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A RECONSTRUCTED APPROACH TO THE SOCIOLOGY OF MORALS
ILLUSTRATED WITH A STUDY OF CONFLICT IN
A LARGE, URBAN JAIL SYSTEM

by

POLLY ASHTON SMITH

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York.

1997

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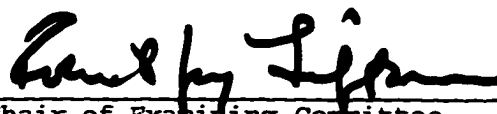
This manuscript has been read and accepted for the Graduate Faculty in Criminal Justice in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

5/27/97

Date

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Abstract

A RECONSTRUCTED APPROACH TO THE SOCIOLOGY OF MORALS
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by

Polly Ashton Smith

Adviser: Dr. Robert Jay Lifton

Durkheim's program for the sociological study of morality has been largely abandoned by American sociologists. The concept of morality has consequently been undertheorized in empirical sociological research and an unsupported moral relativism has been presupposed. In Part I, the history of this problem is traced to and analyzed in terms of Talcott Parsons' interpretation of Durkheim's formulation of the Hobbesian problem of order in The Structure of Social Action. Parsons misconstrued both Hobbes' and Durkheim's conceptualization of the sources and social implications of moral knowledge and developed a sociology of values that ignored any distinctions between moral and non-moral norms or rules. Ethnomethodology's constitutive model of rule-following is analyzed in terms of its application to moral deliberation, and a focus on "mundane morality" at work in everyday social interaction is proposed. A review of relevant literature in contemporary moral philosophy and moral psychology is undertaken in order to specify how social actors' moral deliberations may be identified by the sociological researcher.

Part II illustrates the theoretical approach developed in Part I through an analysis of conflict between members of various groups working and living in the New York City Department of Correction (NYC DOC). The method proposed and employed in the two empirical chapters is discourse analysis, which is applied to in-depth interviews conducted with DOC staff, inmates, and oversight agency representatives. The first empirical chapter focuses on how members describe and account for the social facts of the organization and identifies members' overriding concern with the moral failings of their colleagues. This concern is analyzed in terms of a pervasive historical problem with the legitimation of authority in the NYC DOC. The final chapter offers a paradigmatic case of how clashes between organizational social facts, moral facts, and context-contingent group norms are reconciled through a detailed analysis of one member's "narrative of moral reckoning." The status of the "don't rat" rule and its influence on correction officers is analyzed in terms of the project's broader argument about the characteristics of mundane morality.

ACKNOWLEDGEMENTS

I wish to thank the employees and inmates of the New York City Department of Correction and employees of the NYC Legal Aid Prisoners' Rights Unit and the NYC Board of Correction who generously gave to me their time and their reflections on subjects that were often difficult to discuss. Their contributions, which cannot be credited to them by name, made the field research for this project both stimulating and fruitful.

I am especially grateful to James T. Garvey, Jr., without whose support and efforts on my behalf the field research at the NYC DOC would have been impossible. Moreover, his insights and passionate opinions about "the Department" were largely responsible for catalyzing the initial directions of my research. For better or worse, however, the interpretations and conclusions I draw here are my own.

A fellowship from Dartmouth College's Humanities Research Institute to participate in the "Program on Moral Knowledge" in Fall, 1994 greatly enriched the theoretical component of my research. I thank the Directors, Walter Sinnott-Armstrong and Kevin Reinhart, for that opportunity.

Lastly, I wish to thank Louis H. Tietje, Robert Jay Lifton, Lindsey Churchill, and James P. Levine for their helpful comments, criticisms, and support.

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Chapter 1. Introduction

A funny thing happened to me on the way to developing a dissertation project. I discovered what seemed to be a gaping hole in the subject matter of twentieth century American sociology, which, almost a century ago, Emile Durkheim confidently defined as the “sociology of morality.” My “discovery” occurred, I believe, because I was unwittingly engaged in the rather reckless pursuit of reading across the thick boundaries that emerged during this same century between philosophy, specifically moral philosophy, and sociological or “social theory.”

Consider what might happen to the hapless reader like me. You sit down with your stack of philosophical toms. Therein you find a lively debate among (actual, living) scholars about the nature, scope, and status of moral understanding. Many of the authors you read assume or are developing specific arguments in support of the claim that there are concepts, standards, emotions, rules, or “metaphors we live by” that can be defined as distinctly “moral.” There are those who disagree that a distinction between moral and non-moral concepts or norms can usefully be made, but in the early 1990s they are apparently a vocal minority. A few are specifically engaged in a contentious discussion about the source of morality in human life, and a small group is advocating the view that morality arises from social life, and from the specific societies that humans have created. But you would probably never learn from reading these arguments that from around the

mid-nineteenth century on some people have devoted their considerable intellectual energies to understanding how societies and the relations between individuals and groups and social institutions are formed and maintained. Although the term morality is put under a very high-powered analytic microscope, the term "society" is for the most part non-problematic for your philosophers.

After a couple of hours and a much needed break, you proceed to leap across the deep metaphysical-historical divide to the "postmodernist pursuits" of the seemingly more worldly and perhaps more analytically hang-loose sociologists. The term "moral" will appear fairly often in their terminological lexicon, but, nodding over your shoulder to the philosopher-reformer Wittgenstein, you realize that you are now immersed in a very different language game. Here, you find numerous discussions about "moral careers," "moral entrepreneurs" and "moral claims-making." The most you can discern, however, is that the term "moral" refers to strong feelings that *some* people -- perhaps people from a particular cultural or "subcultural" group that the sociologist is studying -- have about certain ideas or ways of doing things. So you might find discussions about "moral conflict" between various groups or individuals, but you don't get the sense that the analyst-researcher believes that what makes that conflict "moral" is an interesting or even appropriate question. We, the reader and the sociological investigator, apparently "know" what is meant, by "moral," just as the philosophers

apparently know what is meant by "society."

My recognition of a conceptual discontinuity between moral philosophy and sociological theory might not have led further than casual scrutiny of a small patch of intellectual history if I were not at the same time assuming the polymorphic role of participant-observer at a research site seething with social and sociological significance. The research site in question was the "large urban jail system" of this study's title, the NYC Department of Correction. "The Department," as it is called, was an organization of amazing social complexity, fraught with internal discord. One striking symptom of this condition was the continual war of words (and often subversive deeds) among and between people who belonged to the most prominent functional groups operating within the organization: uniformed correctional staff, civilian managers, inmates, and oversight agency representatives (prisoners' rights advocates).

Following the norms of traditional ethnographic practice, I attempted to lend a sympathetic ear to the points of view expressed by members of each of these groups. In short, I heard what I took to be a great deal of soul searching moral deliberation as well as self-justifying moralizing discourse on the part of and between members of this organization. And I saw the correlative organizational repercussions: managerial staff's pervasive inability to achieve short or long range policy or program objectives, the ongoing problems of violence and staff corruption in the jails, and the

considerable waste of material and human resources that accompanies bureaucratic paralysis.

