

ROSS AND UTILITARIANISM ON PROMISE KEEPING AND LYING: SELF-EVIDENCE AND THE DATA OF ETHICS*

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I. Introduction

An important test of any moral theory is whether it can give a satisfactory account of moral prohibitions such as those against promise breaking and lying. Act-utilitarianism (hereafter utilitarianism) implies that any act can be justified if it results in the best consequences. Utilitarianism implies that it is sometimes morally right to break promises and tell lies. Few people find this result to be counterintuitive and very few are persuaded by Kant's arguments that attempt to show that lying is always wrong, even if it is necessary to save someone's life. One thing that makes Kant's view about lying so implausible is that he is committed to the view that the duty not to lie is *always* more important than any conflicting duties. Even if we agree with utilitarianism that lying and promise breaking are *sometimes* morally permissible, we may still be inclined to think that utilitarianism is too permissive about lying and promise breaking. Ross gives the definitive statement of this criticism. He holds that there is a strong, but overridable, moral presumption against telling lies and breaking promises that is independent of utilitarian considerations. Almost all utilitarians claim that there is a strong moral presumption against telling lies and breaking promises on account of the direct and indirect bad consequences of those actions. However, utilitarians cannot say that there is any moral presumption against lying and promise breaking that is independent of their bad consequences. Many philosophers think that Ross's theory constitutes a kind of reasonable middle ground in ethics between Kant's absolutism and utilitarianism. Ross's theory is arguably the major ethical theory that is closest to most people's commonsense moral beliefs. It is noteworthy that the two most important defenders of rule-utilitarianism/rule-consequentialism,

Richard Brandt and Brad Hooker, claim that the ideal moral code which determines the rightness and wrongness of our actions includes rules about lying and promise-keeping very similar to Ross's *prima facie* duties.¹ With some qualifications, Hooker accepts Ross's argument to show that (act)utilitarianism is too permissive about breaking promises.²

The subject of this paper is Ross's criticisms of the utilitarian view about the moral prohibitions against breaking promises and telling lies and his defense of his own positive views about these matters. My conclusion is that Ross's arguments are not successful.

Part II, offers a brief summary and explanation of Ross's theory of right action in Chapter 2 of *The Right and the Good*. In parts III and IV, I explain Ross's argument that utilitarianism is too permissive about lying and promise keeping. This argument appeals to Ross's claim that the fundamental principles of morality (his *prima facie* duties) are "self-evident." Ross likens our knowledge of basic moral principles to our knowledge of the axioms and postulates of mathematics. He also argues that his theory squares much better with "the moral convictions of thoughtful and well-educated people" than utilitarianism. In part V, I argue that Ross's criticisms of utilitarianism and his defense of his own theory are unsuccessful because he fails to deal adequately with objections arising from the pervasive phenomenon of moral disagreement. Many thoughtful and well-educated people do not find his principles to be self-evident. Indeed, some utilitarians claim that it is self-evident that we should always do whatever will have the best consequences. The agreement among those with mathematical expertise is essential for our knowledge of self-evident mathematical axioms and postulates. In the case of morality, there is no comparable agreement among those we might plausibly call "experts." Ross's arguments founder on this point; he doesn't give good reasons for thinking that his moral intuitions are correct and the utilitarian's mistaken. Ross's appeal to the "data" constituted by the moral convictions of thoughtful and well-educated people also fails on account of the pervasive phenomenon of moral disagreement. Thoughtful and well-educated people don't all side with Ross on the issues concerning which he and utilitarians disagree. I argue that the relativity of normative concepts also creates serious problems for Ross; many people in other societies don't employ the concept of a moral obligation.

II. Ross's Theory

1. *The Concept of a Prima Facie Duty*. Ross's theory of right and wrong is based on his concept of a "*prima facie* duty" or "*prima facie* obligation." He defines this notion in the following passages:

I suggest ‘*prima facie* duty’ or ‘conditional duty’ as a brief way of referring to the characteristic (quite distinct from that of being a duty proper) which an act has, in virtue of being of a certain kind (e.g., the keeping of a promise), of being an act which would be a duty proper if it were not at the same time of another kind which is morally significant.³

If, as almost all moralists except Kant are agreed, and as most plain men think, it is sometimes right to tell a lie or to break a promise, it must be maintained that there is a difference between *prima facie* duty and actual or absolute duty... We have to distinguish from the characteristic of being our duty that of tending to be our duty... Any act that we can do contains various elements in virtue of which it falls under various categories. In virtue of being the breaking of a promise, for instance, it tends to be wrong; in virtue of being an instance of relieving distress it tends to be right. Tendency to be one’s duty may be called a parti-resultant attribute, i.e., one which belongs to an act in virtue of some one component of its nature. Being one’s duty is a toti-resultant attribute, one which belongs to an act in virtue of its whole nature and nothing less than this.⁴

