed by the way he calls balls and strikes, he remains impartial with respect to calling balls and strikes with regard to the two teams.

This example of the umpire who changes strike zones at random intervals shows that treating like cases alike, that is, consistently, is not a necessary condition of impartiality. Consistency, or treating like cases alike, is clearly not sufficient for impartiality either, because a person can consistently favor men over women for an executive position, although he is supposed to be impartial with regard to all job applicants. There is nothing odd or even unusual for a person to be consistently partial in making decisions that favor men over women, even though he is supposed to be impartial with regard to all job applicants. Consistency is neither necessary nor sufficient for impartiality; indeed, consistency does not seem conceptually related to impartiality even though both characteristics are required of referees, umpires, and judges.

As the above examples show, impartiality is a more complex concept than is generally recognized. The claim that a person is impartial tells us nothing about how she behaves unless we know both the group toward which she is impartial and the respect in which she is impartial with regard to that group. Usually, the group and respect are

presupposed when talking about impartiality, but failure to recognize these presuppositions or to make them explicit has led to a misunderstanding of the concept. An informative claim about a person being impartial must be a claim about a person being impartial with regard to a specified group in a specified respect.

This basic concept of impartiality is defined as follows: *A is impartial in respect R with regard to group G if and only if A's actions in respect R are not influenced at all by which member(s) of G are benefited or harmed by these actions.*<sup>1</sup> A teacher can be impartial with regard to a group G, e.g., the students in her class in respect R, e.g., grading their exams, but not impartial with regard to the same group in a different respect, e.g., calling on them in class, for she may favor boys over girls in this respect. Two umpires can both be impartial with regard to two teams in a given respect, and yet not be impartial in the same respect with regard to pitchers and batters. If one prefers a higher scoring game and the other a lower scoring one, they may, within the accepted interpretations of the rules, call some pitches differently. Even if in the respect of calling balls and strikes, one umpire shows partiality toward pitchers and the other toward batters, both can still be impartial with regard to the two teams in that very same respect.

The fact that two baseball umpires can both be impartial with regard to the two teams and yet differ in the way that they call balls and strikes shows that it is a mistake to think that impartiality requires unanimity. Two impartial rational persons, equally informed, can differ in their decisions and judgments.<sup>2</sup> Some philosophers, like Kant and Rawls, assume that all equally informed impartial rational persons must always agree. However, this may be due as much to their mistaken accounts of rationality as to their mistaken accounts of impartiality. The mistaken claim that all equally informed impartial rational persons must always agree has some undesirable implications. If it were correct,

then one would have to hold that every split decision made by the United States Supreme Court, or any other court, must be the result of at least one judge not being equally informed, not being rational, or not being impartial. Philosophers who accept that impartiality requires unanimity should not take any comfort in the fact that extremists on all sides of a controversial issue may not view this as implausible. However, many, if not most, philosophers accept the mistaken claim that every moral question has a unique correct answer and this mistaken claim supports the view that all equally informed impartial rational persons must always agree on their answer to every question.<sup>3</sup>

### **The Respect In Which Morality Requires Impartiality**

The example of the teacher shows that a person can be impartial with regard to a group in one respect and not impartial with regard to the same group in another respect. The example of the baseball umpire shows that a person can be impartial with regard to a group in a given respect, but not be impartial in that same respect with regard to a different group. Impartiality with regard to a group and impartiality in a given respect can and do vary independently of each other. Both the group and the respect must be clearly specified in order to make clear what is meant by saying that a person is impartial. This is also true of the impartiality that is required by morality, what I call *moral impartiality*, so that it is not sufficient to say that morality requires impartiality. In this section I shall discuss the respect in which morality requires impartiality and in the next section I will discuss the group with regard to which morality requires impartiality.<sup>4</sup>

In *Utilitarianism*, John Stuart Mill says, “As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and

benevolent spectator.”<sup>5</sup> Some contemporary consequentialists claim that morality requires impartiality with regard to all sentient beings, while other philosophers claim that morality requires impartiality only with regard to *moral agents*, those who are themselves required not to act immorally. Since I am now concerned only with the respect in which morality requires impartiality, I will consider the respect in which morality requires impartiality with regard to all moral agents. This is because all those who accept that morality requires impartiality agree that it requires impartiality with regard to a group that includes at least all moral agents, including oneself.