The sort of questions that were arising from my experiences could not, I discovered, be answered within the available conceptual-theoretical frameworks of traditional moral philosophy or sociological theory, although both these disciplines had already helped shape my observations and interpretations of the organizational environment and the meanings people gave to their experiences within it. For example, the question I address in Chapter Ten of this study, "How do members understand the relationship between the 'social fact' features of the organization and their own and others' perceived morally relevant social action?" concerns the relationship between the social contexts in which practical reasoning takes place and the conceptual content of that reasoning. Most researchers, I believe, would agree intuitively that members of the organization describe their significant experiences, especially those that involve the appropriate or best responses to formally defined expectations and breaches of those expectations, in *moral* terms. Yet members of different groups, and sometimes members of the same group, profoundly disagree about the legitimacy of these expectations and how one should respond to them.

But what are they actually disagreeing about? There are numerous possibilities and combinations of possibilities that might describe the *focus* of members' conflicts: What are the appropriate considerations for making

decisions that will have significant impact on individuals or groups? Which are the “correct” norms or principles to guide decisions and actions? What are the best values or ideals to shape legitimate expectations for social action? Or, perhaps, what *really happened* in *that* event, between *those* people, that precipitated the necessity of a making a certain kind of decision or acting in a certain way? In short, what is really conflicting in the “moral conflicts” we observe?

It seemed to me that the provision of an adequate answer to this question must involve going beyond either: (1) the applied philosophical approach of analyzing the problems members reason about through the lens of a predetermined set of ethical theories that dictate normatively “correct” responses; or (2) the sociological approach of presupposing, for the sake of an idealized scientific objectivity, that all “morals” are the conventional “mores” of specific cultural-linguistic groups, and therefore ignoring analytically the kind of distinctions that (if one thinks about it for a second) many people (at least virtually all contemporary culturally Western or Westernized “competent” reasoners) do actually make in practice between rules and precepts with moral status and/or significance and those without it. I discovered, to make a long story short, that I had no meta-theoretical models I could apply to the investigation and analysis of “morality in action.”

Any reader at all familiar with the history of social science is at this point likely to interject mentally, “but what about Durkheim? Certainly,

Durkheim had some thoughts on these issues?" Indeed he did. But Durkheim, who died in 1917, was virtually the first and last notable twentieth century or "modern" sociologist to explore the relationship between society and morality directly, in both theoretical and empirical terms.¹ His scholarly oeuvre combined a thorough, working knowledge of modern philosophy with his own contributions to the development of sociological theory and method. His plans for a last book, *La Morale*, focused on the sociology of morals, and was to be the culmination of his life's work. (Lukes 1973/1985) Since his death, sociologists have advanced and expanded on Durkheim's rich intellectual legacy to theorize about the formation and maintenance of groups and societies, social control, and the individual's relationship to the collective. Yet Durkheim's ideas on the sociology of morality have never been embraced or developed by American sociologists.

This study is first and foremost an attempt to take Durkheim's project for a sociology of morality a small step further, even though, eighty years later, one might feel strangely isolated in doing so. Having said as much I must point out, as the following chapters will make obvious, that there are many developments within sociology, philosophy, and psychology that have significant contributions to make to this endeavor. What I offer here is, therefore, not at all as original as the preceding discussion might imply.

The study is divided into two complementary parts. The first part is

devoted to the theoretical, or, to be more precise, the meta-theoretical issues in conceptualizing morality and its role in social order and social action. Many sociologists claim be following Durkheim's lead in assuming, as I mentioned above, that moral beliefs and norms vary across socio-cultural and historical boundaries. They might well claim that social scientists have amassed a rather large body of knowledge about different moralities because so many social scientists in this century have conducted detailed research on different socio-cultural group's definitions of right and wrong, good and bad. Why do we need a "reconstructed sociology of morality?"

Anticipating this kind of critique, Chapter One provides a brief overview of the different kinds of moral relativism that philosophers have conceptualized. I argue that social scientific studies that claim to discuss different group's moral understandings have not made analytically adequate distinctions between the various elements that are involved in moral discourse to justify any conclusions about moral relativism, or even to make many claims about the characteristics of a group's morality. This discussion also serves to set the stage for my discussion in the following three chapters about how moral understandings and discourse might be defined, as distinct from other forms of evaluation.

The second chapter explores the question, tacitly begged above, of why the sociology of morality was abandoned in American sociology. This is an attempt to retrieve and analyze the developments in sociological theory that

contributed to the de-problematization of the concept of morality or “morals.” It is a complex history, and I could not hope to cover all the ground in this project that a complete answer would require. I have therefore focused on what I take to be one of the most salient trajectories within that history, which is Talcott Parsons’ introduction to and interpretation of Durkheim’s ideas on morality and its role in social order for American sociologists. In The Structure of Social Action (1937/1968), Parsons introduced what he called the “Hobbesian problem of order” to explain the conceptual problems that Durkheim faced in the late nineteenth century as he was attempting to establish sociology’s disciplinary focus. I describe and analyze Parsons’ explanation against my own reading of both Hobbes’ and Durkheim’s relevant arguments about the basis for social cooperation and conflict, and conclude that Parsons’ “reconstruction” of these arguments was responsible, at least in part, for the elision of morality as a theorized (and therefore problematized) concept in post World War II sociology.

The discussion in Chapter Three leads toward a focus on moral rules and norms and their role in regulating social action and justificatory discourse about social action. Parsons, as is well known, was responsible for developing the normative approach to social action, which essentially understands norms as internalized causes of actions or patterns of social action. A major criticism mounted against the normative approach came from one of Parsons’ students, Harold Garfinkel. Garfinkel (1963; 1967/1990)

developed the constitutive model of rule following for “explicating” social action. Garfinkel’s ethnomethodological approach, along with the parallel historical development of symbolic interactionism, led to a new, theoretically-strengthened focus on small group or “micro” interaction. In Chapter Four I discuss why and how the constitutive model of rule following is significant for the sociology of morality. I critique certain aspects of Garfinkel’s and ethnomethodological sociology’s assumptions about rules and how social actors employ them to account for their actions. In conclusion, I appropriate ethnomethodologist Mel Pollner’s (1987) notion of “mundaneity” to develop the concept of “mundane morality,” which, I argue, should be a major focus of the sociological investigation of morality.

The last chapter of Part One, Chapter Five, finally tackles directly the question of how or on what basis moral understandings and moral discourse may be identified by the researcher-analyst. This chapter therefore provides a summary review of the relevant discussions in contemporary moral philosophy and in the new field of moral psychology. Before proceeding, I offer a philosophical caveat to the reader about the relationship between things and concepts, or “facts and values” that I think has meta-theoretical relevance to my undertaking. In sum, I argue that the social scientific researcher might benefit from understanding and assuming the positions of moral cognitivism and “elementary” moral realism as background to their investigations. In moral psychology, I review the major assumptions of and

differences between the work of Lawrence Kohlberg, Eliot Turiel, and Richard Shweder. I discuss what I take to be the important differences in the foci of psychological and sociological studies of morality. I then draw upon moral philosophy to summarize the putative characteristics of moral judgment and, more broadly, the “moral domain.” These characteristics, I argue, can be reconceptualized or hypothesized by the sociological researcher as “contextualization cues” (Gumperz, 1981) in the analysis of social actors’ discourse about conflict involving moral judgments.