Ross defines *prima facie* duty in terms of the concept of one’s actual duty or “duty proper.” One’s *actual duty* is what one ought to do, all things considered. A *prima facie* duty is one’s actual duty, other things being equal.⁵ We could also put this by saying that a *prima facie* duty is an actual moral duty in the absence of countervailing reasons/considerations.⁶ Ross uses the term “*prima facie* duty” interchangeably with the term “conditional duty.”⁷ A *prima facie* duty is one’s actual duty on the condition that it doesn’t conflict with another *prima facie* duty of equal or greater importance. Ross says that there is a *prima facie* duty not to lie. Simply put, this means that there is a moral presumption against lying; lying is morally wrong, other things equal. However, sometimes lying is morally permissible, even obligatory. Lying is morally permissible when, and only when, the duty not to lie conflicts with a more important or equally important *prima facie* duty. More precisely, lying is morally permissible when, and only when, the duty not to lie conflicts with another duty, X, such that X, taken together with other duties that are fulfilled by doing X, is as important as (or more important than) the duty not to lie together with any other duties that are fulfilled by not lying. This last qualification is necessary because a *prima facie* duty (A) could conflict with two *prima facie* duties (B and C) each of which is less important than A, but which together are more important than A (and more important than A together with any other *prima facie* duties that are fulfilled by doing A in the case in question). Lying is morally obligatory when, and only when, the duty not to lie conflicts with another *prima facie* duty, X, such that the duty to do X, together with the other duties fulfilled by doing X, are more important than the duty not to lie together with the other *prima facie* duties that are fulfilled by not lying. In

order to determine whether an action is morally right (all things considered) we need to consider all of the respects in which it is *prima facie* right and *prima facie* wrong. In order to be morally right an act must be such that:

of all acts possible for the agent in the circumstances, it is that whose *prima facie* rightness in the respects which it is *prima facie* right most outweighs its *prima facie* wrongness in any respects in which it is *prima facie* wrong.⁸

2. *Ross's List of Prima Facie Duties.* Ross proposes a list of eight *prima facie* duties on pp. 20–21 of *The Right and the Good*. He does not claim “completeness or finality” for his list.⁹ Ross’s list is as follows:

1. The duty to keep promises. The act of making a promise creates duties that would otherwise not exist. Ross writes “To make a promise is to put oneself in a relation to one person in particular, a relation which creates a specifically new *prima facie* obligation to him. . . .”¹⁰
2. The duty not to lie. According to Ross, the duty not to lie is a special case of the duty to keep promises. He claims that one makes an implicit promise not to lie whenever one uses language to communicate with another person.¹¹ Ross construes the duty not to lie as a negative duty. According to Ross, there is a duty to refrain from lying, but no duty to tell the truth or reveal information. [Ross does not say that there is a *prima facie* duty not to deceive others. On his view, it is possible to deceive someone without violating any *prima facie* duties.]
3. The duty to make reparations to people one has harmed.
4. The duty of gratitude. If someone has done something that helped you, then you have a special obligation to help him/her.
5. The duty to distribute happiness according to merit. Whenever the actual distribution of happiness in the world is not according to merit (moral goodness), “there arises a duty to upset or prevent such a distribution.”¹² If good people are unhappy and bad people are happy, then the distribution of happiness is not according to merit and we have a *prima facie* duty to upset this distribution.
6. The duty to do things that benefit others. (According to Ross, there are three ways in which I can benefit another person: I can give him pleasure, give him knowledge, or improve his moral character.)
7. The duty to improve one’s own intellect and moral character.¹³
8. The duty not to harm others.

In order to apply Ross’s theory to concrete cases, we need to determine when one *prima facie* duty is more important than another. Ross says that the duty not to harm others is more stringent than the duty to help others.¹⁴ This means that, other things being equal, it would be wrong to cause someone a given amount of harm in order to provide another person with an equivalent amount of benefit. Ross also says that the “duties of ‘perfect obligation’” (promise keeping, gratitude, and reparations) are very stringent—quoting Aristotle, he says that “For the rest, the decision rests with perception.”¹⁵ Ross does not claim that perfect duties are always more

important than other conflicting duties; he explicitly denies this in a passage in which he says that it would be permissible to break a trivial promise in order to help the victims of an accident.¹⁶ Ross doesn't provide any general guidelines for determining what one ought to do in cases of conflicts of duty. According to him, each case must be judged on its own merits. Any attempt to formulate general rules or guidelines for resolving conflicts of duties would oversimplify things. Judgments to the effect that one duty is more (or less) important than another (in a concrete case) are a matter of perception; they involve "moral risk" and are not certain.¹⁷

3. *How Strong is the Moral Presumption Against Promise Breaking/Lying?* Ross says that breaking promises and telling lies is *prima facie* wrong. This means that there is a moral presumption against breaking a promise or telling a lie. But how strong is this presumption? Ross says that duties of fidelity (which include the duty not to lie or break promises) are "stringent." Ross clearly thinks that it is wrong to break a promise or tell a lie in order to bring about a very small amount of good or prevent a very small amount of bad. For example, I would not be justified in breaking a promise or telling a lie to spare you momentary distress or embarrassment. On the other hand, Ross is not an absolutist. He thinks that lying or breaking a promise can be justified if it is necessary to produce a great good or avoid a great evil. Ross never gives a clear explanation of the *threshold* of benefit provided or harm avoided that is necessary in order to justify telling a lie or breaking a promise. I suspect that Ross would reject the idea that there is a single threshold that applies to all cases of lying (or all cases of promise-breaking); he would say that this threshold varies according to the gravity of the lie (how "big" or "small" the lie is) or the importance of the promise.¹⁸ On this reading, Ross holds that the duty not to lie and the duty to keep promises admit of different degrees of stringency.

