

Can Moral Norms be Rationally Justified?

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Dedicated to Professor Lutz F. Tietze on the occasion of his 60th birthday

1. Introduction

In Germany, the topic of whether norms can be rationally justified has gained surprising relevance and urgency in recent months. Journals and newspapers brimmed with controversy. They were full of emotionally tainted statements and arguments, often concerning bioethical and medical questions. The first problem was that of active euthanasia carried out by doctors, legalized after a long period of discussion and a kind of test run in the Netherlands; the second crucially that of our dealings with embryos and embryonic or other stem cells.

For some time the practice of “pre-implantation genetic diagnosis” was very prominent. After in vitro fertilization, parents who have reason to believe that their offspring might suffer from severe genetic defects get the chance of having the embryo tested for such genetic defects at the earliest stage of development, before it is implanted. In the worst case, they may decide against implantation. The question of whether this procedure is permissible concerns, above all, the “moral status” of the embryo. Research in the field of stem cell therapy then relates to the moral status of human cells that can, under certain circumstances, develop into a complete human being.

There is one thing about these discussions that professional moral philosophers found quite baffling: Proponents of differing views in these matters, especially those opposed to the methods mentioned above, talk and write as if morality was all on their side, as if people who hold other views say good-bye to the old consensus of Europe’s moral tradition. They frequently insinuate that those who support new technological methods such as genetic research have first and foremost great economic advantages in mind; and that in their view these advantages justify the dismantling of moral norms. When Britain decided to legalize experiments with superfluous embryos for exceptionally important research,

the German minister of justice said, very much in this vein: “England has now left the circle of cultivated nations.”

There seems to me to be a fairer and more realistic view: It is not the case that such disputes occasion the clash of guardians of moral standards on the one hand and disdainers of morality enthused, even inebriated with the idea of scientific progress on the other, but rather of proponents of two different moral outlooks. Also, the so-called “conservative” position ascribing even to the newly fertilized ovum full human dignity and the unconditional protection that our constitution accords to persons, is in fact both radical and very modern: it is not, in any way, rooted in the history of moral thought.

As with other controversial questions concerning morally right behavior, we now face the problem of having to distinguish the more correct convictions from the less correct ones amongst the diverging moral views expressed by their proponents with so much force. I shall now turn to this fundamental question.

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What is a moral norm? I think the following explanation (not definition) might be acceptable: moral norms are rules of human behavior directed at making sure that human beings treat the needs, interests, and wishes of other human beings—or, in an extended version, of all sufficiently sentient beings—in all their acts and omissions in such a way that these interests etc. pertaining to those individuals affected or threatened by their behavior not be infringed upon to any unacceptable extent, but rather promoted as far as reasonable and possible. When I say “Interests etc.” I mean that, for example, the rights of others may also be seen to be factors one ought to pay attention to in one’s behavior. Some of these norms are declared legal norms by developed societies. However, many legal norms, perhaps even most of them, have no moral foundation, even though a certain compatibility with norms of justice is probably one of the most important aims of any legal system (cf. Robert Alexy’s book *Begriff und Geltung des Rechts*, 1992).

So, how can such moral norms be justified? There are, as is presumably widely known, different competing approaches, of which here I shall briefly discuss only some that seem to be particularly important: religious approaches (Section 2), value-based, that is, axiological and ontological approaches

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(Section 3), approaches within evolutionary theory (Section 4) and finally “communitarian” approaches to justifying moral standards (Section 5). I shall conclude this article by sketching my own basic method of rationally justifying moral norms to in Section 6.

However, I should first like to assess the above-mentioned approaches with a view to whether they can solve the problem of justifying moral norms.

2. Religious models of justification

All great religions—Hinduism, Judaism, Buddhism, Christianity, and Islam, in the order of their historical occurrence—contain catalogues of norms in which certain human actions are declared to be good, others bad. These rules are to be followed because they have been decreed by the Gods, by God or by some religious founder by virtue of their special authority. The Decalogue of the Old Testament and the lessons of the Sermon on the Mount of the New Testament are particularly prominent in Western culture.