Part II is devoted to illustrating what a reconstructed approach to the sociology of morals can offer to the explication of social-interactional conflict. The location of my research was the New York City Department of Correction, an organization that administers all of New York City’s (approximately) thirty-six jails, court detention facilities, and secure hospital wards and their programs and services. The empirical component of my study is intended to point in the direction of future research, rather than to offer a comprehensive treatment of organization life and moral conflict in the New York City Department of Correction. A full treatment of this subject, which would certainly be a valuable addition to correctional research, exceeds my present purposes and resources.

In Chapter Six, for the purpose of elucidating the differences in my own forthcoming analysis, I examine how inter- and intra-group conflict was historically conceptualized by researchers of prison organizations (the nearest

sibling to the “large urban jail system” in which my empirical research was conducted). I discuss five different theoretical frameworks that have been employed in these studies and how each framework conceptualizes the normative dimension of social action. Each of these frameworks, I argue, has implications for whether and how the researcher understands the possibility of positive change in conflict-ridden prison organizations.

Chapter Seven provides an account of some of the basic features of the research site. I offer some descriptive statistics on inmates and employees and describe some of the political- environmental and organizational conditions of the Department’s operations. One of the most important conditions, the presence of several agencies that oversee the Department’s implementation of the requirements of numerous court-ordered consent decrees that dictate remedies to violations of inmates’ constitutional rights, is discussed in some detail.

Chapter Eight describes the methodologies and methods I employed to conduct my research and to analyze my “findings.” The methodologies, defined as “general approaches to studying research topics” (Silverman 1993) are derived from two sociological traditions, symbolic interaction and ethnomethodology. Accordingly, my methods are defined respectively as “interpretive and descriptive realism” (Denzin 1989) and “discourse analysis” (Silverman 1993). Both methods involve analysis of the in-depth interviews I conducted with twenty-four members of the Department and two of its

oversight agencies. All of the interviews were recorded and transcribed verbatim.

The empirical research is analyzed in Chapter Nine and Chapter Ten using the themes and terms developed and discussed in Part I. In Chapter Four, I argue that moral deliberation, as a type of practical reasoning, cannot be understood or explicated apart from the background features of the social-organizational context. These features provide the conditions, expectations for social action, and regulative ideals that inform members' specific responses to actions and events. Hence, Chapter Nine focuses on how members describe and account for the "social facts" of the Department. My analysis identifies members' overriding concern with what I term the "moral failings" of others, and by inference, themselves. Based on members' accounts, I return to the "Hobbesian problem of order" and raise the issue of the legitimacy of authority in the Department and explicate how problems with legitimacy affect members' deliberations about conflicts and their resolution.

Chapter Ten offers a detailed analysis of one member's "moral reckoning," of conflicts that arose between and within various groups over uniformed custodial staff's proper use of physical force against inmates. This narrative offers a paradigmatic case of how clashes between organizational social facts, moral facts, and conventional, context-contingent group norms are reconciled with the aid of mundane morality. Several types of rules that

emerge in the narrative are discussed, and the contextualization cues employed by the member to explain and justify specific instantiations of these rules in terms of their putative purposes and social-moral statuses are analyzed. The moral status of the well-known “don’t rat” rule and the role it plays in organizational conflict is explicated in terms of my broader argument about the characteristics of mundane morality.

Finally, the Conclusion summarizes the implications of the study for future sociological theory and research on social conflict.

This study attempts to synthesize a wide range of ideas and analytical tools from a number of different disciplines in the service of developing a framework for the study of social conflict that directly recognizes and incorporates social actors’ active engagement of moral concepts and beliefs. My overarching claim is that the assumptions of existing sociological frameworks do not enable this kind of analysis, and therefore do not provide rich or deep enough accounts of why social groups come to blows, figuratively and literally, and how they perpetuate or change their situations. By trying to incorporate the insights of two disciplinary masters, sociology and moral philosophy, I take the perilous risk of satisfying the representatives of neither. Nonetheless, like the members of the New York City Department of Correction, I was compelled to make my own moral reckoning.

PART I

A RECONSTRUCTED APPROACH TO THE SOCIOLOGY OF MORALS

What enables us to say: this is a matter of morality and this is not? (Durkheim 1925/1973)

Indeed it is not an exaggeration to say that the sociology of morality is the great void in contemporary social science (Steven Lukes 1973/1985)

Chapter 2. The Problem of Ethical Relativism

Social science and cultural relativism are virtually cognate terms. The groundwork for the nineteenth century's version of cultural relativism was laid earlier by seventeenth century humanists, but it was the new disciplines of social science in the nineteenth century that developed and employed the concept of cultural relativism as an all out challenge to the powerful foundationalist and universalist philosophies of eighteenth century rationalism (Toulmin, 1990). Today at least in the West, the social scientific worldview of cultural relativism prevails. No one would have to defend the view that in order to understand and explain variations in people's customs, practices, and beliefs we must investigate the material, geographic, historical, and linguistic aspects of their circumstances. Indeed, a person who argued against this view might well be subject to some rather scathing judgments. In the twentieth century, however, social science progressively embraced a related doctrine, ethical relativism, which up to and throughout the nineteenth century occupied a marginal, or at least subordinate, place in the perspectives of educated people. The difference is that, while cultural relativism has become part of the shared perspective of all but the most intransigent religious fundamentalists, ethical relativism is not presupposed by the average man or woman on the street. It is, to the contrary, a doctrine shared by one segment of an educated elite.

For the purposes of this essay, I can only allude to the complex social

and intellectual history of the development of this perspective. Nevertheless, my point is that the result of this history is that most social scientists today, regardless of whether they adhere to empiricist, positivist, or interpretive perspectives or focus on macro- or micro-level phenomena,² hold a social constructionist view on morality that entails a tacit, or sometimes explicit, assumption of ethical relativity. Of course social scientists, to a greater or lesser extent than anybody else, embrace and act upon what might be called conventional morality. But the trajectory of the social scientific worldview of the last one hundred years or so has led most scholars to believe that moral beliefs are the social conventions of particular groups or cultures.³

At bottom, the social constructionist perspective⁴ holds that since morality is "invented" rather than "discovered," its content will be shaped by and fluxuate in relation to other aspects of the social order. As one sociologist recently wrote: "A value system or morality, can be broadly defined as those ideals, mores, or criteria that shape normative behavior. . . . Doing morality is the process through which an object or process is evaluated as good or evil. What is regarded as good or bad varies among societies and fluctuates over time within one society. In complex societies, morality is negotiated" (Ben Yehuda, 1991, p. 50). This definition illustrates the typical presupposition of many social scientists that morality (which in this and in many other examples is conflated with values) is one aspect of the customs, or "mores" of particular societies or cultures.