On a broad interpretation of Mill’s claim, morality requires impartiality with respect to *all* of a person’s actions or inactions that might affect anyone, including oneself. Some contemporary consequentialists do claim that morality requires everyone to *always* act impartially toward all moral agents (or even all sentient beings) with respect to *all* of the consequences of their actions or inactions on all moral agents. However, this claim has as much influence on their actions as the claim of philosophical skeptics that we cannot know, or even justifiably believe, that there is an external world has on their actions. Although some of these philosophers are far more altruistic than most people, none of them even attempts to act impartially with regard to all moral agents, including themselves, with respect to *all* of their actions, e.g., none of them attempts to buy for all other people, their favorite food.

This does not in any way support a negative moral judgment concerning their moral character because unless one never acts to benefit anyone, including oneself, it is humanly impossible for anyone to *always* act impartially with regard to all moral agents with respect to preventing or relieving their pain and suffering, much less to promoting their pleasure or happiness. Especially if, as consequentialists generally claim, there is no

morally relevant distinction between actions and inactions, it is absurd to claim that morality requires impartiality with regard to all moral agents with regard to *all* of one's actions and inactions. It is impossible to *always* be impartial even with regard to all those moral agents about whom one knows, let alone all moral agents. It is impossible to even imagine a person whose *every* action or inaction involves impartially minimizing the suffering of everyone, let alone impartially maximizing their happiness.

Morality cannot be taken to require impartiality in a specified respect when it is impossible for people to be impartial in that respect. The only respect in which it is possible to act impartially with regard to all moral agents, including oneself, is with respect to those rules that morality prohibits one from violating unless one has an adequate justification for violating them. On my account of morality, there are ten such basic general moral rules. The first five rules prohibit directly causing any of the five personal harms that all rational persons want to avoid unless they have an adequate reason not to: death, pain, disability, loss of freedom and loss of pleasure.<sup>6</sup> The second five rules prohibit deceiving and cheating, and require keeping promises, obeying the law, and doing one's duty.<sup>7</sup> General violation of these second five rules increases the probability of people suffering the five personal harms. With respect to all ten rules it is possible for a person to be impartial both in the basic sense and in the extended sense that is involved when one is a member of the group with regard toward which she is required to be impartial, even when the group is large enough to include all moral agents, or even all sentient beings.<sup>8</sup>

The reason that it is possible to act impartially with respect to the first five moral rules is that they are prohibitions; they prohibit causing any personal harm without adequate justification. If I do not do the prohibited kind of action, I am not violating the

rule with regard to any moral agent, so I am acting impartially with respect to these moral rules with regard to a group large enough to include all moral agents. This is also true of the rules prohibiting deceiving and cheating; if I do not violate them, then I do not violate them with regard to anyone. The three positively stated moral rules, “keep your promises,” “obey the law,” and “do your duty” may seem as if they could not be obeyed impartially, but this is not the case. If I do not violate these three rules, I do not violate them with regard to anyone. These three rules can even be phrased as prohibitions with little or no change in meaning, “Do not break your promises,” “Do not violate the law,” and “Do not neglect your duties.” Stated in this way, it is clear that when I do not violate these rules I do not violate them with regard to anyone, even with regard to a group that includes more than all moral agents.

I distinguish between moral rules, with respect to which morality requires impartiality, and moral ideals, with respect to which morality does not require impartiality. As stated above, the moral rules can all be regarded as prohibitions, but the moral ideals, e.g., “prevent suffering,” “relieve pain,” “help the needy,” cannot be so regarded. They involve actions with regard to particular persons or groups of persons, and cannot be followed impartially with regard to all moral agents, let alone all sentient beings. All moral agents encourage everyone to follow the moral ideals when this does not involve violating a moral rule, and some encourage them to do so even when it does involve violating a moral rule.<sup>9</sup> However, when no moral rule is being violated, everyone is encouraged to follow these ideals toward any group they choose. It is not morally required that one give to all worthwhile charities impartially; nothing is morally wrong for a person to choose to give to only one of the following, e.g., Oxfam, UNICEF, the cancer fund, or the heart fund