As these are supposed to involve some kind of justification of moral norms, two fundamental and widely discussed difficulties immediately come to mind: First of all, it is a matter of faith whether the documents in which these norms are laid down are in fact considered to be the utterances or instructions of some superhuman authority; and secondly we must keep in mind that we always require, over and above such commandments, an independent and prior principle to tell us that it would be our moral duty to obey these commandments in all cases, even if, for example, they contradict our moral intuition.

The argument that we need a superordinate principle according to which we are morally obligated to obey the commands of God as binding even if our moral intuitions point in different directions has been developed by the philosopher Kai Nielsen in particular. Consider God’s commanding Abraham to sacrifice Isaac (Old Testament, Genesis 22), or the command of the Sermon on the Mount not to resist evil but to “turn the other cheek” to somebody who “smites thee on thy right cheek” (New Testament, Matthew 5, 39) and not to “take thought for your life” because God in his own way will care for you as he does for the “lilies of the field” and the “fowls of the air” (New Testament, Matthew 6, 25–28). These divine commands are instructions that clearly contradict the moral intuitions of many of us. Theologians must try—and indeed they do—appropriately to re-interpret passages like “Be fruitful, and multiply” (Genesis 1, 28), the command of unrestricted rule of man over all other creatures (Genesis 9, 2f.), or the sentence “Whoso sheddeth man’s blood, by man shall his blood be shed” (Genesis 9, 6) for humanity in much-changed circumstances today.

In the course of this, theologians univocally claim that the Bible announces God’s commandments in a way intelligible to contemporary readers at the time. It is therefore said to be the continuing task of biblical exegesis to adapt these historical texts in a fast-changing environment to ever new

circumstances: with regard to the threat of global overpopulation, to the responsibility for nature rather than its subjugation, to the fellowship of all living creatures on this planet, and so on. These are views that theologians now like to deduce from the Old and the New Testaments as obligations for mankind today. These views can hardly be substantiated with biblical quotations. They rather amount to adjusting what the Bible says to meet today’s needs, a move motivated by reason. This procedure is perfectly legitimate; but it also raises the following question: Why not decide directly to look for guidelines on how to behave in today’s world, without any reference to those old books? Not even religion can serve as a source of moral norms without the guidance of rational deliberation, especially when the consequences and effects of their moral commands are concerned.

Some theologians at least seem to have reached this conclusion already, for example, Hans Küng. The Dalai Lama too some time ago said that developing a secular system of ethics was a task of particular importance. He considers this necessary because half of mankind, about three thousand million people, do not feel part of any religious tradition, and their moral competence must be taken care of as well. In addition, the age of globalization renders a secular system of ethics necessary because the moral requirements of different world religions are still obviously incompatible. A secular system of ethics might thus, according to the Dalai Lama, provide a common foundation for individual religions to develop their specific ethical norms; norms which must, however, be compatible with the universal system of

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ethics. Considering the many religious conflicts in the course of world history, this thought seems very attractive to me. If there were an ethical system capable of commanding universal agreement, disputes about certain basic moral questions would be different and probably more conciliatory in character. This wraps up religious attempts to justify moral norms. The result is, I think, the following. Even if religious kinds of moral justification do not live up to our general expectations, religious allegiances and ideas must surely play a prominent, perhaps even essential role in many individuals’ willingness to abide by moral norms.

3. Value-Based Models of Justification

Let me move on to the second type of justification. This approach no longer plays a particularly prominent role in academic philosophy, but it still seems very attractive to a general public outside philosophical circles. What I mean is the following: We would have an excellent foundation of moral justifications if we could presuppose a metaphysical thesis according to which there are certain absolute values independent of our opinions, even our very existence; amongst them aesthetic and moral values. In Britain, this thesis was developed and defended under the title of “intuitionism” by George Edward Moore (1903), in Germany especially by Max Scheler (1916) and, in much greater detail, by Nicolai Hartmann (1926). Hans Jonas’ book *Das Prinzip*

Verantwortung (1979, The Imperative of Responsibility) offered an intriguing re-encounter with philosophical ideas that were highly influential in Germany in the 1920s.

According to value-based models of justifications, moral and aesthetic values are independent entities with which we get in touch intuitively or emotionally by means of a “value feeling” (Wertgefühl), and thereby encourage us to realize them. The main flaw of this appealing theory is the fact that these values are presumably introduced “ad hoc” solely for the purpose of forming the basis of justifying our moral obligations.