Although debates within various academic communities on ethical relativism have erupted throughout the twentieth century,⁵ this doctrine is apparently so noncontroversial for so many working sociologists today that it seems to have achieved the status of a truism within this particular discipline.⁶ For example, Donald Black's (1993) closing statement in the Preface of his recent, award-winning book, The Social Structure of Right and Wrong, exemplifies a constructionist response to public political debates on morality to which, I believe, most sociologists would give their consent:

The empirical evidence indicates that a universal morality, indifferent to the social structure of individual cases, nowhere exists in human society, never has, and never will. Any claim of universality in the application of morality is sociologically naive if not meaningless. Nonetheless, an unsociological program of this kind -- morality in a social vacuum -- is advanced by nearly everyone, including philosophers, theologians, and jurists.

But should we conclude that moral universalism is obsolete? Are we entering a new stage of moral evolution when right or wrong are explicitly defined partly by particular locations and directions in social space -- among intimates, strangers, organizations, nations, against superiors and inferiors? Or is relativistic morality a contradiction in terms and the death of morality itself? The answer is not self-evident. And precisely how the structural relativity of morality and moral universality should be reconciled, if at all, is unanswerable by science alone (p. xvi).

I will argue that Black's statement illustrates several prevalent conceptual problems that have prevented sociologists from developing a coherent approach to the sociology of morals -- one that would enable the conclusions stated by Black to be confidently supported.⁷ Identification of

these conceptual problems will serve the objective of directing attention to the heuristic issues that are preliminary to an empirical approach to the study of morality.

Implicit in Black's statement is the supposition that we have a great deal of information about the moral codes of our own and other societies. In support of this supposition, a perusal of sociological journals discloses many authors implying or asserting directly that their research addressed the *moral* dimensions or discourses of the groups, organizations, cultures, or subcultures that they studied. Yet despite these claims, Durkheim's apt question as to how we might determine whether "this is matter of morality and this is not," quoted as an epigraph to Part One of this study, signals a significant problem. While other key terms that shoulder similar burdens in sociological theory, like "culture," "social control," "action," "deviance," and "structure," have received sustained analytic attention, the term "moral" has received almost none. Surely the usual textbook-type definitions, such as the one quoted above, which generally subsume morality under the rubric of "values" -- defined as shared convictions about what is right and wrong, good and bad -- only beg the question, since virtually every kind of activity and object that has social significance is evaluated by a society's members. The point is a simple one: no comparison of empirical information about different moral codes, attitudes, or ethical systems can be made in the absence of a initial definition that delimits the range of

phenomena to which a concept applies, for without these preliminary definitions we do not know what we are comparing. A brief review of several different types of ethical relativism will illustrate how shifting the focus of comparison affects whether and what kinds of claims of ethical relativism are supported.⁸

Cultural Relativism

First, the perspective that emerged from anthropological observations that people in different cultures or groups develop widely divergent practices in response to similar problems or situations is generally referred to as "descriptive" or cultural relativism. For example, people from one cultural group may kill their elderly when they become feeble, while another cultural group cares for them until they die naturally (Frankena, 1973, p. 109). As mentioned, a widespread assumption among social scientists is that these different cultural practices are supported by divergent moral values and principles, in this case, different rules governing the practice of euthanasia that may be related to divergent values about the sanctity and worth of individual human life. Moral relativism, it is assumed, is a concomitant of cultural relativism.⁹

The equation of cultural and ethical relativism, however, ignores a crucial intervening question about cultural differences. The first cultural group's practice of killing the elderly may be based on beliefs about an afterlife

that justify killing them as an act of caring and personal sacrifice by their younger kin.¹⁰ Divergent beliefs about the (nonmoral) facts of the matter may determine the course of action prescribed, not the group's codes of conduct or moral values, which may be similar for both groups. At minimum, this distinction must be made in empirical studies that purport to draw conclusions about cultural differences related to morality.

Functionalism

In this century both anthropologists and sociologists who embraced cultural relativism developed a version of ethical relativism based on putatively scientific explanations of why culturally divergent moral understanding emerge from groups who face similar social problems, such as the problem of elderly people who require resources to survive but who do not contribute to the production of those resources. Talcott Parsons is generally credited with developing the theory behind this form of ethical relativism in American sociology (Andersen, 1990). In a functionalist perspective, the explanation of why one group euthanizes otherwise healthy elderly people lies not in the reasons the members of this group offer for their practices, i.e. belief in an afterlife. Rather, the explanation lies in specific material and/or historical-social aspects of the group's environment that make the practice significant for its ongoing cohesion and survival. Thus, to continue this somewhat oversimplified example, cultural groups that, for whatever other reasons, remain physically mobile rather than attached to one

geographical location, may be greatly hindered by their unproductive and feeble elders. From the researcher's point of view, the practice of killing them functions to maintain the group.

Like related versions of ethical relativism, the functionalist perspective asserts that some moral codes of conduct or beliefs are "true for one group, but not for another" (Wrong, 1993; Lukes, 1974). Functionalists make a sharp distinction between beliefs as providing reasons for group or individual action and social consequences as providing explanations of practices, and are concerned primarily with analyzing the latter (Simon, 1990, pp. 29-31).

Functionalist analysis assumes a relationship between a society's structures and the normative "goals," (or in Parsons' terms, the "ultimate values") of its members, but remains silent about whether a society that "functions" well is also a "moral" society, in any sense that our considered historical judgments might make of this. As has been argued often, functionalism seems rather to beg the question: the truth value of a moral code resides in the ongoing material and cultural viability of the collectivity that produces and employs it.¹¹

Donald Black's statement quoted above suggests that he embraces a thoroughgoing version of social scientific ethical relativism that equates cultural relativism with ethical relativism and that further locates the sources of putative differences in moral codes of conduct and moral values in the structural aspects, "defined partly by particular locations and directions in

social space" of societies or groups. But without further empirical specification about what aspects of a society's and its members' moral and nonmoral understandings are being identified, the anthropological doctrine of cultural relativism and the related perspective of functionalism cannot support empirical claims about ethical relativity. (Frankena 1973)

Moreover, if Black would have us conclude that empirical evidence alone can provide an irrefutable basis for a normative theory of ethical relativism, then he committing a particularly egregious form of the naturalistic fallacy. Even if ethical relativity could be "proved," it does not follow that ethical relativism should be embraced as a necessary or desirable condition of social life. Some "anti-relativists" have argued cogently if not persuasively that the sacrifice of individual life is never justified, regardless of the social scientific explanations or set of cultural beliefs that may be offered to support it. They have also made the further but logically distinct claim that moral "truths" should be considered binding on all people, regardless of their individual situations or group conditions and regardless of whether they "know" these truths in a subjective sense. (Arrington 1989) The former argument makes objectivist claims about the independence of "moral facts," that morality is "discovered, not invented." The second is a psychological claim, that all (or most) people have the capacity to recognize moral precepts and therefore to follow them. In any case, and regardless of how these issues are analyzed, there is no reason to conclude that social

scientific evidence about the plurality of moral values and codes of conduct somehow "solves" the difficult questions "advanced by . . . philosophers, theologians, and jurisprudes" (Black, op. cit.) about the *justification* of practices that have moral consequences.