To say that morality requires impartiality with respect to the moral rules means that it requires impartiality both with respect to obeying the rules and with respect to violating them. Morality requires impartiality not only with respect to those affected by a violation, e.g., being partial toward friends is not morally allowed, but also with respect to who can violate a moral rule. Moral impartiality prohibits you and your friends from violating a rule if you would not publicly allow strangers to violate it in the same circumstances. When violating a moral rule, one is required by moral impartiality not only not to be influenced by which individuals are affected by the violation but also not to be influenced by which individuals are violating the rule. A person is not being impartial as required by morality with respect to a moral rule if he would not be willing for everyone to know that they are allowed to violate the rule in those same circumstances.<sup>10</sup>

Sometimes all impartial rational persons favor violating a moral rule, e.g., deceiving a hired killer in order to save an innocent person's life. Because morality requires impartiality with respect to moral rules, it must be possible to violate moral rules and still be acting impartially with respect to them. The first formulation of Kant's Categorical Imperative might be modified to claim that one is acting impartially only when one wills to make it a universal law that everyone violate the rule in those circumstances. However, although it may be sufficient for acting impartially in violating a moral rule that one would will to make it a universal law that everyone violate the rule in those circumstances, it is not necessary. It is a mistake to hold that one is acting impartially when violating a moral rule only when one would will that everyone in the same circumstances act in the same way that one is acting. The Categorical Imperative can be further modified in a way that provides for acting impartially when violating a

moral rule without requiring that one will that everyone in the same circumstances act in that way. It is sufficient for acting impartially with respect to violating a moral rule that one would be willing for everyone to know that they are allowed to violate that rule in the same circumstance. Following this procedure guarantees that one is acting impartially in the basic sense, i.e., not favoring any member of the group over any other with regard to the violation of the rule. It also guarantees that one is acting impartially in the extended sense required when one is a member of the group with regard to which one is required to be impartial, i.e., not making any special exceptions for oneself or one's friends with regard to who can violate a moral rule.

Impartiality with respect to the moral rules prohibits making special exceptions for oneself or one's friends, family, or country, but this does not require that one must will that everyone act in the same way. Holding that impartiality with respect to the moral rules requires everyone to act in the same way is related to the mistaken view that impartiality requires unanimity. But I can act impartially in violating a moral rule even if I do not care whether everyone else violates the rule in the same circumstances. As long as I would be willing for everyone to know that they are allowed to break the rule in those circumstances, then I am acting impartially with respect to a moral rule when I violate it. If I am willing to do this, then I am not making special exceptions for myself or my friends, family, or country, either as violators or as victims of a violation.

Acting impartially in the basic sense with regard to a specified group in a specified respect is acting in that respect with regard to that group without being influenced by which members of that group will be harmed or benefited by your action.<sup>11</sup> The paradigm cases where impartiality is required are games and legal trials. Referees, umpires, and judges do not belong to the group with regard to which they are required to

be impartial. However, when considering the impartiality required by morality, moral agents, (their friends and family) do belong to the group with regard to which they are required to be impartial with respect to the moral rules. Unlike basic impartiality, the impartiality required by morality with respect to the moral rules, not only requires not being influenced by who is benefited or harmed by following or violating the rule, but also requires that one not make special exceptions for oneself, or anyone else, concerning who is allowed to violate the rule.<sup>12</sup> The extended as well as the basic sense of impartiality with respect to the moral rules is satisfied if one is willing for everyone to know that they are allowed to violate the moral rule in the same circumstances. When one is considering violating a moral rule in some specified circumstance, then if one is willing for everyone to know that they are allowed to violate the rule in those circumstances, I say that one “publicly allows” violating a moral rule in those circumstances.

Moral impartiality does not require that a violation of a moral rule affects or is even believed to affect all moral agents in the same way. Although it might be plausible to believe that everyone is affected in the same way if one does not violate a moral rule, if one does justifiably violate a moral rule then it is not even plausible to believe that one’s violation affects all moral agents in the same way. Of course, a person might be deceived into thinking that she would publicly allow violating a moral rule in the same circumstances, when she would not really be willing for everyone to know that. She may be influenced by which particular persons or persons with morally irrelevant features, e.g., race or ethnicity, are harmed or benefited by this instance of this kind of violation.<sup>13</sup> If the parties harmed or benefited were different, she would not claim that she would be willing for everyone to know that they can violate the moral rule in these same

circumstances. But judges, umpires, and referees can also believe that they are making their decisions impartially when, in fact, they are influenced by which members of the group with regard to which they are supposed to be impartial are harmed or benefited by their decisions. But if they are not influenced, then they are acting impartially.

