

Moral and legal judgment and punishment of harmless and beneficial behaviors and “non-behaviors”

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Abstract: in this paper I criticize, on logical and empirical grounds, the beliefs that moral and legal punishments are aimed at the discouragement of harmful or, at least, inconvenient behaviors and that moral and legal punishments are aimed at benefiting “the group”, as well as the view that moral actions are closely related to altruistic ones. As an alternative, I defend that all causes and motivations for violence can be causes and motivations for moral and legal punishment, provided this punishment has sufficient social support. These causes include desire to discourage harmless but inconvenient behaviors and desire to harm certain kinds of people, among others.

Keywords: morality, law, punishment, violence, motivations for violence.

1. Introduction

If God had decreed from all eternity that a certain person should die of smallpox, it would be a frightful sin to avoid and annul that decree by the trick of vaccination.

Timothy Dwight¹

An ethical principle can be judged by the type of emotion that ensures it is well received. By applying this test, we discover that a significant number of widely held principles are not as respectable as they might seem. An honest examination would reveal that what often makes human beings embrace a principle, being valid or not, is whether this principle offers an outlet for certain not-so-noble passions, such as, above all, cruelty, envy and the pleasure of feeling superior.

Bertrand Russell²

Some frequently implied and sometimes explicitly stated propositions in papers on morality are no longer tenable. These include the related beliefs that (1) moral judgments and punishments are aimed at the discouragement of harmful or, at least, inconvenient behaviors, (2) moral judgments and punishments are aimed at benefiting “the group”, and (3) moral actions are closely related to altruistic ones. These beliefs are defended, for example, in statements such as this: “To establish moral rules is to impose rewards and punishment (typically assistance and ostracism, respectively) to control social acts that, respectively, help or hurt others” (Alexander, 2007, p.77), “Moral systems require individuals to act in service to their social groups” (Lahti and Weinstein, 2005, p. 47), “Morality is generally recognized as a system of rules that facilitate and coordinate group living” (Janoff-Bulman and Carnes, 2013, p. 219), and “Attempting to propagate your genes in individually selfish ways, at the expense of the physical, material, or psychological welfare of others, is immoral, but attempting to propagate your genes in

¹ Quoted by Bloom (2012, p. 194).

² Russell (2002, p. 148).

individually cooperative or altruistic ways that foster the welfare of others is moral” (Krebs, 2005, p. 749).

In this paper I criticize beliefs (1)-(3) on logical and empirical grounds, and defend that all causes or motivations for violence can be causes or motivations for moral and legal punishment, provided they have sufficient social support. These causes include desire to discourage harmless but inconvenient behaviors and desire to harm certain kinds of people, among others.

In section 2 I will jointly argue against (1) and (2). In sections 3 and 4 I will add specific arguments against (1) and (2), respectively. In section 5 I will argue against (1), (2) and (3). In section 6 I will discuss an alternative view on morality.

2. Moral judgments and punishments do not have one single aim

I take the words “aimed at” in (1) and (2) to imply intention, and the word “intention” to mean “psychological preparation towards an aim or a set of aims.” Intentions cannot be perceived, or known by other means; one can only know his/her conscious intentions, but not his/her unconscious ones, nor anyone else’s intentions.³ So, in principle we have no grounds to defend (1) or (2).

Although in principle we have no grounds to defend (1) or (2), perhaps they are nevertheless correct. Perhaps (a) that which moral rules and judgments have in common is *what people assume* they are aimed at, and (b) it is the case that the enormous quantity of implied assumptions is correct. But (a) and (b) are both very unlikely. There is empirical evidence that people’s deductions about intentions (their own and those of others) are frequently biased. In fact, according to the results of several experiments, people tend to see more intention in an act if its author is considered to be morally at blame (Knobe, 2006; Leslie *et al.*, 2006; Inbar *et al.*, 2009). That is, assumed intentionality can be a *consequence*, not only a cause, of moral judgments, and, so, assumed intentions cannot be what moral judgments have in common.

On the other hand, the assumption that each act has only one aim is a simplification that can sometimes be useful but misleading in many other cases. Decision making is a very complex process usually involving millions of neurons, and describing it with a few words such as “They decided it for their group’s sake” would be akin to summarizing a million-page book written in one language with a few words from a very different one: provided such a book could be read a lot of information would surely be lost.