Metaethical relativism

But what exactly is meant by the forgoing phrase, "recognize a moral precept?" Another version of ethical relativism addresses the epistemological issue of whether we, the researchers from one culture, know and understand the world in the way our comparison culture does.

Proponents of metaethical relativism claim that we do not have any independent, objectively valid way of judging which of a set of conflicting beliefs should command our assent even if we agree on what counts as a moral belief, and even when people's different factual beliefs about how the world works are taken into account (Frankena, 1973; Lukes, 1974).

Metaethical relativism is based on a skeptical argument about the limits of knowledge that shifts the locus for comparison to what, in any given society or group, counts as objectively valid, or "good" reasons (justifications) for moral judgments. What counts as "objectively valid" for the members of a group will depend on the conceptual framework they draw upon to reason about and evaluate their circumstances, or, in contemporary terms, on linguistically embedded standards of rationality. Metaethical relativism is thus based on arguments about the relativity of concepts that shape the way

in which people reason about the world and their experiences.

The most famous example used in support of conceptual relativism is the anthropologist E. Evans-Pritchard's description of his conversation with a Zande priest about the merits of the Azande tribe's beliefs about witches and related practices of magic used to counteract their influence. After lengthy exploration of the priest's views it became apparent to Evans Pritchard that, although magic was employed in a scientific spirit to predict and control events occurring in the physical world and the priest followed canons of logic similar to our own in many respects, his reasoning ignored crucial inconsistencies in the evidence and was self-contradicting on certain points (Hollis. 1995, p. 229-233). Evans-Pritchard concluded that, "In his web of belief every strand depends on every other strand and a Zande cannot get out of its meshes because it is the only world he knows. The web is not an external structure in which he is enclosed. It is the texture of his thought and he cannot think that his thought is wrong" (E. Evans-Pritchard, Witchcraft, Oracles and Magic among the Azande (1937), cited in Hollis, p. 232).

The meta-ethical relativist argues that since, like the Azande, those of us from Western cultures are also enmeshed in our own conceptual web, we simply cannot evaluate whether the group that kills their elderly in order to send them on to the next life is morally justified in doing so. This is not because we agree or do not agree with them about the intrinsic moral value of individual life, but because we cannot meaningfully evaluate their

interpretation of the relationship between moral and epistemic beliefs and standards. ". . . [T]he rationality of a belief and the rationality of an action for which the belief functions as a reason are relative to the epistemic standards and belief structure of the agent's culture" (Simon, 1990, p. 20). Because he considers it irrelevant, the metaethical relativist leaves open the ontological question of whether there are "moral facts" independent of linguistic and social contexts. He argues, however, against the epistemological claim that certain moral precepts are binding on all people because all people have the capacity to recognize them. This latter claim cannot be valid for someone who is skeptical about whether people from different conceptual-linguistic communities can ever experience the world in the same way because, in effect, he believes that they may experience a different world.

A related argument in support of metaethical or conceptual relativism focuses on the fact that, although people from different cultural groups may apparently share similar general moral precepts or principles such as a prohibition against inflicting wanton harm against others, the scope of such prohibitions (i.e. to whom they apply and under what circumstances) and the degree of seriousness allotted them (i.e. how prohibitions are "ranked" by a society's members) varies greatly (Snare, 1980). The group that justifies the compassionate killing of their elderly on the basis of their belief in an afterlife (Group P) may wantonly kill any or all members of another group, Group Q, and perhaps on occasion eat them for dinner. History is of course replete

with many examples of, "rule X applies to all members of our Group P (as well as other groups R, S, T) with no exceptions (unless appropriate excuses are offered and accepted), but not to any members of Group Q." Why is rule X not applicable to Group Q? Possibly the members of Group Q are not considered human in a morally relevant way by Group P, as in the case of white separatists in South Africa and the United States. Or possibly, even more telling for the relativist, the members of Group P simply acknowledge the prohibition and its exception without any considered agreement on why they acknowledge it.

What these observations suggest is that it is very difficult for the social scientist to establish a firm basis for comparing moral beliefs. Even within a given society wide variations exist in the way in which the members reason practically about what counts as relevant moral considerations (Wallace, 1988). Does the fact that both group P and Q acknowledge a prohibition against wanton harm establish at least a partial common moral code or a shared moral value of inviolate individual human life, even though what counts as wanton harm is significantly different for each group?¹² As mentioned, what determines the scope and degree of the application of a moral rule or standard in a given culture may depend on other, (nonmoral) beliefs about the world. When particular problems arise for individuals, they draw upon a stock of local knowledge (Geertz, 1983) in their deliberations that includes epistemic beliefs, moral and nonmoral norms, rules, values, and

ideals, as well as a related stock of exceptions, excuses, and exemptions and the conditions for their application. Some aspects of this local knowledge are more or less taken for granted, while other aspects are part of the formal, public discourses of law and government. Some norms and rules will be strictly enforced while others will not be. Exceptions to these norms and rules may be based variously on the statuses of relevant individuals, the type of conduct involved, the settings or occasions in which the conduct takes place, or the rules' designated sources of authority (Edgerton 1985). The point here, to reiterate, is that empirical research on morality requires a great deal more refinement to disentangle what kind of ethical relativism, meta-ethical or otherwise, is confirmed or disconfirmed by specific studies.

Applicational Relativism

The problem of establishing what counts as a relevant moral consideration for a particular culture or community alludes to another "relativism" that has been considered by moral philosophers. Since Aristotle, moral deliberation has been understood as a form of practical reasoning. The moral person for Aristotle was by definition a person of "practical wisdom," that is, one who ". . . is concerned not only with universals but with particulars, which become familiar with experience, . . . " and deliberates with ". . . respect . . . [to] . . . the end, the manner, and the time" (Aristotle 1925/1992 [1142a7; 1142b11] pp. 148, 150). In other words, to decide or evaluate a course of action from a moral point of view involves evaluating the context of an

action, or the "situational particulars." Moral evaluation or decision making entails judgments about the "facts" of the matter, including the possible consequences of different courses of action, as well as the possible moral and nonmoral standards, principles, or rules that may be applicable. Both nonmoral and moral considerations are often many and complex, especially when the situation is itself complex, and may include prudential interests or issues of social or collective welfare that conflict with individual issues of justice or care. Moreover, consideration of several moral principles or concerns may be called for, each implicating a different course of action and possibly conflicting outcomes. Since, as with norms in general, the applicability of moral principles will almost always vary according to context, most moral philosophers affirm some form of "applicational" or "contextual" relativism (Wallace).

