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Law and Oppression: A Moral Call to Abstain from the Use of Moral Language

Benjamin L. Stalnaker

In our increasingly polarized political climate, moral rhetoric is a tool being deftly wielded to advance controversial positions, target disfavored groups, and alienate political opponents. Moral language can, and often is, effective in achieving the goal of the speaker, despite the falsity of the statements themselves. By moral language or moral rhetoric, it is meant *simple* moral language containing generic moral terms and no further justification. Such terms include good, bad, right, wrong, moral, immoral, just, unjust, should, ought, etc. Use of these terms is not restricted to those who use them accurately or even well-intentioned. Examples of that sort of use of moral language includes Georgia Republican Representative Tom Price’s comments on the Affordable Care Act, “This bill is an affront on the morality of the provision of American healthcare [...] We lose our morality and our freedom”¹ North Carolina Republican Senator David Curtis implicitly invokes moral language when criticizing Charlotte’s LGBT protection ordinance, “This liberal group is trying to redefine everything about our society. Gender and marriage — just the whole liberal agenda. I don’t think we should let national criticism stop us from doing what we should do.”² Finally, moral rhetoric is constantly

¹ “AAPS Member Rep. Tom Price, MD’s Floor Remarks on Government Takeover of Health Care,” last modified on November 7, 2009, <http://aapsonline.org/aaps-member-rep-tom-price-mds-floor-remarks-on-government-takeover-of-health-care/>.

² Agrawal, Nadya. “North Carolina Republicans Vow Showdown Over Trans Rights.” The Huffington Post. http://www.huffingtonpost.com/entry/charlotte-passes-bathroom-bill-to-protect-trans-people-and-conservatives-arent-happy_us_56cdd1e8e4b0928f5a6de60c (accessed March 3, 2017).

used to criticize same sex marriage or other issues related to gay rights. These examples demonstrate that moral norms are often utilized by actors that are advancing ends antithetical to morality. The misuse of moral language provides compelling moral reasons for *all* individuals to abstain from the use of moral language when discussing laws. While the examples cited above adhere to a particular set of moral beliefs, the position of this paper still holds regardless of the content of morality. This piece will begin by demonstrating that the misuse of moral language is a problem worth addressing. Next, it will answer an intuitive objection before proving why the position of this paper is an actual solution to the problem. Finally, a serious objection will be responded to.

The misuse of moral language when discussing laws and policies allows for the passing of immoral laws and harm to befall vulnerable groups. The use of moral rhetoric serves a very particular function in the context of law and politics, namely associating specific public policies with constituents' preexisting moral commitments.³ Regardless of whether or not the policy actually aligns with morality, the invocation of the language provides constituents with additional reasons to approve or disapprove of the policy depending on the context in which the language is used. Since moral rhetoric has the potential to garner public support for a law regardless of the truthfulness of the statements, such language can be used to pass immoral or amoral laws and policies. Given that immoral laws, especially those passed at

³ Clifford, Scott, and Jennifer Jerit. "How Words Do the Work of Politics: Moral Foundations Theory and the Debate over Stem Cell Research." *The Journal of Politics* 75.3 (2013): 660.

the federal level, have the potential to harm millions of people, there is a compelling reason to attempt to prevent the instrumentalization of moral language for immoral ends.

An alternative and equally worrisome use of moral language is the impact it has on specific groups. Specifically, what poses a threat is its ability “to define the limits of moral communities, to define ingroups versus outgroups.”⁴ It is common to understandings of morality that different groups warrant different treatment. Criminals, for example, are not thought to deserve all the same rights and freedoms as law-abiding individuals. Additionally, there are also thought to be special moral duties to ones’ friends, family, compatriots, etc. Since rights and privileges are linked to one’s membership of a morally relevant group, moral language has the potential to strip away those rights and deny access to those privileges by categorizing people as outside of the morally relevant groups.