At this point I should like to mention a general principle in philosophical and scientific methodology that moral philosophers often ignore: a theory is the more powerful the weaker the premises on the basis of which one argues and the stronger the conclusions one is able to deduce from these premises. To put it somewhat differently: it is methodologically pointless to formulate a theory the premises of which are so strong that the result one wishes to establish can be deduced straight away. The only thing speaking in favor of the premise of positing absolute values seems to be that on this assumption formulating a “material ethic of values” would be quite easy.

The great divergence of people’s moral judgments as well as the evident cultural dependence of a so-called “value feeling” should be enough to raise serious doubts about the viability of such an ethical system. In addition, there is what John L. Mackie calls the ontological “queerness” of a class of entities which led a kind of precautionary existence even before humanity came into being. One could of course object to Mackie that “queerness” as such is hardly a reason to doubt the existence of something; for there are other kinds of things that seem queer to us, for example, black holes in astronomy, quarks in elementary particle physics, and retro-viruses in biochemistry. In these latter cases, however, there are empirical observations open, in principle, to everyone that lead to such existence claims within a framework of trusted scientific theories. That is not true in the case of values, where unproblematic every-day talk of an action being “valuable” or having “special moral value” presumably lead to a view in which over and above the action there must be something like a “value” which can be ascribed to it. It is quite natural for us to experience things, actions, artworks, character traits, and much more as “valuable”—without being conscious of the highly complex genetic preconditions of such value “perceptions”. (I do not use “genetic” in a biological sense; it rather concerns the “genesis” of such value judgments.) If, for example, watching a tennis match you are impressed by the delicacy and elegance of, say, a drop-shot, you display this kind of reaction only as a result of watching a great number of matches or actually playing tennis yourself.

A similar point can be made about values that people quite immediately seem to perceive in actions, character traits, and the like. This kind of value theory sounds plausible just because we always see or perceive something valuable in the world we live in, while at the same time we are entirely unaware of the complex genetic background of such “acts of perception”.

Neither the mere survival of the human species, as in classical Darwinism, nor the special reproductive success of the genetic pool I happen to belong to can possibly be the highest target at which my moral norms ought to be directed.

4. Sociobiological Models of Justification

Another way of explaining moral judgments and justifying some moral norms—a way moreover that is particularly influential and popular today—seems to be suggested by the sociobiological approach. Sociobiology has been a genuine competitor of philosophical models of justification for some time. Today’s sociobiological theories can indeed explain a kind of “altruism” that is both essentially reciprocal as well as (highly) selective and gradual in accordance with the degrees of relationship individuals bear to each other, especially with a view to the behavior of socially living mammals. Genes are selected by the struggle for opportunities of life and reproduction. As the same genes occur in the siblings of an individual with the same probability as in its descendants, evolution rewards the kind of behavior that serves the purpose of reproduction and care of offspring as well as the kind of behavior that even at the risk of the individual’s own destruction improves the chances of survival of siblings and other near kin. Genes directing such behavior would have an above-average chance of reproduction in a normal population. Some kinds of behavior typical of human beings—such as caring for one’s own children and helping relatives—receive a satisfactory explanation within this theory. The same may be said for “reciprocal altruism”. Mutual help is better for the survival of the genetic pool of individuals than mutual indifference or even aggressiveness. However, so-called “free riders” must be excluded, that is, individuals who accept the help of others without themselves offering any help when it is their turn. Case studies confirm that “reciprocal altruism” in conjunction with cautionary measures concerning “free riders” is wide-spread amongst socially living animals. It is a pattern of behavior characteristic even of human beings, often accompanied by indifference and even hostility towards outsiders.

How shall we interpret such sociobiological data? Have we found the true source of human morality at last, as some people think, and should we alter, in a sense adjust our historically evolved moral norms with a view to these results? Or should we rather acknowledge sociobiological data as what an empirical science tells us and then carefully weigh and decide whether we consider any morality that draws on such data to be acceptable?