³ The assumption of intentions is risky, as the case of harm caused by the medical practice exemplifies. Fiske and Rai (2015, p. 3) consider that surgery cannot be classed as an act of violence, as the *thoughts* of the perpetrator are included in their definition of violence: “We exclude from consideration here practices such as painful surgery and physical rehabilitation because the distress or injury involved is regarded as undesirable but necessary to achieve the aims *of the sufferer*.” But other motivations or aims can be suggested for medical practice. One of them is the obvious economic one. Gigerenzer (2008, p. 18) cites another possible motivation: the physicians’ desire to protect themselves from possible lawsuits by patients, when “doctors are likely to be sued by the patient for having overlooked a disease but not for overtreatment and overmedication.” Russell (2003, pp. 268-269), referring to cruelty, states: “I can think of no example of a wrong medical treatment that was pleasant for the patient rather than being unpleasant.” And according to Renfrew (2005, p. 16), “some researchers in the broad field of aggression might suggest that assumed internal aggressive impulses play a role in choosing the career by, say, a surgeon.”

Bearing this in mind we can nevertheless consider the simplification wherein each behavior is decided when its author, consciously or unconsciously, believes that the pros outweigh the cons. Consequently, the final cause of a behavior is the result of the difference in the “weight” of the list of pros and the list of cons. If we call “cause” to each item in the pros list, behaviors normally have several causes. This being so, that which moral judgments and punishments have in common is very unlikely to be one single cause, or one single aim, and (1) and (2) are very unlikely to be helpful simplifications for researchers into morality.

3. Moral judgments and punishments are not always aimed at the discouragement of behaviors: the “punishment” of harmless and beneficial behaviors and “non-behaviors”

Many cases involving a lack of action have been or are legally or morally punished. These include failure to pay taxes, failure to vote in elections, failure to cover certain parts of the body with clothing, failure to help certain people in need, failure to make gestures indicating respect, and failure to go to war, among others. This fact refutes (1): as a lack of action is not a behavior, it cannot be a harmful or inconvenient behavior.

But (1) can still be refuted even if we replace “behaviors” by “behaviors or lack of behavior.” Let us consider, for example, the studies by Haidt *et al.* (1993) and Haidt and Hersh (2001). In both of these studies, subjects were asked to judge harmless and private behaviors, such as homosexual sex, masturbation and cleaning the bathroom with rags made from an old national flag. Many subjects said that the behaviors were immoral and/or their authors should be stopped or punished.

Yet, it can be imaginatively argued that these behaviors have long-term overall bad consequences, and should be discouraged. In response to this hypothetical objection I will now discuss evidence that *useful* behaviors which would be nonsensical to discourage are also sometimes condemned and punished.

Inbar *et al.* (2012) found that the subjects tended to judge a behavior (betting on there being a hurricane in the Third World) as immoral although it neither causes damage nor intends to cause it. This and other experiments (Uhlmann *et al.*, 2014) show that information that the judged action provides about what kind of person the author of the action is influences moral judgments. Other experiments show that moral judgments are influenced by information not coming from the judged action but from independent sources: information about what kind of person its author is (Alicke, 1992) or about which group he or she belongs to (Valdesolo and DeSteno, 2007; Uhlmann *et al.*, 2009). Alicke (1992) also asked subjects about possible punishments and, as could be expected, moral condemnation was often accompanied by proposing punishment.

These experiments show that moral condemnation and punishment are preferentially directed against certain kinds of people: people capable of betting on the possibility of a hurricane in the Third World, for example, or “bad people.”

People would prefer, perhaps, that there were no “bad people”. However, “bad people” do exist and people likely prefer to know of them (for example, to better defend themselves from them). Behaviors such as the aforementioned bet cause no harm but provide useful information. That is, they are *useful* overall and it would be nonsensical to

discourage them. The “punishment” directed at them is not a real punishment, that is, its aim is not to discourage the behavior, but to aggress against “bad people” for other reasons.

From experiments such as those by Inbar *et al.* (2012) it can be inferred that violence is preferentially directed against certain kinds of people, but, at least, there are behaviors signaling the belonging to these kinds of people, and it can be alleged that it is these behaviors which are the subject of the punishment. However, sometimes what is allegedly the subject of punishment is definitely not a behavior; rather it is a “non-behavior” such as a thought or a feeling. As an example, the Ten Commandments commands not to *covet* one’s neighbors’ women or possessions. And, for a long time, many Catholic authorities defended that sexual *pleasure* was sinful, even within wedlock. For instance, an influential paper attributed to the pope Gregory I said that “sexual pleasure can never be without sin,” and that the only perfect man is “the one who manages not to burn amidst the fire” (that is, the one who manages to copulate without feeling sexual pleasure) (Ranke-Heinemann, 1991, pp. 141-142).