III. Ross's Criticisms of Act-Utilitarianism

1. *General Differences Between Ross and Utilitarianism.* (Act) utilitarianism is nearly equivalent to the moral theory we obtain if we take Ross's theory and eliminate duties 1–5.¹⁹ Utilitarians deny that there is any moral obligation to keep promises, or refrain from lying, etc., that is independent of the good and bad consequences of the actions in question. Ross recognizes a greater number of *ultimate* moral obligations than do utilitarians.

2. *Ross and Utilitarianism on Promise Keeping.* Ross makes special note of the differences between his theory and utilitarianism for cases of promise-keeping. Utilitarians hold that, *other things being equal*, it is a matter of indifference whether one breaks a promise or keeps it. If breaking a promise will have exactly the same consequences as keeping it, then it doesn't matter

whether one breaks it or keeps it. Ross says that, other things being equal, it is a duty to keep our promises.

If, so far as I can see, I could bring equal amounts of good into being by fulfilling my promise and by helping someone to whom I had made no promise, I should not hesitate to regard the former as my duty.²⁰

Ross also argues that utilitarianism mistakenly implies that breaking a promise is morally right whenever breaking a promise produces slightly better consequences than keeping it. He asks us to consider a case in which by keeping a promise I will bring about 1000 units of good and by breaking the promise I will bring about 1001 units of good (Ross means “net” units of good).²¹ Utilitarians are committed to the view that I ought to break my promise in cases in which breaking the promise would result in slightly better consequences than keeping it. Ross thinks it *obvious* that I should not break my promise in such a case.

Ross’s second example presupposes that our judgments about the values of the consequences of actions have a far greater degree of precision than they, in fact, have. I cannot think of a case in which one course of action will produce *exactly* 1000 units of good and an alternative course of action which involves breaking a promise will produce *exactly* 1001 units of good. We need concrete examples against which to test our intuitions. We also need to know how much good each unit is supposed to represent. Is 1 unit of good a tiny, barely discernible, amount of good (e.g., the amount of good represented by the difference between one pleasant experience of eating a candy bar and a slightly more pleasant experience of eating a candy bar), or is it a very large amount of good such as the total value of a person’s life? Suppose that the difference between 1000 and 1001 units of good is very small. In practice, we can’t make measurements of value that are nearly this precise and thus we can’t point to any actual cases that (we can be confident) meet Ross’s description of 1000 and 1001. On the other hand, if 1 unit of good represents a great deal of value, then it is not clear that it would be wrong to break a promise in order to produce 1 extra unit of good.

Ross’s first argument about promise-keeping can be easily modified to apply to the issue of lying. (This is clearly in the spirit of Ross’s view, since he holds that all lies are cases of promise-breaking.²²) The argument would go roughly as follows: “Sometimes lying will result in *exactly* the same consequences (or *exactly* the same amount of good and bad) as not lying. In such cases, utilitarians must say that it doesn’t matter whether one lies or tells the truth. But surely this is unacceptable. *Other things being equal*, it is wrong to tell a lie. There is a strong presumption against lying; one needs weighty reasons to justify lying.” On the face of it, this is a powerful argument. However, it is very difficult to find an example of a case in

which lying and not lying will have *exactly* the same consequences. The best examples I can think of involve lying to a total stranger one will probably never see again about a very trivial or insignificant matter that the other person is completely uninterested in. Suppose that I lie about my age to a stranger on a train or airplane—I tell her that I am 52 years old, when, in fact, I am 54 years old. It’s hard to see how being misinformed about my age could possibly harm her or anyone else. Since I will never see her again, and since she is almost certain to forget what I say to her, my lying will not undermine trust between us. However, my lying to the stranger is likely to harm *my* character by making me less honest. (Utilitarians can say that it is bad to be prone to telling lies, since lying usually has worse consequences than telling the truth.²³) Given this, utilitarians can claim that, since lying almost *always* harms one’s character, there is almost always a moral presumption against lying. If successful, this line of argument would allow utilitarians to explain the apparent moral presumption against lying while maintaining that the rightness or wrongness of an action is determined solely by its consequences.

Ross can avoid these complications by considering the following kind of case. Suppose that the quantity of good that lying produces is equal to the quantity of bad that it causes by harming the liar’s character. Suppose also that there are no other good or bad consequences that result from lying or not lying and that no other *prima facie* duties are involved. In this case, lying and not lying produce the same net amount of good (bad).²⁴ To make this more concrete, suppose that you ask me how I like a house which you helped design. You ask the question in such a way that I cannot evade it without being very rude. I don’t like the house at all, but I lie to spare your feelings. In this case, the slight harm to my character from lying might be exactly counterbalanced by the slight benefit you receive if I spare your feelings. Ross would claim that it is clearly wrong to lie in such cases.

IV. Ross on the Basis of Our Knowledge of Fundamental Moral Principles

1. *Self-Evidence*. Ross claims that his *prima facie* principles are “self-evident.” He claims that it is self-evident that there is a *prima facie* duty not to lie and a *prima facie* duty to keep promises.