If a rational person genuinely publicly allows violating a rule in the same circumstances, then she is not influenced by which members of the group are harmed or benefited by the specific violation, nor is she making any special exceptions for herself or others with regard to who can violate the rule. Rather she is simply acting according to her estimation that less harm would result from everyone knowing that this kind of violation was allowed than from everyone knowing that it was not allowed. The reverse is also true. If a rational person is not influenced by which members of the group would be harmed or benefited by a specific violation of a moral rule, nor is making any special exceptions for herself or others with regard to who can violate the rule, but is influenced simply by her estimation that less harm would result from everyone knowing that kind of violation is allowed than from everyone knowing that kind of violation was not allowed, she would publicly allow violating the rule in the same circumstances. Publicly allowing a violation is the criterion for being impartial with respect to violating a moral rule. More generally, that a fully informed rational person would publicly allow a violation is the criterion for saying that the action is not immoral.

Sidgwick, and many contemporary consequentialists, do not require that violations of a moral rule be publicly allowed. They do require impartiality, but not in the extended sense of impartiality that Kant tried to guarantee by means of the Categorical Imperative. Consequentialists only require impartiality with regard to the consequences of one's action or inaction; they do not require impartiality with regard to who is allowed to

violate a moral rule. Consequentialists hold that if one is not influenced by which members in the group will benefit or be harmed, then one is impartial with the only kind of impartiality that morality requires. Kant, on the other hand, was not concerned about guaranteeing that one is impartial with respect to the consequences of one's action or inaction. Rather Kant can be taken as holding that morality requires impartiality with regard to who is allowed to act in a given way. If Kant were to hold that a moral rule can be justifiably violated, he would mistakenly claim that it could be only if one would will that everyone violate the rule in the same circumstances.

Kant, Baier, Rawls, social contract theorists, Hobbes and other natural law theorists, regard it as a necessary feature of morality that it be a public system. They all correctly hold that morality cannot be esoteric, that it must be known to all those who are required to guide their behavior by it. For them, a guide to conduct can be a moral guide only if it is a guide that all moral agents would put forward for all moral agents to use as a guide for their conduct. The moral guide that it is morally acceptable for a person to follow must be the same guide that the person regards as morally acceptable for all others to follow. Sidgwick, like many contemporary consequentialists, does not distinguish between moral rules and rational rules of conduct. (This may explain why many contemporary consequentialists mistakenly use "right," "wrong," "good," "bad," and "ought," as if they meant the same as "morally right," "morally wrong," "morally good," "morally bad," and "morally ought.") That is why Sidgwick thinks that it makes sense to talk of an esoteric morality and regards rational egoism as one of the methods of ethics. His mistake has led many contemporary consequentialists to regard "ethical egoism" as a possible moral guide. "Ethical egoism" might be a rational guide to conduct, but it is not

a moral guide because no rational person who held this view would advocate that all people adopt it as their guide.

Although Kant is correct in claiming that morality requires impartiality with regard to all moral agents, i.e., those who are required to obey the moral rules, he does not provide the correct account of this kind of impartiality. If one regarded willing it to be a universal law of nature that everyone act in the same way as a criterion of moral impartiality, then some actions might mistakenly be considered immoral. For example, suppose that in order to be polite one acts on the maxim never to be the last to leave a party. On Kant's view, if one acts on that maxim, one would be acting immorally, for one could not will it to be a universal law of nature that everyone act on that maxim. More seriously, regarding acting on a maxim that is not in accord with the Categorical Imperative as a criterion of immoral behavior can result in homosexual behavior being falsely regarded as immoral. It is quite plausible that rational persons would not want it to be a universal law of nature that everyone engage in homosexual sexual activity, especially if that were to exclude any heterosexual activity; for that might mean the end of the human race. However, there would be no harmful results at all if everyone simply knew that they were allowed to engage, even exclusively, in homosexual behavior. We know this because almost everyone does know that they are allowed to engage, even exclusively, in homosexual behavior; and this does not have harmful consequences.