Of course, sinful thoughts and feelings cannot be seen. But moral authorities can nevertheless try to punish them by (a) threatening those who die in mortal sin to eternal suffering, (b) imposing penitence to those who confess the sin, and (c) inferring the sin from actual behaviors: according to Ranke-Heinemann (1991, p. 4), “in Emperor Charles V’s ‘Penal Rules’ of 1532 Article 133 imposed the death penalty for the use of contraceptives—which implied the seeking of sensual pleasure outlawed by the Church.”

Some motivations are also punishable by laws and moral rules as they are considered to be aggravating circumstances. For example, certain alleged motivations can help identify cases of so-called “hate crimes.” Amnesty International agrees that these motivations should be punished (Amnesty International, 2013).

Economic motivation is not only an aggravating circumstance (see, for example, Spain Criminal Code’s art. 22-3 [“Criminal Code”, 2015]), as some behaviors may be moral and legal if they are not paid whereas they are considered immoral or illegal if they are paid for. Examples of this include giving birth to a child, going to war and having sex. Similarly, donating an organ is deemed praiseworthy while giving the same organ in exchange for money is frequently seen as reprehensible and/or illegal (in contrast, performing the required surgery in exchange for money is not).

4. Moral judgments and punishments are not aimed at benefiting “the group”

It may still be argued that punishing “bad people” discovered performing harmless but informative behaviors, or when confessing sinful thoughts or feelings, may be good for the group.

However, many experiments show that there is a great deal of variation in moral judgments and punishments by different people who are seemingly in the same group. Many conditions influencing them have been discovered. According to various experiments, moral judgments and punishments partially depend on having seen a comedy or not (Valdesolo and DeSteno, 2006), being a relative of the people being judged (Lieberman, 2007), a personal aversion to performing certain actions (Cushman, 2013; Miller *et al.*, 2014), socioeconomic status (Haidt *et al.*, 1993; Horberg *et al.*, 2009),

political orientation (Haidt and Hersh, 2001; Haidt, 2007), what people believe they have previously stated (or their desire to be viewed as a consistent person) (Hall *et al.*, 2012), and the framing of the information provided (Petrinovich and O'Neill, 1996), among other factors. As far as these conditions do not alter the group's interests, these interests cannot possibly be the only cause of moral judgments. The same can be said about legal judgments and punishments as "extraneous factors" have been found to influence them (Dhimi, 2003; English *et al.*, 2006; Danziger *et al.*, 2011).

It can be argued that, although moral and legal judgments may be biased, moral rules and laws pursue only benefits for the group. This proposition can be readily rejected in the case of moral judgments and rules because, unlike laws, moral rules must usually be inferred from moral judgments (this is, for example, what Cushman *et al.*, 2006, do). If moral judgments are made not only to benefit the group, this must also be the case for moral rules inferred from them.

5. Moral judgments and punishments can be mistakes

Moral judgments and punishments partially depend on evolved mechanisms and have a genetic basis. This assertion can be defended theoretically but I will use here only empirical data to support it.

According to Bouchard (2004, p. 151), "[n]early every reliably measured psychological phenotype (normal and abnormal) is significantly influenced by genetic factors." For example, Bouchard (2004) reports heritability above 0.4 for antisocial behavior and right-wing authoritarianism. According to Glenn *et al.* (2011, p. 372) "psychopathy has a substantial heritable component of about 50%." "Punishing" behavior (rejection) in the ultimatum game (Wallace *et al.*, 2007) and cooperative behavior in the trust game (Cesarini *et al.*, 2008) has also been found to have a genetic basis. All these traits are likely to influence moral judgment and punishment. Namely, there is evidence that psychopathic traits influence moral judgments (Kahane *et al.*, 2015). Psychopathy is a quantitative characteristic and psychopathic traits can be found in both clinical and non-clinical populations (Glenn *et al.*, 2011).

According to evolutionary theory, if moral judgments and punishments partially depend on evolved mechanisms and have a genetic basis then they *must* be partially erroneous where evolutionary adaptation is concerned. I will illustrate this idea using the case of incest.