"Applicational relativism" (Lukes, 1974) should not be confused with and does not necessarily entail ethical relativism: contexts that generate moral considerations for the participants neither produce *ad hoc* the relevant moral rules and standards nor dictate the conditions of their application. At the very least, social scientists, like philosophers, need to recognize moral deliberation as a special form of practical problem-solving that concerns both the context and the consequences of action.¹³ The way in which social scientists have conceptualized the relationship between normative rules and the contexts of their application has great significance for the empirical study

of morality and is discussed at greater length in chapters three and four.

Regardless of the merits of the philosophical arguments that have been put forward for these versions of ethical relativism, empirical researchers have rarely, if ever, made the kind of distinctions in their analyses that would make clear whether and which version(s) of ethical relativism their findings supported. In sum, without further conceptual clarification to guide comparative research, the most reasonable assumption for the social scientist on the issue of ethical relativity seems to be that of an agnostic:

It is . . . extremely difficult to show that people's basic ethical judgments would still be different even if they were fully enlightened, conceptually clear, shared the same factual beliefs, and were taking the same point of view. To show this one would have to find clear cases in which all of these conditions are fulfilled and people still differ (Frankena, p. 110).

A presumption of ethical relativity and a persistent lack of clarity about the focus of research on morality has led sociologists and other social scientists to employ the term quite loosely, which has resulted in such unlikely conjunctions as "Fascist morality" or the "moral codes of the juvenile gang," conjunctions that deny the linguistic intuitions and conventions of our everyday talk on what we take to be moral matters (namely, that Fascists and juvenile delinquents codes of conduct are in some way *immoral*). It seems, therefore, that although most social scientists are at least initially suspicious of theories that are strongly counter-intuitive, they nevertheless have persisted in employing the term "moral" and its cognates

pre-theoretically, yet with presuppositions that are odds with the intuitions of our common understandings.

How did the doctrine of ethical relativity come to be an unexamined aspect of the sociological perspective? The answer probably lies to some extent in the social and political circumstances that contribute to the evolution of certain assumptions that once occupied the status of interesting hypotheses into the common sense knowledge that determines competent membership in the group that originally entertained the hypotheses. Answering the "whys" of the progressive acceptance of ethical relativism in the twentieth century may be a task for the sociology of knowledge, which is beyond the purposes of this discussion. But another kind of answer can be found in the history of several of the central theoretical developments within American sociology.

This approach, the one taken here, is warranted by an important consideration for the sociology of morality. Despite the fact that the presupposition of ethical relativism has played an important role in preventing the advancement of a sociology of morality, I shall argue that certain developments within sociological theory -- for example, the constitutive model of rule-following -- are essential to an adequate analytic framework for the study of moral discourse. From the standpoint of sociological theory, there is no reason to reinvent the wheel in order to clarify and deepen our investigations of the moral domain of social interaction.¹⁴

There is much in the history of how morality "got removed" from the sociological agenda that suggests how to put it back.

For several reasons, this history should begin with Durkheim, who at various points of his career supported all of the versions of relativism discussed above (Hall, 1987, pp. 183-197). Durkheim's sophisticated analyses in support of ethical relativism are significant because they exerted great influence on subsequent generations of American sociologists. Nevertheless, one of Durkheim's foremost intellectual goals was to develop a sociological approach to the study of morality. This unfinished project, and his later attempts to grapple with the theoretical problems that his early work set up has received relatively little attention from his interpreters, a development that has contributed to much misunderstanding of his views and obscured his insightful criticisms of directions in sociological theory that reached their height only after his death.¹⁵

1. Jurgen Habermas (1990), the contemporary German social theorist, has addressed this relationship in theoretical terms, but he is not an empirical researcher and has therefore (to the best of my knowledge) not dealt with the methodological and interpretive issues that must necessarily arise for the researcher.
2. Recent theories of morality developed by social scientists who give primacy to socio-biological explanations are an exception. See, for example, Roger D. Masters, Beyond Relativism: Science and Human Values, (University Press of New England, 1993).
3. Thus, although some scholars reject postmodernism in the social sciences on the grounds that this perspective is or leads to a kind of moral nihilism, I believe these same critics would be hard put to defend a non-relativist position within the terms of their own discipline (especially sociology). Most would defer to drawing a boundary between scientific and moral knowledge, putting moral knowledge beyond the pale of any strictly rational or empirical defense: one's adherence to a moral principle would be justified in terms of community standards or perhaps, more subjectively, "solo fide." But this would prove my point, which I hope will become clearer in the following discussion.
4. My understanding of the conceptual and theoretical premises of the social constructionist perspective in social science is informed by Gergen's overview in Gergen and Davis (1985), pp. 3-17.
5. E.g. Clifford Geertz's heated defense of the non-nihilistic implications of cultural relativism in his "Distinguished Lecture" to the American Anthropological Society (Geertz, 1983). He does not, however, discuss any the conceptual issues addressed in this paper.
6. Although my criticism applies generally to the social constructionist perspective in social sciences, this discussion is specifically directed to sociological theory and research.
7. It is important to note that positivists and many empiricists do not share the broader social constructionist perspective on the "social construction of reality," (Berger and Luckmann 1967). The sustained attack from the 1950s onward on evolutionary theories in sociology and anthropology that supported the ethnocentric and chauvinistic perspectives of neocolonial and Cold War political philosophies, with their sometimes brutal consequences for non-Western peoples, was at least partially responsible for casting in doubt the implication of the ethical or moral superiority of Western perspectives

that was inherent in these theories (Vidich and Lyman, in Denzin, 1994). Subsequently, sociologists and anthropologists who continued to adhere to positivist and/or empiricist assumptions in their broader theoretical outlooks apparently adopted the constructionist perspective with regard to morality and values.

8. This is not an exhaustive description of the types of ethical relativism for which philosophers have developed arguments, nor are the main philosophical arguments for or against the types that are described explored here. For fuller accounts of these arguments see Krausz and Meiland, 1982; Margolis, Krausz, and Burian, 1986; Stout, 1988; and Arrington, 1989.

9. For example, Geertz 1984.

10. The example of a group that justifies its policy of euthanizing the elderly on the basis of a belief in the afterlife is drawn from Frankena's discussion (as cited) of the difference between factual and moral beliefs, but the further use I make of it below is my own extrapolation.

11. Functionalist analysis used in support of ethical relativism is a version of ethical naturalism, a perspective discussed in greater detail below.

12. I owe the insight that the "what counts as" argument for ethical relativism is closely related to other meta-ethical arguments to Louis Tietje (Personal discussion with the author).

For a good account of this issue from an "anti-relativist" point of view, see Bernard Gert (1988, pp. 77-95).