This mistake is avoided if one recognizes that all that is required for moral impartiality is that one be willing for everyone to know that they are allowed to do that kind of action. This is sufficient to show that one is not making any special exceptions for oneself or anyone else. Moral impartiality does not require that one not do some act unless one wills it to be a universal law of nature that everyone not act in that way, it

requires only that one publicly allow not acting in that way. When considering violating a moral rule, providing an account of the same circumstances is the first step of the two-step procedure for determining whether one is impartial with respect to the moral rules. The second step is estimating whether more harm would result from that kind of violation being publicly allowed or not being publicly allowed.<sup>14</sup>

### **The Group With Regard To Which Morality Requires Impartiality**

It is usually overlooked, when talking about basic impartiality, that the group with regard to which a person is required to be impartial is usually quite small and usually does not include the agent. Neither the teacher nor the umpire is a member of the group with regard to which their job requires them to be impartial. The teacher is not a member of the class that takes exams or gets called on in class, and the umpire is not a member of either team with respect to which he calls balls and strikes. Moral impartiality differs from most instances of impartiality in that it requires impartiality with regard to a group that includes the agent. It also differs from most instances of impartiality in that there is not complete agreement about who belongs in the group with regard to which morality requires impartiality. Unlike umpires and referees, where impartiality is required only with regard to those playing the games, not with regard to anyone else, it is not clear that impartiality is required only with regard to those whose behavior is itself governed by morality, i.e., moral agents.

Although everyone agrees that the group with regard to which morality requires impartiality must include at least all moral agents, many claim that morality requires impartiality with regard to a much larger group. All and only moral agents understand what kinds of actions morality prohibits and requires and can guide their actions

accordingly. Someone counts as a moral agent, although perhaps only a partial one, if he understands to any significant degree what kinds of actions morality prohibits and requires, and can, to any significant degree, guide his actions accordingly. The account of morality that views it as the system that all rational persons, using only those beliefs that all moral agents share, would put forward to all other moral agents as a guide to govern the behavior of all of them, explains why morality requires impartiality with regard to all moral agents.<sup>15</sup> It also explains why there is so much controversy about whether morality requires impartiality with regard to non-human animals and to human beings before they become even partial moral agents, especially fetuses.

This account of morality requires that “rational person” be understood in its normal everyday sense, where a rational person avoids suffering any personal harm, viz., death, pain, disability, loss of freedom, or loss of pleasure, unless he has an adequate reason for not avoiding it.<sup>16</sup> Reasons are beliefs or facts that can make some otherwise irrational action rational; they are beliefs or facts that a personal harm will be avoided or prevented for someone, or that a personal good, viz., consciousness, ability, freedom, or pleasure, will be gained or increased.<sup>17</sup> The only basic reasons are beliefs or facts that a personal evil (harm) will be avoided or prevented for someone (or the probability will go down), or that a personal good, (benefit) viz., consciousness, ability, freedom, or pleasure, will be gained or increased (or the probability will go up).<sup>18</sup> Although all rational persons agree on what count as basic goods (benefits) and as basic evils (harms), they can differ in their rankings of these goods and evils, hence they can differ in their views about whether avoiding some specific evil (harm) or gaining some specific good (benefit) provides an adequate reason for suffering a particular evil (harm).

Rational persons can also differ in their level of concern for sentient beings that are not rational persons, or moral agents. A rational person may be so concerned with some non-human animals, e.g., chimpanzees or dolphins, that she wants them to be included in the group with regard to which morality requires impartiality. However, other rational persons may have little or no concern for any non-human animals and so may want them not to be included in any group with regard to which morality requires obedience to the moral rules, let alone impartial obedience. They know that including non-human animals in a group with regard to which morality requires obedience to moral rules takes away some freedom from moral agents; and they rank any loss of freedom to moral agents more highly than any harm suffered by non-human animals.<sup>19</sup> Other rational persons may take various intermediate positions, holding that morality requires some obedience to moral rules with regard to non-human animals but that the reasons that morally justify harming non-human animals need not be as strong as the reasons needed to justify causing the same amount of harm to moral agents.