Incest is problematic because it increases the risk of illness and death of the offspring. This probably resulted in an aversion to incest being selectively advantageous and there is evidence supporting the theory that moral judgment of cases of incest has an evolutionary or genetic basis (Lieberman *et al.*, 2003; Fessler and Navarrete, 2004). Having an aversion to something does not require one to know the reasons for it: many people are unaware of the biological risks related to incest but this unawareness does not prevent these people from morally condemning it. Thomas Aquinas is a good example of this: he tried to provide "rational" justification for the condemnation of sins; in the case of incest, he seemed to be unaware of the biological risks and provided other justifications for it being a sin, such as this: "Since by nature man loves his blood relatives, if the love that derives from the sexual connection supervenes, there would be too much passion in

the love and a maximum of sexual desire, and this goes against chastity” (as quoted by Ranke-Heinemann, 1991, p. 225).

The risks posed by incest are immediately altered with the invention of effective contraception, but genes causing aversion to incest are not. As a result condemnation of incest persists even when performed with two concurrent contraceptives (Haidt and Hersh, 2001). This is a case of evolutionary hangover or mismatch. People disapprove of incest for reasons that currently do not always apply and that they do not know, and disapproval leads to moral condemnation and punishment. Other cases of mismatch may produce a similar result. For example, moral condemnation of sex among teenagers or extramarital sex may be partially due to the risk of impregnation. The pronounced change in this risk instigated by modern contraceptives is followed, at best, by a slow change in the associated moral judgments.

Obviously, moral and legal condemnation and punishment of incest, teenage sex and extramarital sex cannot be aimed at discouraging harmful or inconvenient behaviors, or at benefiting “the group”, nor can they be (equally) altruistic both before and after the invention of contraceptives.

6. A different view of moral and legal judgment and punishment

When people say that a behavior is immoral they sincerely or deceitfully express their view that there is a general dislike or disapproval of the behavior or its authors and agreement on the imposition of costs for them (Cortizo Amaro, 2014, chaps. 11 and 12). This imposition of costs can only be correctly called “punishment” if it is accepted that this word does not imply a desire to discourage the behavior, as this desire is not required for social agreement on the imposition of costs (see section 3). Something similar can be said about the use of “immoral” with regard to thoughts, feelings, motivations, and so on (see section 3).

Illegality can be seen as a special or (culturally) evolved case of immorality, in which norms, the descriptions of which and how behaviors are punished, (a) are much better specified, and (b) are decided by legislators, who may have very variable social support. (Religious immorality may be more or less similar to immorality or to illegality.)

There are many reasons for disliking behaviors and individuals; indeed, there are many reasons for violence. People know they like or dislike certain behaviors and individuals but, because of reasons such as the important role of the unconscious in decision-making, they cannot know why (Nisbett and Wilson, 1997a, 1977b; Zajonc, 1980). As people cannot know the causes or motivations of each behavior, when they desire to punish a certain individual they cannot know whether the desire is due to what the individual did, or to what or who the individual is, or to other causes such as design errors (see section 5), or to any combination of these different causes. Therefore, people cannot approve punishment for what they dislike for certain reasons while not approving punishment for what they dislike for different reasons (though they certainly can approve punishment for what they dislike very much while not approving punishment for what they dislike to a lesser extent). This implies that all reasons for disliking something or someone can be reasons for moral and legal condemnation and punishment of behaviors and individuals, provided they have sufficient social support.

On the other hand, countries usually have criminal or penal codes, but they do not usually have “reward codes.” The Ten Commandments include prescriptions as well as proscriptions, but the behaviors proscribed are not encouraged with rewards. Instead, the failure to perform them is discouraged with punishment: penitence, if the sin is confessed in time, and eternal suffering (according to authorities) if not. This anecdotal evidence suggests that, at this point, words can be misleading: instead of “immoral” being “what is not moral” it seems that “moral” is “what is not immoral.” That is, it seems that “morality” is defined by (a lack of) social approval of punishment, which usually entails (a lack of) social approval of violence, and that the condemnation of immoral behaviors and the establishment of laws are very akin to justification of violence. B. Russell expressed a similar idea when he wrote that “all systems of morality and theology have been invented to make people feel that violence is noble” (Russell, 2002, p. 163).

The assertion that a behavior is harmful is a very common and usually effective justification for punishment of said behavior. This can be expected to lead people to try to find harmful consequences in all behaviors they would like to punish. Gray *et al.* (2012) provide evidence that when people think that a behavior is immoral they usually feel that there must be an agent causing harm to a suffering patient, and Gray *et al.* (2014) provide evidence that the mental association between immoral behavior and harm is automatic and implicit. Although the usefulness of allegations of harm in justifications can be learned and internalized, it is also possible that it is so old that evolution has provided us with a tendency to automatically search for it when we want an individual to be punished.