The first of these two possible standpoints, that is, that there is now a scientific foundation of human morality in accordance with which we ought to re-arrange our moral views, has been argued for by the influential American biologist Edward O. Wilson, the British scientist Richard Dawkins (The Selfish Gene) and in Germany by Konrad Lorenz (who

of course still considered the preservation of the species rather than the reproduction of genes the proper end of evolution). We find the second view in the writings of, for example, the Göttingen anthropologist Christian Vogel, who died an untimely death in 1994. Like Vogel, I unambiguously favor this second approach: neither the mere survival of the human species in classical Darwinism, no matter under which

conditions, nor the special reproductive success of the genetic pool I happen to belong to can possibly be the highest target at which my moral norms ought to be directed. With a view to the threat of overpopulation there may obviously even be a moral obligation to keep reproduction within certain limits; and in the case of serious genetic risks there might be the moral question whether one should completely abstain from having offspring in order to limit the passing on of such risks and the suffering likely to result from the outbreak of certain diseases in the next generation. This would be a morally justified kind of behavior contrary to the human tendency to maximize one's reproductive success.

However, sociobiology does teach us how strong our innate tendencies towards, for example, nepotism and xenophobia in fact are. This means that we need to acknowledge such preformations and use moral standardization and education even to counter tendencies that are part of our biological make-up. For this very reason, sociobiology is a crucial resource for the justification of moral norms and especially for purposes of moral education. Sociobiology cannot itself be the foundation of moral norms, though. David Hume was the first to teach us that it is impossible logically to deduce norms from mere facts. That is precisely why even sociobiology, as an empirical science, can offer us nothing normative, nothing other than facts.

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5. Communitarian Models of Justification

Over the last decades, the difficulty of finding moral norms that do not vary from culture to culture as well as the initially hopeless dispute about which principles to draw on in justifying universally valid norms has prompted many moral philosophers, especially in the United States, to turn their attention from "ethical theories" and their moral principles to so-called "virtue ethics". J. St. Mill and Kant are usually considered proponents of the former type of moral philosophy, whereas Aristotle and Hume are seen to be the founders of the latter.

Virtue ethics is said to have the advantage of offering justifications of a concrete and emotional, rather than rational kind. To put the question directly, without a view to the great philosophical authorities of the past: is such a "communitarian" moral theory tenable? It seems to me that this theory should rather be considered a false response to understandable fears. The effect of a principle-based universal ethical system, which levels down cultures and cultural differences, is anticipated with fear; as is the dreary monotony produced by a unitary moral code that, to make things worse, is one-sidedly based on western tradition, above all the Enlightenment. The fear of such a sterile wasteland is countered with a colorful, aesthetically much more satisfying plurality of local moral traditions. Sensitivity to concrete special cases with all their peculiar features is meant to replace sweeping rules derived from abstract principles.

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It is not difficult to reply to such views. It is true that the sheer variety of human "experiments of living" is as such aesthetically pleasing; but it is quite out of the question that all moral scenarios of all societies should be accorded the same moral status. Moral rules are attempts to manage problems and conflicts in society. It is thus not surprising that there should be better and worse solutions, especially since there are basic human needs that different societies satisfy differently, and more or less successfully. There are lively disputes about the most fundamental moral questions even within societies, except perhaps in strictly traditional ones.

You will hardly hold it against a German citizen that he expresses his shock and dismay about a view according to which—implicitly—the system of moral norms prevalent in Germany from 1933–1945 should be considered an equivalent, local scenario of equal moral weight and status to, say, societies of liberal democracies. The communitarian position, however, passionately defended especially in the United States, inevitably points in this direction.

Should we not, from a moral point of view, condemn an extremely unequal distribution of chances in people's working lives and their unequal share of income in some western societies, as we condemn, the subjugation of women, religious intolerance and intimidation of dissenters in other societies? Everybody will notice many moral discrepancies even in the society they grew up in. Even if human rights—as formulated by the UN in 1948 and justly defended in the face of growing opposition to this day—could be taken for granted, there would still be a many ways of realizing these principles to prevent the feared uniformity of living conditions. The plurality of values that is still to be found within single societies is a most welcome scene for experimentally conducting our search for new solutions to morally relevant social problems.

That is why an attitude of mutual tolerance is required also in the moral domain, for example, concerning the permissibility of divorce or polygamy. However, there can be no toleration—in the sense of acknowledging the equal standing of different views—of massive violations of fundamental moral principles such as human rights. To prevent an even more devastating conflict of cultures one must [often?] abstain from realizing one's views by force, however good the reasons for one's views may be.