The attitude of rational persons toward fetuses has even more variations. Although children who are even partial moral agents must be included in the group with regard to which morality requires impartiality, infants and children below the age at which they are even partial agents are not universally included in this group. It might be thought that almost everyone in any country or society that is not in any danger of not being able to provide for all of its citizens or members, would include infants and very young children in the impartially protected group, but for various reasons this seems not to be true. Even in the most affluent societies, some people do not want to include in the group with regard to which morality requires impartiality infants who have genetic problems that will prevent them from ever becoming even partial moral agents. Even

with regard to infants who could become moral agents, some people in some countries may want to allow families to dispose of newborn infants simply in order to achieve a desired gender, or gender balance. Nevertheless, almost all people in all developed societies would include all infants and children who might become moral agents in the group with regard to which morality requires impartiality.

With regard to fetuses there is nothing even approaching a consensus. Some, probably for religious reasons, want to include a human embryo from the time the egg is fertilized in the group with regard to which morality requires impartiality. Others do not want to include in the impartially protected group, even fetuses that are at the stage where they would survive if removed from the womb. Some have included fetuses in the impartially protected group at the time after which twinning is impossible; others have included fetuses at the time at which the fetus has acquired a brain. Some have picked the time at which the fetus becomes sentient to include them in the impartially protected group; others have picked the time at which the fetus is viable outside the womb. Fetuses at any of these times can be put forward as being included in the impartially protected group. As long as the description of the fetus can be understood by all moral agents, nothing prevents a rational person from holding that a fetus of this description is impartially protected by the moral rules.

As with non-human animals, rational persons are not required to choose between only two views; including fetuses in the group with regard to which morality requires impartiality with respect to the moral rules and holding that the moral rules do not offer any protection to fetuses. Rational persons may take various intermediate positions, holding that the moral rules provide some protection to fetuses but that the reasons that justify harming fetuses need not be as strong as the reasons needed to justify harming

moral agents. Rational people can even hold that as the fetuses develop the force of the reasons needed to justify harming them becomes stronger. On this view, when a normal fetus is close to being born, the reasons needed to justify killing it have as much force as the reasons needed to justify harming an infant, a child, or even an adult.

As with non-human animals, rational persons know that including fetuses in a group with regard to which morality requires impartiality with respect to moral rules takes away some freedom from moral agents. Even the claim that the moral rules provide some protection to fetuses takes away some freedom from moral agents. Some rational persons rank any loss of freedom to moral agents more highly than any harm suffered by fetuses. This last point is especially salient with regard to fetuses, because many claim that including fetuses in the group with regard to which morality requires impartiality, or even claiming that the moral rules provide a significant degree of protection to the fetus restricts the freedom of the pregnant woman to an unacceptable degree.

Even though the group with regard to which morality requires impartiality must include the moral agent who is making the moral decision or judgment, this does not result in complete agreement about how the group should be specified. Although everyone agrees that moral agents are included in the group with regard to which morality requires impartiality, there are varying degrees of disagreement concerning which if any other beings belong in this group. This disagreement is not resolvable, for it is rationally allowed for someone to accept or reject most additions beyond moral agents. That morality requires impartiality with respect to the moral rules does not settle the problem of specifying the group with regard to which morality requires impartiality.

Some might claim that the group with regard to which morality requires impartiality should be picked impartially. But once the concept of impartiality is properly

understood, it becomes clear that this makes no sense. It makes sense to say that a person is acting impartially only if there is a specified group with regard to which he is acting impartially. Acting impartially involves not being influenced by which members of that group benefit or are harmed by the agent's actions or decisions. Even if members of that group are themselves groups, it still makes no sense to talk of a person acting impartially unless he is dealing with members of a specified group. Thus, there is nothing that can possibly count as impartially picking the group with regard to which morality requires impartiality.

### **Conclusion**

The concept of impartiality has not received the attention it deserves from philosophers. This failure to recognize the complexity of the concept made it almost impossible for any philosopher to provide an adequate account of the role of impartiality in morality. When an over simple account of impartiality is accompanied by an account of morality that distorts our ordinary views about morality, such as consequentialism, fruitless discussions about whether morality requires impartiality are almost inevitable. It would have been difficult for even a correct account of impartiality to be applied to a concept of morality that did not distinguish in some way between moral rules with respect to which one can be impartial, and moral ideals, with respect to which one cannot. Further difficulties are the result of an account of rationality that does not allow rational persons to disagree in their rankings of the various harms (evils) and benefits (goods). This gives support to the false view that all equally informed impartial rational persons must always agree, and so seems to confirm the false view that impartiality requires

unanimity. Finally, the false view that every moral question has a unique correct answer, which many philosophers seem to accept, is supported by the preceding mistaken views.