Every action has a lot of long-term consequences, and it is very likely that some of these are harmful for others, or at least for others’ interests. So, harm can very often be alleged. But the allegations may be deceptive, as it is also very likely that the same action also has some beneficial consequences. Condemnation and punishment are not grounded in an overall assessment of all harmful and beneficial consequences, as this cannot possibly be done. What makes justifications successful must lie elsewhere; for example, in the justifications transmitting shared interest or similarity to in-group individuals (Cortizo Amaro, 2014, chap. 10). Pope Alfonso of Ligorio, in accordance with a long tradition of opposition to all kinds of contraception, alleged harm when he said that raped women should not try to get rid of the semen: this cannot be made “without doing injustice to nature or to the human race, whose reproduction would be impaired” (Ranke-Heinemann, 1991, p. 261). Nowadays, this seems to be a bad justification, but it could be successful if addressed to a sympathetic audience.

Harm cannot always be found, however, as shown in section 3. After we acknowledge this, we can more easily understand that other motivations may be at work, to different degrees, in *any other* case of moral or legal condemnation or punishment, as theoretically predicted.

There are two nearly universal motivations for violence, neither of which is particularly noble (easily publicly acknowledged): the motivation for harming or eliminating competitors and the motivation for displaying power (Cortizo Amaro, 2014, chaps. 2 and 7). Sell (2013, p. 36), for example, points out that you may hate “someone who doesn’t know you exist (e.g., the person who holds the job you want).” Isolated individual hatred or dislike does not usually produce new moral rules and laws, but a lot of

similar dislikes are more likely to produce them. The Nuremberg Laws are a good example: they punished a competing group, economically benefiting the “Aryan” majority. These laws were consistent with a new morality: according to Neitzel and Welzer (2012, p. 31):

“Nazi society was by no means amoral. Even the many instances of mass murder cannot be reduced to a collective ethical dissipation. On the contrary, they were the result of the astonishingly quick and deep establishment of a ‘National Socialist morality’ that made the biologically defined *Volk* and the community it entailed the sole criterion for moral behavior ... To cite just one instance of Nazi morality: it was under Hitler that failure to offer assistance in an emergency became a punishable crime in Germany. Yet that dictate applied only to the Nazi Volk community and could not be extended to people’s refusal to help Jews.”

There are at least three ways for directing punishment preferentially at certain (kinds of) individuals that are consistent with the fact that moral rules and laws usually proscribe or prescribe behaviors.

First, moral rules and laws may be intended to apply to certain kinds of individuals, for example to “in-group members.” The Universal Declaration of Human Rights and many constitutions proscribe discrimination due to race, religion and sex, but no one proscribes *all kinds* of discrimination based on nationality (nor discrimination based on species, of course). In addition, moral rules and laws can even prescribe or proscribe different behaviors for different kinds of people of the same country: blacks and whites, Jews and Aryans, men and women, people older or younger than 18 years of age, etc.

Second, alleged moral rules are very vague and many laws are also relatively vague, and both alleged moral rules and laws must be applied by people – the police, judges and juries, for example – who can be biased by particular interests, such as favoring or harming certain (kinds of) individuals.

Third, and most interestingly, even hypothetical perfectly specified and applied codes of conduct lacking references to kinds of individuals can be designed to preferentially favor or harm certain kinds of individuals. This can be done prescribing the behaviors that correlate with the kinds of individuals to be favored and proscribing the behaviors that correlate with the kinds of individuals to be harmed; that is, taking advantage of the information that behaviors provide about what kind of individuals their authors are. Doing this does not require a correlational analyses, as far as common likings and aversions towards (kinds of) individuals are naturally transferred to their behaviors.

This idea helps understand many laws and alleged moral rules. For example, Gusfield (1986, p. 28), trying to explain the causes leading to the American so-called “Dry law”, states:

“Drinking, and nondrinking, appear as crucial signs of the contrasts and similarities with which the differentiations of group membership are made into the substance of a social class system. In their break with established churches, new sects often react against

the customs and morals of their opposition, as well as against their theology. The Lollardists of sixteenth-century England prohibited drinking, gambling, and sports—the prized leisure-time pursuits of the upper-class Catholics against whom they rebelled. The Pentecostals of Gastonia, North Carolina, expressed their revolt against the organized churches of the 1920's by a stringent set of restrictions on dancing, drinking, and movies. Gregory Stone and William Form have shown that drinking and nondrinking have become salient demarcators of the leisure-time styles of “old” and “new” middle classes in one American city. The “drinking crowd” and the “temperance people” were clear and significant criteria for differentiating social groups in Vansburg.”