That an act, *qua* fulfilling a promise, or . . . is *prima facie* right, is self-evident; not in the sense that it is evident from the beginning of our lives, or as soon as we attend to the proposition for the first time, but in the sense that when we have reached sufficient mental maturity and have given sufficient attention to the proposition it is evident without any need of proof, or evidence beyond itself. It is self-evident just as a mathematical axiom or the validity of an inference, is self-evident. The moral order expressed in these propositions is just as much part of the fundamental nature of the universe (and, we may add,

of any possible universe in which there were moral agents at all) as is the spatial or numerical structure expressed in the axioms of geometry or arithmetic. In our confidence that these propositions are true there is involved the same trust in our reason that is involved in our confidence in mathematics; and we should have no justification for trusting it in the latter sphere and distrusting it in the former. In both cases we are dealing with propositions that cannot be proved, but that just as certainly need no proof.²⁵

Ross doesn't define "self-evident," but his use of the term seems to imply both of the following: 1. self-evident knowledge is non-inferential knowledge, something that one knows without having inferred or deduced it from anything else one knows, and 2. when one has self-evident knowledge, adequately understanding or attending to the proposition in question is sufficient to give one knowledge of its truth. To paraphrase Ross, in the case of self-evident knowledge, there is no need of proof (or inference) and the proposition is evident provided that one has reached sufficient mental maturity and given sufficient attention to it.

As Ross notes, some of the basic axioms of mathematics and logic are self-evident. These principles or axioms cannot be proven or deduced from anything else we know; nonetheless, we know that they are true. (The principle "all three-sided plane closed figures must have three angles" is an example of a self-evident geometrical principle.) In Euclidean Geometry, theorems can be proven on the basis of certain axioms or postulates, but those axioms and postulates themselves cannot be proven. We also have non-inferential knowledge of the features of our own immediate experience. For example, I know without inference that I am not now in pain. It seems that there is such a thing as self-evident or non-inferential knowledge.

2. *The Data of Ethics.* Ross argues that his theory is preferable to utilitarianism because it squares better with "the moral convictions of thoughtful and well-educated people." According to Ross, the moral convictions of thoughtful and well-educated people constitute a kind of data against which moral theories must be tested.

I would maintain, in fact, that what we are apt to describe as 'what we think' about moral questions contains a considerable amount that we do not think but know, and that this forms the standard by reference to which the truth of any moral theory has to be tested. . . the moral convictions of thoughtful and well-educated people are the data of ethics just as sense-perceptions are the data of a natural science. Just as some of the latter have to be rejected as illusory, so have some of the former; but as the latter are rejected only when they conflict with more accurate sense perceptions, the former are rejected only when they are in conflict with other convictions which stand better the test of reflection. The existing body of moral convictions of the best people is the cumulative product of the moral reflection of many generations, which has developed an extremely delicate power of appreciation of moral distinctions; and this the theorist cannot

afford to treat with anything other than the greatest respect. The verdicts of the moral consciousness of the best people are the foundation on which he must build; though he must first compare them with one another and eliminate any contradictions they may contain.²⁶

Ross makes an analogy between moral theories and scientific theories. Our experience of the world constitutes the “data” for testing scientific theories. Similarly, the moral convictions of thoughtful and well-educated people are the data against which moral theories must be tested. Moral theories must be consistent with the moral convictions of thoughtful and well-educated people. Utilitarianism must be rejected, because it implies things we know to be false. [Here I can’t resist asking whether Ross includes Mill, Sidgwick, Brentano, and Moore among those he regards as the “best people,” and, if not, why not?]

V. Criticisms of Ross’s View About the Basis of Moral Knowledge

1. *Self-Evident Knowledge*. The phenomenon of moral disagreement raises serious problems for Ross’s claim that we have “self-evident” knowledge of basic moral principles. Certain moral principles claimed to be self-evident by some people are rejected by others. Disagreement alone doesn’t undermine Ross’s claims, but disagreement among competent or “expert” moral appraisers creates serious problems for Ross. Agreement among competent and expert judges makes possible much of our knowledge. Without this agreement, we couldn’t fully trust our own sensory and cognitive capacities. For example, our knowledge of the external world is dependent on the extent of inter-subjective agreement in reports about the external world by those with properly functioning sensory organs. If my observations of the world were frequently contradicted by the observations of others, I couldn’t rely on them to nearly the extent that I am able to. The observations and testimony of *other people* that form the basis of our knowledge of astronomy, e.g., observations relevant to the occurrence or nonoccurrence of solar eclipses (temporary darkening of the skies and observations of the moon blocking the light from the sun), give us knowledge only because we know that these observations and testimony are not seriously disputed by other reliable sources.