Only when an adequate analysis of impartiality is accompanied by equally adequate accounts of morality and rationality, is it possible to provide a correct account of the role of impartiality in morality. Thus my seeming digressions concerning the nature of morality and rationality were necessary in order to provide an adequate account of the role of impartiality in morality. The concepts of impartiality, morality, and rationality are closely related, and it is impossible to provide a correct account of that close relationship without an adequate account of all three. It is certainly impossible to provide an adequate account of the role of impartiality in morality without an adequate account of all three concepts. As the traditional philosophical accounts of all three concepts are seriously flawed, it is not surprising that so little progress on the philosophical problem of the role of impartiality in morality has been made.

In order to provide the correct account of the role of impartiality in morality, one must have the correct account of basic impartiality: *A is impartial in respect R with regard to group G if and only if A's actions in respect R are not influenced at all by which member(s) of G are benefited or harmed by these actions.* Then one must acknowledge that the impartiality required by morality also includes the feature that one cannot make special exceptions with regard to who can violate a moral rule. The account of morality must distinguish between moral rules and moral ideals and acknowledge that morality can only require impartiality with respect to the moral rules. Finally, the account of rationality must acknowledge that rational persons can, within limits, disagree both in their rankings of the goods (benefits) and evils (harms) and in their level of concern for those who are not moral agents. An adequate account of impartiality together with the

appropriate accounts of morality and rationality are needed in order to arrive at a correct account of the role of impartiality in morality. If any of these are missing, the account of the role of impartiality in morality will be defective.

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#### Notes

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<sup>1</sup> The basic concept of impartiality applies to referees, umpires, and judges, where the person who is supposed to be impartial is not a member of the group with regard to which he is supposed to be impartial. When the person is a member of the group with regard to which he is supposed to be impartial, such as the impartiality required by morality, then impartiality involves more than is involved in the basic concept of impartiality. I am grateful to Brad Hooker for his helpful comments concerning this matter.

<sup>2</sup> "Impartial" in the phrase, "equally informed impartial rational persons" means "impartial with regard to the same group in the same respect."

<sup>3</sup> See my paper, "Moral Arrogance and Moral Theories" (*Noûs, Philosophical Issues: Normativity*, 15, 2005) for a fuller critique of the view that every moral question has a unique correct answer.

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<sup>4</sup> However, as mentioned in note 1, the impartiality required by morality involves a person who is a member of the group with regard to which he is supposed to be impartial, so the impartiality required by morality involves more than is involved in the basic concept of impartiality. This will be discussed in more detail later in the paper.

<sup>5</sup> Chapter 2, Paragraph 17. To be fair to Mill, in paragraph 9 of chapter 5 of *Utilitarianism*, he explicitly states, “Impartiality. . . does not seem to be regarded as a duty in itself, but rather as instrumental to some other duty.” In general, what Mill says in chapter 5 is far better than what he says in the previous four chapters of *Utilitarianism*.

<sup>6</sup> When I talk of a rational person, I mean a person insofar as he is rational.

<sup>7</sup> A full version of my account of moral rules is presented in *Morality: Its Nature and Justification*, Revised Edition, (Oxford, 2005). A shorter version is presented in *Common Morality: Deciding What To Do*, paperback edition (Oxford, 2007).

<sup>8</sup> I am not claiming that the ten rules as I formulate them, are the only rules with respect to which it is possible for a person to be impartial with regard to a group containing all moral agents or even more. However, as pointed out in the next paragraph, all such rules would have to be prohibitions, or equivalent to prohibitions. Further, I do not think that any other set of rules, unless they are extensionally equivalent to the ten rules that I formulate, will have all of the other characteristics that moral rules must have. See the books cited in note 7.

<sup>9</sup> If one encourages someone to follow a moral ideal when this involves violating a moral rules, one must be willing to publicly allow everyone to break that rule in the same circumstances.