13. In other words, applicational relativity does not entail the conclusion that situational factors or considerations of the consequences of action determine moral outcomes or even whether or which specific moral principles or standards are applicable to particular circumstances. Philosophers analyze these considerations quite differently and provide different answers depending on their affiliations with different schools of thought.

14. For the limited purposes of this project, my own account of this history is a highly selective one. My account focuses on what I interpret as those developments in sociological theory that, although they were not directly aimed at developing a sociological approach to morality and entailed serious conceptual obstacles toward doing so, are essential to the future development of any adequate approach. For example, I do not include a discussion of Max Weber's sociology because, while significant to sociological history and concerns in other respects, it does not, I believe, provide a productive avenue for this project. Weber is generally credited with influencing the various

strains of phenomenological and symbolic interactionist sociology that attempt to incorporate the subjective perspectives of social actors and the meanings they attach to their own and others actions. But Weber's bifurcation of reason and emotion led him (and perhaps his interpreters) to a non-cognitivist understanding of morality in which nonmoral, affectual dispositions operating "beneath" the level of social interaction between reflexively aware individuals provide the sources of moral evaluation and judgment. Hence Weberian sociology focuses on the bleak antinomy between the iron cage and charismatic authority, the later representing the expression of moral "renewal."

15. See Mestrovic, 1988 for a discussion of how Durkheim's views have been misconstrued by subsequent generations of sociologists.

Chapter 3. The Normative Concept of Morality in American Sociology: Emile Durkheim, Talcott Parsons, and the Hobbesian Problem of Order

At its historical inception the sociological perspective on morality had much to commend it. Anthropological and sociological investigators at the turn of the nineteenth century were challenging traditional, academic moral philosophy through their investigations of the connection between moral knowledge, culture, and social organization. A century earlier, the Enlightenment's solution to the protracted religious warfare of the 17th century had been to separate religious doctrine from moral knowledge, a move anticipated in Aquinian and Protestant theology. Following this bifurcation, religious affiliations were relegated to the realm of the conventional, or, in other words, to the customs of one's tribe or to the contingencies of individual choice. Moral knowledge, now redefined as subordinate to, but the highest objective of rational knowledge, became the binding agent of identity and obligation.¹ The locus of universality – shared truth which secures a common destiny for humanity – will no longer be secured through divine commands but will reside in each individual conscience.

In this century philosophers have described the ethical implications of secularization in terms of the eclipse of an "ethic of the good," which derives normative prescriptions for action and evaluation on the basis of a conception of human flourishing or happiness, by an ethic of the "right,"

which guides action on the basis of rules and principles to which (it is claimed) all rational people would give their assent (Williams, 1985). Concomitantly, social scientists – most notably Max Weber – described the transition to modernity in terms of a conversion from social institutions based on fixed sets of obligations and customs congruent with a hierarchy of ascribed roles and statuses to social institutions based on a set of abstract political rights that supported individual competition for personal gain within an increasingly diversified and rationally organized economic structure.

Locating universal moral truth in individual conscience was one of classical liberalism's unprecedented solutions to the problem of protracted social conflict (Toulmin, 1990), but the resulting conception, as Durkheim (1925/1973) complained, was an eviscerated one, in which the intimate nexus of self, kin, and community was lost. The sociological project was, in sum, to redefine this nexus. For Durkheim, "When our conscience speaks, it is society speaking within us" (p. 90). His formulations of the relationship between "conscience" and society have influenced virtually every generation of social scientists in the twentieth century, even, as I argue below, those who would not want to claim his larger theoretical perspective as their own. Durkheim's struggle to reconcile the claims of the old world and the new, however, were far more intense and complex than his interpreters usually acknowledge.

The theorist primarily responsible for bringing Durkheim's work into the mainstream of social scientific thought was Talcott Parsons, in his first full-length publication The Structure of Social Action (1937/1968). In this study of the major progenitors of nineteenth and early twentieth century sociology, Parsons accomplished two goals that had great significance for the post-World War Two period. First, he greatly enriched the development of sociological theory in the United States. Second, his interpretations set out many of the terms of that development. Although the theoretical directions of Parsons' work after The Structure of Social Action have largely been eclipsed (Giddens, 1979), Parsons' interpretations of Durkheim's thought, especially his basic outline of the normative approach to social action, are still indirectly influential.

This chapter has a twofold focus. I discuss Parsons' interpretations of the evolution of Durkheim's thought on the normative-moral dimension of social action and its relation to social order with particular emphasis on Parsons' problematic conceptualization of what he called the "Hobbesian problem of order." Second, I analyze the disparities between Parsons' interpretations and Durkheim's own ideas on the moral dimension of social action. Developing a framework for the sociological study of morality was one of Durkheim's primary foci. At the time of his death he was working on a full-length treatment of this subject that was to be the culmination of his life's work (Lukes, 1973/1985, p. 411). I argue that the published manuscripts

that deal directly with the theory of the sociology of morality show that Durkheim was unable to resolve a serious conceptual problem that was intrinsic to his own theoretical formulations. This was the problem of how social actors could be constrained by socially-given, non-subjective moral norms and yet act as autonomous moral subjects. Parsons astutely perceived the problem, but went on to provide Durkheim with a resolution. This resolution, explained below – which was Parsons' but not Durkheim's – essentially turned the sociological approach to the study of morality into a study of social values.

Largely due to Parsons, Durkheim is generally credited with providing a consensus theory of social order in response to the "Hobbesian problem," which was allegedly created by utilitarian social theorists' insistence on self-interested and self-directed individuals as the primary "unit of analysis" (Wrong, 1994). Parsons, like his sociological successors, completes modernity's secularization process by treating all *moral* norms as conventional, that is, as historical and cultural (and sometimes group specific) responses to social conditions that make possible collective and cooperative action. But some of Durkheim's most critical insights on the relationship between morality, society, and individual action are obscured by such conclusions. In this and the next chapter I contend that Parsonian assumptions are inadequate and isolate sociological researchers from a potentially productive dialog with moral psychology and philosophy that

could reenergize the sociology of morality.

It is important to bear in mind that, since he was unable to complete what was to be his magnum opus, Durkheim did not specifically summarize or retrospectively analyze the evolution of his own theorizing on morality (Lukes). What follows is an analysis of Parsons' self-termed "reconstruction" and my alternative reading of some of Durkheim's key passages on morality. My objective is to suggest a way in which the terms of morality's status and role in relation to social order might be recast. This, I believe, is a necessary prerequisite to the development of an approach to the sociological study of morality that does not subsume "morals" into "values" and values into exigent "social forces," but rather focuses on explicating the nature and working of what, in Chapter Four, I will call mundane morality. Mundane morality, I will argue, is employed in significant ways by social actors in their construction, legitimation, and reconstruction of social reality. It therefore plays a key role in how social actors define and interpret inter-and intra-group conflicts. I hope my objective and these terms will become clearer as my arguments unfold in this and the next chapter.