Agreement among expert mathematicians is essential for our knowledge of self-evident mathematical propositions. We would not be justified in thinking them to be self-evident were it not for the agreement of those who have special competence and expertise to judge these matters. At least, disagreement among those with special competence to judge these matters should greatly undermine our confidence in such statements. Claims to mathematical competence and expertise can be justified independently of presupposing the truth of these self-evident principles. We don’t

need to define competence or expertise in terms of accepting the principles in question. There is no comparable consensus about the truth of moral principles among those who might qualify as “experts” or authorities about moral questions. Ross, Moore, Brentano, and Sidgwick arguably count as “experts” about morality. However, they do not agree about the truth of such principles as “lying is *prima facie* wrong.” Ross claims that this principle is self-evidently true, but its truth is not self-evident to Moore—indeed Moore would say that it is self-evidently false. G.E. Moore says that it is self-evident that consequentialism is true. Moore writes:

It seems to me to be self-evident that knowingly to do an action which would make the world, on the whole, really and truly *worse* than if we had acted differently, must always be wrong.²⁷

Ross’s claim that it is self-evident that lying is *prima facie* wrong is flatly inconsistent with this. Ross claims that lying can be wrong, even if not lying results in slightly worse consequences than lying. It is not plausible to claim that Moore lacks “mental maturity” or that he doesn’t adequately attend to or understand the propositions in dispute between him and Ross. It would be question-begging for Ross to disqualify people with utilitarian intuitions as moral experts on the grounds that they have utilitarian intuitions.

Intellectual honesty and humility require that we not automatically assume that we are correct and others mistaken when we disagree with them. Sidgwick writes:

Since it is implied in the very notion of Truth that it is essentially the same for all minds, the denial by another of a proposition that I have affirmed has a tendency to impair my confidence in its validity. . . . the absence of such disagreement must remain an indispensable negative condition of the certainty of our beliefs. For if I find any of my judgments, intuitive or inferential, in direct conflict with a judgment of some other mind, there must be error somewhere: and I have no more reason to suspect error in the other mind than in my own.²⁸

Ross does not adequately address the problem of disagreement. In the absence of some reason for thinking that Mill, Sidgwick, Brentano, Moore, and other utilitarians are mistaken in denying that lying is *prima facie* wrong, Ross has no warrant for his claim that it is self-evident that lying is *prima facie* wrong. In this case, it is most implausible to suggest that the disagreement stems from the failure of one party or the other adequately to understand the judgment and propositions in question.²⁹ Principles such as “there is a *prima facie* duty to keep promises” are not knowable simply on the basis of understanding them.

2. *The Moral Convictions of Thoughtful and Well-Educated People.*

Ross notes that the moral convictions of thoughtful and well-educated people can conflict. For instance, your moral convictions may tell you that it is morally permissible to lie in order to spare someone mild embarrassment, whereas mine tell me that it is wrong to lie simply for that reason. There is no single comprehensive set of moral beliefs that is accepted by all thoughtful and well-educated people. Ross is aware of this problem and notes that we must find some way to eliminate the conflict between different people's moral beliefs. He says that we must reject those moral beliefs that conflict with other moral beliefs that better stand the test of reflection, but he doesn't spell out what this involves or give any examples of how this might be done.

There seems to be a great deal of disagreement about the moral convictions to which Ross appeals in his arguments about promise breaking and lying. I have presented cases in which lying and not lying have the same consequences (or produce the same net amount of good/bad) to numerous groups of students over many years. My students are not unanimous in sharing Ross's intuitions about these cases. Many of them express puzzlement that anyone would object to lying when it does not have worse consequences than not lying. In response to these examples, many say such things as "What's the harm of lying?," "What's the big deal?" Many of my students think that it is morally permissible to tell lies in order to bring about slightly better consequences than not lying, for example, saving someone from mild embarrassment. Others think that lying is justified only to avoid very bad consequences or produce very good consequences, e.g., to save someone from losing her job or to prevent friends from becoming estranged. In the face of such sharply conflicting moral intuitions, Ross's argument is inconclusive (at best he needs to add a subsidiary argument to show that the intuitions of my students and others who disagree with him are mistaken).

No doubt, Ross would claim that people's moral convictions must be consistent with our knowledge of self-evident *prima facie* moral principles, but, to the extent that Ross's claims about our knowledge of self-evident principles are undermined by disagreements between ostensible "moral experts," his argument about the moral convictions of thoughtful and well-educated people is also seriously undermined. Barring appeal to self-evident moral principles, Ross gives us no grounds for thinking that reflective tests can resolve disagreements between thoughtful and well-educated people.

In science, there is often a strong consensus about what the data are. For example, in astronomy there is strong agreement about the exact times and places in which the skies have darkened during normal daylight (and moonlight) hours. This agreement strongly corroborates conventional scientific theories about solar and lunar eclipses. It is not nearly as clear what the

data of ethics are. The expression “*the* convictions of thoughtful and well-educated people” suggests a single common or shared set of beliefs about morality. The problem, quite simply, is that there is no single consistent and comprehensive set of moral beliefs accepted by all thoughtful and well-educated people. The vast majority of societies throughout human history have granted women rights and freedoms far less than those accorded to men. Many (most) human societies have practiced slavery (or something like it—serfdom or a caste society) at times in the past. Further, these practices were *thought to be* morally acceptable. (Serious controversy about the morality of slavery and conscientious opposition to slavery among non-slaves have been extremely rare in the great majority of human societies.) Slavery existed in the US until 1865. Serfdom was abolished in Russia in 1861. Ethiopia abolished serfdom/slavery around 1940. Slavery was abolished in Saudi Arabia in 1960. Mauritania passed laws outlawing the institution of slavery in the 1980s. Slavery persists at the present time in many countries, most notably Mauritania and The Sudan.³⁰ Many moral codes of other times and places now seem to us to be seriously mistaken. In light of this, we shouldn’t be too confident of the commonsense moral beliefs of our own time and place. Thoughtful and well-educated people in our own place and time might be (and likely are) seriously mistaken in their views about many important moral issues.