Loss of membership in moral communities can have severe ramifications. G. N. Appell makes chillingly clear the consequences of when moral language is used for that purpose, “By morally devaluing one’s competitor for resources and power, dehumanization permits guilt-free behavior of any sort that will obtain one’s goals, even if one’s competitor is destroyed in the process. In fact, such ethical discourse makes the attack on the competitor morally justifiable.”⁵

⁴ Appell, George N. “Talking Ethics: The Uses of Moral Rhetoric and the Function of Ethical Principles.” *Social Problems* 27.3 (1980): 352.

⁵ *Ibid.*, 355.

One need not look far for examples of this sort of use of moral language. President Trump's descriptions of Mexican and Muslims both fit into this category, as does current conservative descriptions of the threat posed by trans-individuals, and discussion surrounding gay and black individuals. Even if the particular laws the language is used to support do not pass, the language itself serves to further alienate marginalized groups and justify future persecution. This demonstrates that the misuse of moral language is a serious problem that must be addressed.

Before developing the main arguments for this position, an intuitive objection will first be addressed. Some might object that it is implausible that stating accurate moral judgments is wrong. So long as the true statements are not directly or intentionally harmful, there is nothing wrong about expressing them. The objection concludes that even if some people are misusing moral rhetoric, only those guilty parties should be obligated to stop using it. While seemingly plausible at first glance, this objection is misguided. Paul W. Taylor provides a useful conceptual framework to understand why the truth of moral statements is distinct from the morality of uttering those statements. He notes that the evaluation of moral utterances includes "judging the moral rightness or wrongness of using certain moral expressions in certain circumstances for certain purposes."⁶ If someone tells an old woman on her death bed that her son is morally repugnant, they may well be speaking the truth, but that does

⁶ Taylor, Paul W. "Moral Rhetoric, Moral Philosophy, and the Science of Morals." *The Journal of Philosophy* 56.17 (1959): 692.

not mean they are acting morally when they tell her this. Examples like that and countless others lead to the conclusion that, “Whether a given moral judgment is true or false does not depend on whether it is morally right or wrong to pronounce it.”⁷ The objection is therefore shown to be misguided, because there is no overriding reason why morality cannot require individuals from abstaining from uttering accurate moral statements.

Since a moral statement being true is insufficient to justify saying it, some other standard must be used. While initially proposed in the context of evaluating metaethical theories, Taylor provides a useful metric for how moral norms on the use of moral language should be evaluated, “Its goal is to become an instrument which can, if people want to use it, help them to find good reasons for moral judgments, to use moral language in the clearest and least misleading ways, and to understand exactly what it is to carry on moral deliberation or to settle a moral dispute.”⁸ If it can be demonstrated that ceasing to use moral language when discussing laws better meets those aforementioned goals, then it is clear that there are compelling moral reasons to do so.

The duty to abstain from the use of moral language when discussing laws is due to how normative force manifests itself in language. In a common sense understanding of morality, one of its essential features is that it provides

⁷ Ibid., 694.

⁸ Taylor, Paul W. “The Normative Function of Metaethics.” *The Philosophical Review* 67.1 (1958): 31.

normative force that gives individuals reasons to act. The fact that x is moral is a reason to do x. The fact that y is immoral is a reason to refrain from doing y. Since morality includes this normative, reason-giving component, statements containing moral language provide reason to act, rather than merely stating facts. The statement *the affordable care act is immoral*, provides people with a reason to oppose that particular act. This reason is not overriding, if someone is skeptical of the claim or has an opposing viewpoint, it will not provide a *sufficient* reason to act. Even though moral language is capable of conveying the normative force of morality, that connection is not absolute. Language is imbued with normative force because of the association with legitimate moral judgements; it is this *association* and not the words themselves that provide the reasons to act.