6. Outline of a Rational Justification of Moral Norms

What shape could a rational justification of moral norms take if it is to be free from at least the gravest doubts diagnosed in the case of each of the approaches discussed so far? One must first and foremost broaden the concept of rationality, which, ever since Max Weber's study of rationality in action, has been reduced to so-called functional or means-ends rationality.

A concept of minimally rational action was defined by Carl Gustav Hempel in his classic article "Rational Action" as early as 1961. An action is rational if it is determined by an intention and if the means supposed to realize the chosen end are, according to the agent's best knowledge, suitable to further the realization of that end. Hempel does not demand that the choice of end be subject to this criterion of rationality, nor in fact that the convictions according to which the means are chosen be formed in a rational way. It would therefore be a (minimally) rational action in Hempel's sense of the word if somebody who believes that geo-radiation damages their organism, and that aluminum foil can protect their body against such radiation, lines their bed with that kind of foil. One might call this rationality of a merely "subjective" kind.

To make rationality objective, we would first have to subject our views about reality, causal relationships, and quite generally the formation of our beliefs to the standards of rationality developed first and foremost, but not exclusively, in science and in logic, especially in theories of reason and argument. Consistency—that is, logical coherence—and well-foundedness can naturally be considered the most important criteria of this kind of rationality. It is not easy to meet these standards. Implicit logical contradictions, which are difficult to detect and to delete, can creep into our beliefs. And as far as the well-foundedness of beliefs is concerned, there will be many disruptive influences that need to be taken into account: emotionally founded prejudices, perception barriers, instances of repression, social pressure, "political correctness" and many more. These mechanisms explain why obviously irrational beliefs, particularly within a framework of political ideologies, can persist even among intelligent people.

Our quest for objective rationality need not at first go beyond the choice of means to pre-given or previously adopted ends. Max Weber's usage of the term "rationality" is to a large extent responsible for the idea still prevalent in Germany that rationality is restricted to the choice of means to pre-given ends. It is an essential step on our way to broadening this type of rationality if the choice of ends itself becomes part of the agenda of rationality.

This is—at least in part—the topic of decision and games theory, founded by Oskar Morgenstern and John von Neumann in 1944. This theory has since seen a rapid development, particularly with respect to the importance its results have had for other disciplines beyond the sphere of economics. There are many rationality criteria for decisions under different conditions, such as security or risk. No rationality criterion has been found for decisions under uncertainty. Maximin, a criterion proposed by John Rawls in his epoch-making book *A Theory of Justice* in 1971—roughly: fear for the worst and try to keep the loss in utility as low as possible—is much disputed.

Here too—in the sphere of rational decision in a game-theoretical sense of the term—there have been attempts to see whether the behavior of people in concrete situations actually meets the rational standards of decision theory: maximize expected utility! Characteristic deviations occurred. Many subjects preferred an instant DM 400 to a fifty-percent chance to

get DM 1000 even though, as can easily be seen, the expected utility in the latter case is DM 500. "A bird in the hand is worth two in the bush", as the proverb goes—although I have often asked myself what one would wish to do with a bird in one's hand. Many people have an irrational penchant for security as such, as amongst other things the popularity of sometimes astronomical insurance premiums for air crashes.

It is very interesting to look at the ethical conclusions drawn from decision theory, in particular the discussion of the famous "prisoners' dilemma". This dilemma, the invention of which is generally attributed to the American mathematician A. W. Tucker, can be explained as follows: two prisoners suspected (and guilty) of a robbery are separately brought before the trial judge, who tells them that if they both confess they will probably be sentenced to eight years in prison. If they both deny the crime they will, owing to a lack of evidence, be sentenced each to a year in prison for minor offenses such as unlawful possession of weapons. However, if one prisoner confesses the robbery while the other still denies the deed, the former will go free, turning queen's evidence, whereas the latter will be sentenced to ten years of imprisonment. (We can neglect the oddities of such a fictitious legal system.) Each of the prisoners knows that his comrade has been thus advised; and none of the two can get in touch with the other to make any arrangements. If they could, and trusted each other, joint denial would clearly be the best strategy because they would get away with a year in prison each. As things actually are, each of them almost inevitably suspects that if he denies the deed the other might confess in order to go free while he himself would end up in prison with a ten years sentence. Both will therefore confess, and both will receive an eight-year prison sentence, the second-worst result for both. The prisoners' dilemma is of special relevance for moral philosophy because it shows as in a focus that there are cases in which selfishly rational behavior is worse for all participants than cooperation would be.