3. *Another Problem for Ross: The Extent of Moral Disagreement.* Moral disagreements are far more pervasive and fundamental than the disagreements between act-utilitarians and Ross. Not everyone thinks that it is *prima facie* wrong to cause harm (even great harm) to others. Ghengis Khan and members of other warrior societies had few, if any, moral scruples about killing and enslaving others. It seems doubtful that they thought it self-evident that it is *prima facie* wrong to harm or kill others. Ghengis Khan’s moral outlook is starkly revealed in the following statement which is attributed to him: “Happiness lies in conquering one’s enemies, in driving them in front of oneself, in taking their property, in savoring their despair, in outraging their wives and daughters.”³¹ Note that we are talking about the moral beliefs of entire societies and cultures, not just the beliefs of isolated individuals (lunatics). Unlike Nazis, American slaveowners, and Bolsheviks, the Mongols and Vikings, etc., didn’t find it necessary to dream up all kinds of wildly false beliefs about their victims in order to justify killing and enslaving them. There are relatively easy arguments that point to the many false beliefs of Nazis, American slaveowners, and Bolsheviks, that we can bring to bear against their moral views. There are no such quick and easy arguments against the moral views of the Mongols and other warrior societies. (Nor are there such easy arguments against the moral beliefs of people in the numerous slaveholding societies in which slavery was not claimed to be justified on the grounds of the innate inferiority of the slaves.)

Not everyone thinks that it is self-evident that it is wrong to lie in cases in which lying causes great harm to others for the sake of small benefits for oneself. Some people have a very casual attitude about acts of fraud that cause great harm to others. When presented with egregious cases of fraud that cause great harm to others for the sake of fairly trivial benefits to oneself at least some of my students are very reluctant to say that such actions are wrong. Some are inclined to say of the victims of such fraud “if they are so stupid that they believe the other person, then they deserve what happens to them.” I would exclude Ghengis Khan and people who casually condone fraud in business from my list of moral experts. But, without an argument, this is question begging.³²

4. *Yet Another Problem: Conceptual Relativity.* It is unclear that Ghengis Khan disagrees with us about the moral impermissibility of harming or killing others. (To say that he believes that it is morally right/morally permissible for him to kill others, implies that he wields our concepts of moral obligation and a right and wrong action.) It seems likely that he doesn't share the same normative concepts that we do. The issues here are very complex and I can't begin to do justice to them. Many philosophers and cultural anthropologists claim that the concepts of right and wrong action are restricted to those societies whose moral codes and concepts derive from the “legalistic” morality of Judaism and its offshoots, Christianity and Islam.³³ Rather than say that Ghengis Khan holds that it is not *prima facie* wrong to harm and kill others, perhaps we should say that he lacks our concepts of moral obligation and moral rightness and wrongness. Ross might welcome this observation and say that, since Ghengis Khan and others like him don't have the concept of moral rightness and wrongness, the proposition that it is *prima facie* wrong to harm or kill others is self-evident to all who adequately understand and employ the concepts of moral rightness and wrongness. However, this is much too quick and easy. One suspects that Ghengis Khan would not be easily persuaded to abandon his own normative concepts (his code of honor) for our concepts of right and wrong. Our moral judgments and the attitudes they endorse are contrary to many of his attitudes; Ghengis Khan clearly approves of actions that we disapprove of and condemn as morally wrong. Suppose that it is self-evident to all of those who understand and wield the concepts of right and wrong that it is *prima facie* wrong to harm others, but that a reasonable person might choose to not wield the concept of right and wrong action. This prospect should not be pleasing to Ross. One can't successfully justify any particular moral view while granting that it is reasonable to opt out of morality altogether.

Here it would be well to keep in mind the following examples. Given certain conceptions of honor, it may be self-evident or nearly analytic that it is dishonorable for me not to challenge you to a duel to the death if you insult me in certain ways. This view of honor was firmly held by many

members of the upper classes in Britain and the United States during the first half of the Nineteenth Century. Andrew Jackson, Alexander Hamilton, and Aaron Burr all fought duels; Abraham Lincoln came very close to fighting a duel that was called off at the last minute. Given other conceptions of honor, it may also be self-evident that it is dishonorable for me not to kill my sister if she is raped. I *understand* these concepts of honor and the specific judgments and attitudes that they would commit me to were I to wield them. On these and other grounds, I reasonably choose not to wield these concepts. Certain normative concepts are such that it is reasonable to reject them and refrain from using them. To show that it is *prima facie* wrong to harm others in a full-blooded sense, we need to show that it is reasonable for one to wield the concept of right and wrong and reasonable for those who don't to adopt it. That is a *very* tall order.