The association does not need to be perfect; every moral statement need not be true in order for moral language to continue to convey normative force. It is important to emphasize, that normative force is only conveyed by moral judgments that are perceived to be legitimate. If a moral statement is clearly false, it will not carry reasons to act. However, if moral statements are plausible, especially if spoken by authority figures, they will often be associated with legitimate moral judgments. Understanding how normative force is conveyed through moral language is essential to discovering how the misuse of moral language occurs and how it can be prevented.

The misuse of moral language can be conceived of as a sort of free rider problem. Moral language functions correctly because the majority of people using it do so in good faith and only invoke it in connection to accurate moral judgments. Those who misuse moral language take advantage of this fact. They invoke moral rhetoric so that their statements, which are empty of moral content or even antithetical to morality, will be imbued with normative force. Since the impact of laws are often unclear to the general public and there is a time delay between discussion of laws and implementation of them, free riders can take advantage of moral language without undermining faith in it altogether. However, the only reason why moral language can be misused in this way is because the free riders are piggybacking off other people's legitimate uses of moral language. In the absence of legitimate uses of moral terms, or at least a refusal by a sizable portion of the population to use moral rhetoric, invocation of such terms no longer carries the same normative, reason-giving force.

Flagrant uses of moral rhetoric will become visible for what they are; namely, an attempt to pass a law irrespective of the accuracy of the moral statements themselves. While initially said in the context of social sciences, Appell's comment is even more applicable to politics and law, "Ethical discourse has been used as a means of disguising the real motives for social action by displacing attention from someone's actual behavior. When ethical discourse is used to veil a political position, it can weaken the thrust for

greater ethical concern.”⁹ Without legitimate uses of simple moral language, ethical concern for that sort of language will erode and it will no longer carry the normative force it once did. Additionally, rather than being broadly accepted, simple moral language will likely be evaluated critically and with a good deal of suspicion. This establishes that there is a compelling moral reason to refrain from using moral language when discussing laws.

Additionally, refraining from using simple moral language when discussing laws facilitates better moral discourse. A serious issue when discussing laws with moral ramifications is a refusal to engage substantively with the other side. One major reason for this is that moral rhetoric often frames disputes regarding the morality of laws as ultimate moral disagreements. Taylor notes, “An ultimate moral disagreement occurs when two people agree on all the facts of the case but disagree in their moral opinions.”¹⁰ While moral disagreements surrounding policies are rarely ultimate moral disagreements, the language used to discuss them implies otherwise. By using moral rhetoric, morality is seen to be little more than surface level intuitions or personal preferences, which means there is no reason to discuss conceptions of morality further. Moral language therefore has the tendency to present moral disagreements as irreconcilable. When individuals cease to use simple moral language, it becomes clear that there are underlying moral justifications behind positions. There are two substantial

⁹ Appell, *Talking Ethics*, 350.

¹⁰ Taylor, *The Normative Function of Metaethics*, 23.

benefits associated with this change in moral discourse surrounding laws. First, it encourages conversation when previously there would only be debate, which means that individuals are more likely to be convinced to accept the more accurate position. Additionally, it makes clear that it is as important to discuss conceptions of morality as it is to discuss possible consequences of laws. This is essential, because without a clear notion of right or wrong it is impossible to evaluate laws. Not only does refraining from using simple moral language when discussing laws prevent misuse of moral language, it also facilitates better and more clear use overall.

The most significant objection to the position of this paper is that it prevents moral discourse and disallows criticism of immoral features of laws. However, it is important to recognize that the principle being defended only applies to *simple* moral language. Simple moral language conveys moral positions without any sort of deeper justification or analysis. An example of this sort of language is *murder is immoral*. The same sentiment can be said in ways that do not fall under the category of simple moral language: *murder is wrong because it denies individuals their right to life* or *murder is wrong because it reduces overall wellbeing*. This example makes clear that refraining from using moral language does not mean refraining from expressing moral sentiments. When used legitimately, simple moral language is merely shorthand for deeper moral principles and positions. This means that any individuals who wish to express moral positions about laws are free to do so, because they can easily fall back upon the underlying moral principles that

make their positions true in the first place. Problems only arise for those who are using moral language to express positions that are devoid of moral content or reliant upon incorrect moral justifications.