However, the gloomy outcome of the prisoners' dilemma is somewhat brightened up by the fact that repetitions have been shown to result in a change of strategy: as has been shown by, for example, Robert Axelrod, there is reason to believe that even a society of rational egoists can agree on a kind of cooperative altruism in accordance with the maxim "You scratch my back, I'll scratch yours". For in the course of time an admittedly reciprocal kind of altruism will prove in the long run to be advantageous for all members of a group. A thought that immediately suggests itself to many is the following: such theoretical approaches might be taken to be a "rational" foundation of morality, in the sense of social cooperation, effortlessly produced by means-ends rationality. Some very prominent moral philosophers have emphatically argued for the thesis that moral behavior must be grounded in informed self-interest, especially if the norms of moral behavior are to be considered in any sense "rational". Epicurus took this line in antiquity; and in our time, Sigmund Freud, John Mackie, and Norbert Hoerster—a somewhat "mixed bag" of authors—have held the view that a rational justification of

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moral norms can only be achieved via the detour of long-term self-interest, Mackie and Hoerster with explicit references to games theory.

All these theories, however, suffer one basic flaw. They can only explain why we consider it right to take the interests of those individuals into account with which we cooperate, or at least could cooperate and who could, moreover, pay back in kind the reckless violation of their interests.

These theories lose all their explanatory power when moral obligations are concerned that we believe to have towards beings that cannot harm us. Severely handicapped or incurably ill people are cases in question, and especially members of future generations, as well as animals we use for our purposes and believe to have a moral obligation towards to treat them with circumspection and care. Shall we assume that rational thought is impotent in these cases?

We now enter a further and yet broader dimension of a theory of rationality. In his intriguing book *Rationality* (1988), Nicholas Rescher proposes a unitary concept of rationality that inseparably includes the elements of cognitive, practical, and “evaluative” rationality. Part of this is “evaluative” rationality, the rationality of choosing ends. Unfortunately, Rescher offers no better criterion for a rational choice of ends than the distinction between “real” and “alleged” interests of individuals, which might also be called “objective” and “subjective” interests. People pursuing their real interests act rationally, people chasing after mere alleged interests act irrationally—and respecting others is already set up as an implicit criterion of real interests. This is a bit like Erich Fromm’s distinction in *Psychoanalyse und Ethik* (1954) between (good) self-love, which allows for sacrifices in the interests of others, and (bad) self-love, that is, egoism.

However, one’s judgment of the rationality of ends in life can hardly depend on whether others believe that pursuing such an end would be in the informed self-interest of the respective agent. It is much rather the compatibility of individual ends of action and objective moral norms, and these norms are constant even compared to our “informed” or “true” interests. I share the conviction of moral philosophers in the tradition of Kantian rationalism, utilitarianism, or discursive ethics that at least some of these norms can be rationally justified. It is irrational to choose a course of action that one cannot allow anybody in a relevantly similar situation to take; it is morally illegitimate and in that sense irrational, or irrational and in that sense morally illegitimate, for example to accept environmental damage as a member of our current generation for the sake of pursuing one’s own trivial interests, damage which might be an unacceptable burden on future generations. It is impossible rationally to justify that one should oneself be allowed to do something that with good reason one would condemn in others if one were to be affected by this action. At least norms of justice, and probably some further moral norms, can thus be justified in accordance with rational criteria.

It is my firm conviction that the questions mentioned at the beginning of this article—whether active euthanasia, in

certain specified extreme cases and in accordance with the patient’s explicit wishes, or pre-implantation genetic diagnosis are morally permissible—can also be rationally solved by weighing arguments and counter-arguments.

I think we should feel a bit proud about the fact that, of our own free will, we have made the step from means-ends rationality that concerns no more than the agent’s own interest to a more comprehensive kind of

rationality that includes the interests of all creatures affected by our actions as a criterion of our choices. We have paved the way, and we shall continue to take it. It is the self-confidence of human reason which—even at a time when the principle of moral rationality is under constant threat of suffering severe set-backs—can strengthen our faith in a gradual improvement of human life.

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