5. *A Possible Reply for Ross.* Susan Hurley gives a very unapologetic defense of epistemological intuitionism. She says that the appropriate response for the intuitionist to make to objections about disagreement is to claim that certain individuals may be deficient in their ability to discern moral properties. According to Hurley, moral properties are objective properties of things constituted by natural properties in the same way that the parts of a physical object constitute a pattern. She likens the ability to see moral properties to the ability to recognize someone's face.³⁴

Given the pervasiveness of disagreement about moral issues, Hurley is committed to the view that many people are deficient in their ability to discern moral properties. She acknowledges this:

What can be supposed . . . to be necessary for some person's belief to constitute knowledge . . . is *not* that a range of investigators would reasonably and unconstrainedly come to converge on it . . . but rather that if the proposition believed weren't true the person in question wouldn't believe it (and, perhaps we should add, that if it were he would). . . . The failure of these convergence conditions does not *per se* undermine the knowledge of those who possess it. . . . To ignore this is to assume (optimistically? or on political grounds?) too great a uniformity, or potential uniformity among persons and their situations; one person's knowledge does not depend on another's capacity for it.

Some people might simply be better at discovering truths about what should be done, all things considered, than others (who might be better at discovering other kinds of truth) . . . For example, some people have very specific agnosias, or recognitional disabilities. Perhaps the most familiar is prosopagnosia, or inability to recognize faces, on the part of someone whose vision is otherwise unimpaired.³⁵

It is possible that many otherwise normal and intelligent people are deficient in their ability to discern moral truths. However, in order to show that this is the case, Hurley needs to give a convincing account of the difference between correct and incorrect perception of moral truths. She

and other intuitionists have failed to do this. The ability to recognize faces is a way of finding one's way around in the world. Those with the ability to recognize faces can make discriminations that others can't. A person who can recognize faces can identify particular people in a crowd without difficulty. There are non-controversial and non-question-begging ways of determining whether or not someone has the ability to recognize faces. If someone's competence in recognizing faces is called into question, we can test her ability to do so without relying on *anyone's* ability to recognize faces. There are *independent* ways of identifying people, e.g., finger prints. There is nothing comparable to this in the case of morality (at least not on Hurley's view). Suppose that you and I disagree about the moral properties of an action, even though we agree about all of its natural properties. Each of us claims that the other is deficient in his/her ability to perceive normative properties. Given Hurley's view, there is no non-question-begging way for us to determine whose perceptions are deficient and whose are not. If her theory is true and moral properties are patterns that we perceive, then the only way that I can test someone else's moral perceptions is to appeal to my own moral perceptions. Hurley fails to show that there are any non-question-begging ways to resolve disputes about the veracity of people's moral perceptions.

This same problem arises for Ross. Ross needs to provide independent tests of the veracity of reports of self-evident moral knowledge (tests independent of disputed appeals to self-evident moral knowledge). He needs to give us grounds for distinguishing between reliable and unreliable reports of self-evident knowledge of moral principles. I don't claim that this can't be done. However, the burden of proof falls on Ross to do this and it is a burden that he and other epistemological intuitionists have failed to meet.

6. *Two Other Possible Lines for Ross to Take.* Perhaps we should say that ideal moral judges must be paragons of moral goodness, i.e., people like Jimmy Carter and the Huguenots of La Chambonne, rather than intellectuals such as Ross, and G. E. Moore. Alternatively, and more plausibly, we might require that ideal moral judges be both intellectually and morally virtuous.³⁶ Given such a view, Ross could say that people differ markedly in their ability to discern moral truths and Hurley's conjecture might be plausible. This view has much to recommend it, but for Ross's purposes it has a very serious problem that I cannot see any way around. The problem is that our characterization of the moral virtues of an ideal moral judge seems to presuppose certain first-order moral views. It is doubtful that we can use the notion of a morally virtuous ideal moral judge to settle controversial first-order moral questions, because if we disagree about the answers to first-order moral questions, it is likely that we will disagree in our characterization of a morally virtuous ideal moral judge. If we seriously disagree about the answers to first-order moral questions, then it is likely that we will also disagree about the moral virtues we ascribe to ideal moral judges and about the ways in which we should define or

characterize those virtues. It is also likely that we will be unable to agree on a list of moral paragons. (Much more needs to be said here.)

Another option for Ross would be to appeal to more conventional notions of a (cognitively or intellectually) ideal observer or ideal moral judge and say that *ideally rational* moral judges would agree that Ross's *prima facie* principles are self-evident. Without any pretense of being able to justify what I say here, permit me two brief comments on this. 1. In order for this reply to succeed, Ross would need to justify one particular theory of rationality or one particular conception of an "ideal observer" over all others.³⁷ 2. Even if Ross could justify one particular theory of rationality (or one particular conception of an ideal observer), it is not clear that ideal observers or ideally rational moral judges (so characterized) couldn't disagree about the truth of Ross's basic principles.³⁸

Notes

* I wish to thank Betsy Postow, Joe Mendola, and Micah Lehner for helpful comments on earlier versions of this paper.

1. See Brad Hooker, *Ideal Code, Real World*, (Oxford: Oxford University Press, 2000), pp. 104–107 and 126–141 and Richard Brandt, *Morality, Utilitarianism, and Rights*, (Cambridge: Cambridge University Press, 1992), pp., 131 and 144–154.
2. *Ideal Code, Real World*, pp. 145–146.
3. *The Right and The Good*, (Oxford: Oxford University Press, 1930), pp. 19–20.
4. *The Right and The Good*, p. 28.
5. Cf. A. C. Ewing:

to say that we have a *prima facie* duty to produce something is the same as a saying that it ought to be produced for its own sake, other things being equal (*Second Thoughts in Moral Philosophy*, (London: Routledge & Kegan Paul, 1959), p. 104).