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<sup>10</sup> When I talk about the same circumstances I mean circumstances with the same morally relevant features. Further discussion of morally relevant features is provided in the books cited in note 7.

<sup>11</sup> In those situations in which a person is supposed to follow rules impartially, it should be obvious that insofar as the rules specify that persons with different features should be treated differently, a person is following the rule impartially when he is following the rule by treating people with these features differently. For example, a judge is following the rule impartially even though he allows one person to go free and sentences another person to prison, if the first person has been found innocent and the second person has been found guilty. Also, “benefit” and “harm” have to be understood as referring not only to basic harms and benefits, but also to what are regarded as benefits and harms in the context of the activity or game, e.g., winning is a benefit and losing a harm.

When the rules do not specify that persons with different features be treated differently (or even when it does) a person can fail to be impartial even when he is not consciously influenced by which member(s) of G (not specified by the rule) are benefited or harmed by his actions. The fact that a person can be influenced by which member(s) of G (not specified by the rule) are benefited or harmed by his actions even when he is not aware of being so influenced is one reason why referees, umpires and judges are picked who are thought to have no reasons to favor some members of G over others. It is the possibility of unintentionally favoring one’s friends and family, or one’s country, which makes it so hard to be sure that one is being impartial when one has some special relationship with some members of group with regard to which one is supposed to be impartial.

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<sup>12</sup> Morality requires the extended sense of impartiality rather than simply the basic sense. The definition of basic impartiality is only a definition of the impartiality required of referees, umpires and judges. The extended sense of impartiality is concerned with more than benefits and harms, and is more closely related to the public character of morality. It prohibits making special exceptions concerning who is allowed to break the rule. This extended sense of impartiality is the sense that Kant tried to capture by claiming that morality required one to act only on maxims that one could will to be universal laws or universal laws of nature. He was correct that morality requires that one make no special exceptions for oneself or friends with regard to who can violate the moral rule in the morally relevant circumstances, but incorrect in thinking that this required willing that everyone act on the same maxim. See *Morality: Its Nature and Justification*, Revised Edition, pp. 214-216

<sup>13</sup> Talking about the same kind of violation is simply another way of talking about a violation in the same circumstances, that is, a violation with the same morally relevant features.

<sup>14</sup> The two-step procedure for determining justified violations of a moral rule is discussed in detail in the books cited in note 7.

<sup>15</sup> A full version of this account of morality is presented in the two books cited in note 7.

<sup>16</sup> A fuller account of rationality, irrationality, and reasons is presented in the two books cited in note 7. It should be clear that “reason” is being used in its normative sense, as a belief that can make some otherwise irrational action rational, not in its explanatory sense, i.e., as equivalent to “motive”.

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<sup>17</sup> Personal reasons are rational beliefs, and objective reasons are facts. Personal reasons are rational beliefs that can make an otherwise personally irrational act rational; they need not be beliefs that explain why a person acted as he did, i.e., as motives, but they cannot make an otherwise personally irrational act rational unless they do serve as motives. Objective reasons are facts that can make an otherwise objectively irrational act rational, for they can change an action from one that no rational person would advocate to anyone for whom she was concerned, to one that some or all rational persons would advocate to anyone for whom they were concerned. For further clarification of the distinction between objective and personal reasons, see *Morality: Its Nature and Justification*, Revised Edition, pp. 67-70

<sup>18</sup> All other reasons must involve basic reasons.

<sup>19</sup> For the most part, it is only the first five moral rules that people hold must be obeyed with regard to non-human animals. Although many hold that non-human animals should not be killed, caused to suffer pain, be disabled, or deprived of freedom or pleasure, without an adequate reason, almost no one holds that the rules concerning deception, keeping promises, and cheating apply to non-human animals. Of course, if deceiving an animal results in that animal suffering some harm, including being disappointed by not getting what he expected, then morality might prohibit it, but only because of the harm it causes. It is not even clear that one can make a promise to an animal, for a statement of intention to do something is a promise only if the animal to whom it is said takes that statement of intention to have been made in order to allow the animal to count on the person doing what he said he would do, This is true even if the statement of intention is made using the words, "I promise." Similar problems arise with regard to cheating.