The use of some substances, dangerous for the consumers, is frequently immoral and illegal whereas consuming other dangerous substances and practicing dangerous sports are not. It has been suggested that the prohibition of the consumption of substances called “drugs” can be partially explained by its correlation with a non restricted reproductive strategy (Kurzban *et al.*, 2010 ; Quintelier *et al.*, 2013) or with some forms of delinquency (Pinker, 2012, p. 122). As Pinker (2012, p. 122) put it, “[a] regime that trawls for drug users or other petty delinquents will net a certain number of violent people as by catch, further thinning the ranks of the violent people who remain on the streets.”

A proposed amendment to the Spain Criminal Code by the two most important Spanish political parties (PP and PSOE) may be understood in the same way. The text proposed by these parties proscribes habitually looking for information on websites which are deemed to “incite” people to join a terrorist organization (“El PSOE”, 2015). If it is the case that looking for certain information correlates with being violent, then it is also the case that, using Pinker's words, a regime that trawls for information seekers will net a certain number of violent people, thinning the ranks of the violent people who remain on the streets (while, of course, putting some not-so-violent people in jail).

Clearly, prohibitions related to groups' hallmarks such as flags and names or representations of gods are very suited to preferentially address favors and aggressions to certain kinds of people. For example, art. 295-B of the Pakistan Penal Code (“Pakistan Penal Code”, 2015) sets a punishment of “imprisonment for life” for “whoever willfully defiles, damages or desecrates a copy of the Holy Qur'an,” but it explicitly states nothing about whoever willfully defiles, damages or desecrates a copy of the Bible, for instance. According to Preston (2012), in 1932, four years before the Spanish Civil War, in Spain there were many local prohibitions of behaviors typical of religious catholic people, such as ringing church bells. “In Talavera de la Reina (Toledo), the Mayor imposed fines on women wearing crucifixes” according to the same historian (2012, p. 20). Wearing a crucifix is a harmless and informative behavior that would be nonsense to discourage. But, at that time, those behaviors were indications of being a political rival to the local authorities who banned them.

Other limitations on freedom of expression can have a similar use. Article 578 of the Spain Criminal Code (“Criminal Code”, 2015) may be very revealing. This short one-paragraph article proscribes *two different actions*, and sets for them the same punishment of up to two years in prison. The first is the glorifying or justification of terrorism. The second is the disrespect to victims of terrorism. Assumed justifications for these two

proscriptions are different. In the first case, advocates of punishment may perhaps argue that glorification of terrorism may encourage some people to become terrorists, who will later execute more terrorist acts. As to the second case, disrespect is related to threats to status in social hierarchies (Cortizo Amaro, 2014, chaps. 6 and 7; 2015). Why are two different behaviors, with different alleged harms, prohibited in the same short article? I hypothesize that what they have in common is the kind of people who are more likely to perform either of these behaviors: people sympathizing with Basque terrorism and Basque nationalists, as for many years most terrorism in Spain was carried out by the Basque nationalist group ETA.

During the Khmer Rouge regime in Cambodia (from 1975 to 1979), “Cambodians who wore eyeglasses” were executed “because it proved they were intellectuals and hence class enemies” (Pinker, 2012, p. 557). It is unlikely that these executions were legal: absurd justifications are not fit for purpose. But this case clearly shows how a behavior can be punished in order to harm a certain kind of person. When Anatole France (1989 [“The red lily”, chap. 7]) wrote that poor people “must work within the majestic egalitarianism of the law, which forbids rich and poor alike to sleep under bridges, to beg in the streets, and to steal bread” he showed that a perfectly equalitarian implementation of laws is not inconsistent with laws favoring powerful people who are very unlikely to sleep under bridges. According to Welch and Fuller (2014, p. 4): “Courts are essential for maintaining the rule of law that governs people and organizations fairly and equally. No individuals or groups should be subject to arbitrary government power, and no person is above the law.” But even if the rule of law were achieved, it would not suffice to keep powerless people from being subject to the arbitrary legislators’ power. This and other important facts are obscured by the assertion that moral rules are aimed at discouraging harmful actions or at benefiting “the group.”

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