Frankena gives essentially the same definition:

Something is a *prima facie* duty if it is a duty other things being equal . . . (*Ethics*, second edition, (Englewood Cliffs, N. J.: Prentice Hall, 1973), p. 27).

6. Cf. Shelly Kagan, *Normative Ethics*, (Boulder: Westview Press, 1998), pp. 180–181) and A. C. Ewing *Second Thoughts in Moral Philosophy*, (London: Routledge & Kegan Paul, 1959), p. 110.
7. *The Right and the Good*, p. 19.
8. *Ibid.*, p. 46.
9. *Ibid.*, pp. 20 and 23.
10. *Ibid.*, p. 38.
11. *Ibid.*, p. 21.
12. *Ibid.*, p. 21.

13. *Ibid.*, pp. 21 and 24–25.
14. *Ibid.*, p. 21.
15. *Ibid.*, pp. 41–42.
16. *Ibid.*, p. 18.
17. *Ibid.*, p. 30. Another reason why Ross thinks that moral judgments about the rightness or wrongness of particular actions are very fallible is that our actions often have indirect good and bad consequences in the distant future. Any act that I perform might harm or benefit other people in ways that I can't know about at the time I act (*The Right and Good*, p. 31).
18. Cf. Hooker, *Ideal Code, Real World*, pp. 131–132.
19. Contrary to what Ross's duties 6 and 7 imply, act-utilitarians say that there is a duty to give oneself pleasure (provided that the pleasure in question is intrinsically good); act-utilitarians also say that there is a duty not to harm oneself. Act-utilitarianism is a principle of *impartial benevolence*. Utilitarians say that we have the same duties to ourselves that we have to others.
20. *The Right and the Good*, p. 18.
21. *The Right and the Good*, pp. 34–35 and 38–39.
22. I think that Ross is correct in claiming that all cases of lying involve breaking an implicit promise or guarantee that what one says is true. See my paper "The Definition of Lying", *Noûs*, forthcoming.
23. Cf. Mill, *Utilitarianism*, (Indianapolis: Hackett, 2001), pp. 22–23.
24. Ross proposes something similar to this to handle utilitarian replies to his second example of a case in which utilitarianism seems too permissive about breaking promises, *The Right and the Good*, p. 38.
25. *The Right and the Good*, p. 29–30; also see p. 40.
26. *The Right and the Good*, pp. 40–41.
27. *Ethics*, p. 77. Cf. Brentano, *The Foundation and Construction of Ethics*, pp. 81–82.
28. *The Methods of Ethics*, pp. 341–342.
29. Cf. Berys Gaut, "Justifying Moral Pluralism," in Philip Stratton-Lake, ed., *Ethical Intuitionism: Re-evaluations*, (Oxford: Oxford University Press, 2002), p. 144.
30. Slavery existed on large scale through the 20th Century and persists to the present day. *Time Magazine* March 5, 2001, pp. 50, reports that there are presently 300,000 child slaves in Haiti. On slavery in Mauritania see William Finnegan, "A Slave in New York," *The New Yorker*, January 24, 2000, pp. 50–61 and Roger Sawyer, *Slavery in the Twentieth Century*, (London: Routledge & Kegan Paul, 1986). On slavery in The Sudan see Sawyer and William Finnegan, "The Invisible War," *The New Yorker*, January 25, 1999, pp. 50–73.
31. See, Witold Rodzinski, *A History of China*, (Oxford: Pergamon Press, 1979), pp. 164–65.
32. For my own part, I think that Hare-type golden rule arguments can exclude certain people as moral experts. My point here is that Ross's own arguments aren't adequate to establish this.
33. According to Anscombe, Aristotle did not employ the concept of a moral obligation. Elizabeth Anscombe, "Modern Moral Philosophy," *Philosophy* 33 (1958): 1–19. Alan Gibbard says that our concepts of right and wrong are norms for guilt and resentment. Gibbard says that not every society wields such

- concepts of moral rightness and wrongness. (See *Wise Choice and Apt Feelings*, Cambridge, Mass.: Harvard University Press, 1990).
34. *Natural Reasons*, (Oxford: Oxford University Press, 1989), pp. 292–293.
 35. *Natural Reasons*, pp. 292–293.
 36. For views of this sort see Jason Kawall, “Virtue Theory and Ideal Observers,” *Philosophical Studies* **109**, (2002): 197–222 and Linda Zagzebski’s, *Divine Motivation Theory* (Cambridge: Cambridge University Press, 2004). Zagzebski defends what she calls “exemplarism.” She thinks that we should make lists of moral exemplars the foundation for ethical theories, see *Divine Motivation Theory*, (Cambridge: Cambridge University Press, 2004), pp. 40–50.
 37. On the great difficulties involved in this, see my *Value and the Good Life*, (Notre Dame, Indiana: University of Notre Dame Press, 2000, Chapter 8.
 38. On this point, see my *Value and the Good Life*, pp 262–265, my “Could Ideal Observers Disagree?” *Philosophy and Phenomenological Research*, Volume L, Number 1, September 1989, pp. 115–124, and my *The Status of Morality*, (Dordrecht: Reidel, 1984), Chapter 2.