The position defended is particularly effective at solving the problem identified, because it disallows the instrumentalization of moral language for amoral or immoral ends. There are three courses of action available to former moral language free riders. The first option is to stop using moral language altogether. This is good because it means that moral norms are no longer being co-opted. Additionally, people “often experience ‘moral outrage’ at the suggestion that nonmoral considerations be weighed alongside moral ones,” which means that moral criticism of these laws or policies are likely to be successful in defeating them.¹¹ The second option available is for former free riders to continue using simple moral language. However, since that type of moral language is no longer associated with legitimate moral judgments, it will cease to have any normative force. Therefore, it would merely be empty rhetoric that will not provide any reason for people to act. The final option available is to try to express one’s position in terms of underlying moral principles. Individuals who had been using empty moral rhetoric all along will not be able to access this option. The only people able to translate their simple moral language into deeper moral statements are those whose positions rely on, in the words of Jonathan Bennet, ‘bad morality.’¹² Even in this case, it is better

¹¹ Clifford and Jerit, *How Words Do the Work of Politics*, 661.

¹² Bennett, *The Conscience of Huckleberry Finn*, 123.

for individuals to express their moral sentiments in terms of underlying principles, rather than merely couching them through simple moral language.

Bad moral positions lose their ability to influence individuals once they are stated explicitly. There are typically two different ways that these bad moral positions can be expressed through their underlying justifications. The first way is a legitimate moral justification that is reliant upon incorrect empirical facts. An example of this is the position of supporters of anti-trans bathroom legislation, such as those recently debated in Texas and North Carolina. The simple moral expression of the defense of these bills is that there is a moral imperative to implement them. The deeper justification is that these sorts of bills are needed to safeguard women and children.¹³ When expressed in this format, the moral status of these bills becomes an empirical question that can be easily refuted. The second way these bad moral positions can be expressed is through false or at times even repugnant justifications. An example of this sort of justification can be seen during discussion of California's Proposition 6, also known as Brigg's Initiative, which was debated during the late 1970s. The legislation would have banned all gay and lesbian individuals, and possibly even supporters of gay rights, from working in California's public schools. The underlying justification for this position was that gays and lesbians are moral deviants who would corrupt children if they had any contact with them.¹⁴

When stated in this fashion, moral criticisms can be brought against it and can

¹³ Agrawal, *North Carolina Republicans Vow Showdown Over Trans Rights*.

¹⁴ Grigg, Amanda. "Republicans in North Carolina Strategically Tapped into a Long History of Anti-LGBTQ Rhetoric." *The Fair Jilt*. <http://thefairjilt.com/2016/03/24/nctrans/> (accessed March 3, 2017).

clearly demonstrate why it is not a valid moral position. When individuals refrain from using simple moral language when discussing laws, bad moral positions can no longer masquerade as something worth influencing policy decisions.

Given how readily moral language can be instrumentalized for amoral or immoral ends and its ability to alienate disfavored groups, there are compelling moral reasons to try to stop or hinder such abuse of moral language. It has been demonstrated that moral language only has reason-giving force because of its association with legitimate moral judgments. If individuals refrain from using simple moral language when discussing laws, the invocation of such language will no longer exert influence on people. Those who previously misused moral language are left with three options, but none of the options allow them to effectively instrumentalize the normative force of morality. Finally, individuals who wish to express legitimate moral positions are still free to do so by expressing their underlying moral justifications. This ultimately facilitates better moral discourse and makes clear the actual moral ramifications of laws. While the benefits discussed in this paper will not be immediate, once a norm has been established the situation sketched out above should develop. Unlike typical collective action problems, nothing is lost by transitioning from simple moral language to content-laden language, which means the reasons to refrain from the use of moral language when discussing laws are overriding.

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