



MORALITY AND CENTRAL CASES OF RULES

A thesis submitted for the degree of
Master of Arts.

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ERRATA

| <u>Page</u> | <u>Para</u> | <u>Line</u> | <u>Word(s)</u> | <u>Correction</u> |
|-------------|-------------|-------------|----------------|-------------------------------|
| 14 | 2 | 4 | "conditions" | insert after "necessary" |
| 21 | 1 | 8 | "anymore" | replace with "any more" |
| 24 | 4 | 1 | "accomodate" | replace with "accommodate" |
| 29 | 1 | 11 | "may" | replace with "might" |
| 53 | 1 | 10 | "rejoiner" | replace with "rejoinder" |
| 56 | 2 | 3 | "prevent" | insert after "to" |
| 65 | 3 | 6 | "breat" | replace with "breast" |
| 82 | 2 | 4 | "be" | insert after "would" |
| 97 | 2 | 6 | "scarely" | replace with "scarcely" |
| 113 | 1 | 2 | "designed" | replace with "designated" |
| 115 | 1 | 18 | "be" | insert after "to" |
| 148 | 2 | 4 | "they" | insert after "that" |
| 152 | 3 | 13 | "independely" | replace with "independently" |
| 155 | 1 | 5 | "of" | insert after "only" |
| 160 | 2 | 8 | "be justified" | insert after "and" |
| 170 | 3 | 3 | "stronger" | replace with "more strongly" |
| 178 | 2 | 4 | "ought" | insert after " <u>facie</u> " |
| 178 | 2 | 6 | "with" | insert before "what" |

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STATEMENT.

This thesis contains no material which has been accepted for the award of any other degree or diploma at any university.

To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the text of the thesis.

I consent to this thesis being made available for loan and for photocopying.

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I am grateful to Mr. John Chandler, my principal supervisor, and to Mr. Michael Bradley, for their patient and persistent criticism during the preparation of this thesis. The same expression of gratitude is extended to Mr. Michael Detmold of the Faculty of Law.

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ABSTRACT

This thesis argues that, despite their apparent differences, moral and legal rules may be construed as a central case of rules due to the particular similarities suggested by H.L.A. Hart.¹ Reservations, however, are expressed about attempts to find any 'necessary' connection between law and morality beyond the maintenance of social equilibrium.

G.J. Warnock is central to these considerations since, in The Object of Morality² he denied the existence of moral rules or, alternatively, maintained that if there were moral rules they could be regarded as irrelevant to moral considerations.

The Introduction outlines Warnock's claims concerning the object of morality, the non-ameliorative types of propensity which work against it, and the countervailing moral principles required for its attainment. Attention is drawn to two questions arising from Warnock's account which are not satisfactorily answered. The first is how people acquire the necessary principles without coercion, and the second concerns their practical application, given that Warnock appears to discount the sort of referential framework provided by moral rules, by which they might be exercised.

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1. H.L.A. Hart, The Concept of Law, Oxford University Press, 1979, pp. 168.
 2. G.J. Warnock, The Object of Morality, London, Methuen & Co. Ltd., 1971.

Chapter 1 posits conditions that might be regarded as necessary and/or sufficient for a rule to be considered a moral one. It is argued that the notion of a moral rule is justified by a sufficient condition, and that moral rules have a ^o rule in moral reasoning.

Chapter 2 examines the discussion by Warnock and R.G. Frey¹ of rules in general and moral rules in particular. It is argued that Warnock is mistaken in his notion of what constitutes a moral rule, and that his claim that there are no moral rules because they do not possess one characteristic allegedly possessed by the 'central' cases of the rules of institutions and the law is suspect. Frey's criticisms of Warnock's alleged 'necessary' conditions are examined and found to be inadequate.

Chapter 3 examines Frey's suggestion that some notion of the centrality of certain cases of rules might be established through a family resemblance theory. Wittgenstein's family resemblance theory is tested by the notion of 'game' and found to be incoherent. The theory's failure to give an adequate account of game is taken as sufficient evidence that it will fail also in the case of 'rule'.

Chapter 4 examines Hart's alleged similarities between moral and legal rules and it is argued that, despite differences, they may be regarded as a 'central' case of rules. David Lyons's² account of the possible 'necessary' connection between morality and law is then examined and reservations are

1. R.G. Frey, Moral Rules, Philosophical Quarterly, Vol. 26, No. 103, April 1967, pp. 149-156.

2. David Lyons, Ethics and the Rule of Law, Cambridge University Press, 1984, pp. 78-109.

expressed about the 'necessity' of such connections. An essential aspect of M.J. Detmold's¹ argument for the union of morality and law is then reviewed and argued to be unsatisfactory. The thesis concludes by suggesting that attempts to assert any 'necessary' connection between morality and law, beyond their role in the preservation of social order may be mistaken.

1. M.J. Detmold, The Unity of Law and Morality, London, Routledge and Kegan Paul, 1984.