Durkheim's Regulative Model of Rule Following

Historically, one of the principal theoretical challenges confronting Durkheim was to establish a connection between individual action and social order that would neither (a) explain social order in terms of individual

psychology, thus denying sociology its own "unit of analysis," nor (b) deny the role of individuals in the production of that order, thus supporting a social determinism inimicable to the political philosophies that provided justification for the liberal-democratic state (Lukes).

The linchpin of the connection Durkheim formulated between individual action and social order was his concept of norms. A society's norms are the rules and standards that regulate individual actions and social relationships.² They are "the collective representations of the beliefs, tendencies, and practices of a group that characterize truly social phenomena," and, as such, constitute the "social facts" that are the proper focus of sociological inquiry (Durkheim, 1966, p. 7). Social norms, he argued, are not the products of coordinated individual interests, but rather the factors which define what and how individual interests will be pursued.

Durkheim developed his perspective on the relationship of normatively governed social action and social facts in response to individualist conceptions of social order common to utilitarian social theories, such as those found in the then widely esteemed work of Herbert Spencer. In general, utilitarian social theory held that societies are formed by aggregates of individuals coordinating their activities in pursuit of self-interested ends (see Lukes, p. 82). Spencer (1879), for example, argued that, "Living together arose because, on the average, it proved more advantageous to each than living apart; and this implies that maintenance of combination

is maintenance of the conditions to more satisfactory living than the combined persons would otherwise have. Hence, social self-preservation becomes a proximate aim taking precedence of the ultimate aim, individual self-preservation" (p. 154).

According to Parsons, the utilitarian formulation of individual conduct and its relation to social order had created a "dilemma" for the study of society from the standpoint of the "positive sciences" (pp. 87-125).

Nineteenth century utilitarians like Spencer embraced that version of eighteenth century rationalism that understood all action (or all meaningful action) in teleological terms, as the individual's self-interested pursuit of pleasure and avoidance of pain (Albee, 1901). But individual desires for pleasure are purely subjective; in contemporary terms they are the arbitrary "preferences" generated by each individual's unique constellation of experiences. Because they are subjective and do not necessarily bear any relation to one another, individual interests are a "given" for the social scientist and cannot be explained with reference to any "laws" governing their formation and direction. The only assumption that can be made about the coordinated patterns of behavior that result in the enduring organization of social life is that the forms of organization (or in behavioristic term, the "uniformities of behavior") are random and cannot be the direct subject of investigation (Parsons, pp. 343-375; see also Hollis, pp. 115-141; Bohman, pp. 67-78). Consequently, this perspective presupposes that sociology has no

unique unit of analysis, and is therefore adjunct to psychology's ontogenetic focus on the individual.

The utilitarian account of rational action seemed unable to explain why, or on what basis, people would agree to enter into contracts, or "combination" in Spencer's more general term, with each other in the first place. Durkheim (1984) maintained that there must be a system of normative rules that preexist contractual rules and which secure, among other things, the desire for cooperation (pp. 154-165). Parsons summarized Durkheim's criticism of the utilitarian perspective and his "breakthrough" as a discovery of the "noncontractual elements of contract":

But on the one hand, Spencer and the other individualistic writers have laid their principal stress on enforcement of the terms of agreements themselves, whereas Durkheim's main stress is on the existence of a body of rules which have not been the object of any prior agreement among the contracting parties themselves but are socially "given." If they wish to enter into relations of contract it is only under the conditions laid down in these rules and with the consequences with reference both to eventual rights and to obligations which they define that they may do so at all. Of course, if the rules were not to some degree enforced, they would be unimportant, but it is on their independence of the process of ad hoc agreement that Durkheim lays his emphasis (p. 312).

When individuals enter into specific, contingent relationships through contract (e.g. any of the familial, work, or voluntary responsibilities a person might assume), the possible foreseen and unforeseen consequences of these agreements are practically infinite. According to Parsons' interpretation of Durkheim, however, only a narrow range of the obligations and rights attached to the immediate conditions of agreement need to be formally

specified because the "givens" of the pre-contract or tacit rules – the norms of custom, common law (and common sense), "mores" and morals – will take care of the rest (p. 314).

To illustrate this point further, consider that regulative rules may be understood, in general, as taking the following forms.³

Rule (1): When conditions C1 and C2 apply to a situation S, do (or do not do) action A.

Rule (2): Allowable exceptions to Rule (1) are of the kind: E1, E2, E3, etc.

(Each E may have its own exceptions to the exception, as well.)

Rule (3): If actor X in situation S does action A under conditions C1 and C2, which either violates or conforms to Rule 1 and exceptions under Rule 2 are not applicable, then consequences Q1 and Q2 will (or should) follow.

Rule (4): Situation S belongs under category G, therefore rules of type (1) and (3), but not those of type (2) are applicable.

We may interpret Durkheim as arguing that utilitarian social theory did not recognize type (4) rules. Category G in Rule 4 designates a "rule for making rules." For example, a prohibition against parents "selling" their children as commodities is a type (4) rule in some societies; it is a rule that "everybody knows" without formal instruction and that is "behind" a wide variety of social practices related to parenting as well as to positive law. No

matter how desperate his financial situation, a person living in the United States cannot provide any normatively allowable exceptions to the child selling rule that will cancel the blameworthiness of his act.⁴ A social scientist unfamiliar with American society (would that this were possible) can observe its citizens behaving in ways consistent with the child-selling rule (e.g., parents who violate their responsibilities/contracts are sanctioned) and therefore extrapolate the pre-contract background norm and concomitant assumptions about the status and roles of children and their parents. A society's regulative rules, on this account, are characterized by a kind of nested aspect; like the famous Russian dolls, "big" ones "hide" a family of smaller but no less important ones inside them.

In Parsons' reconstruction, Durkheim's identification of pre-contract, socially-given rules solved part (a) of the historical-theoretical challenge. The explication of social order in terms of an externally given body of norms that exercise constraint over individual actions enabled Durkheim to reassert sociology's status within the positive sciences because this explication reestablished the social fact, "sui generis" aspects of society as the objects of empirical inquiry. Sociological inquiry and analysis should and could focus on the objectively identifiable characteristics of a given social order rather than on the nonobservable, psychological criteria of (putatively) rational action. In sum, norms and rules regulate not only the terms acceptable to all parties under which specific actions will be carried out, but also provide the

unstated background assumptions concerning the range of possible acceptable means through which individual interests are achieved.

But what about part (b) of the challenge – the role of individuals in the construction of the social orders in which they participate? Thus far Parsons' reconstruction has presented Durkheim as a sociological determinist.

Individual action is seemingly "regulated" by the collection of pre-contract and contract rules constellated within a given society. But how can individuals challenge and change their society, or various aspects of it? Why do some individuals break some of the rules while others do not? These are not questions about the existence and kinds of rules, but about our obligation to them and how that obligation is established.

As we have seen, Parsons contended that in Durkheim's earliest formulations,⁵ rules comprise the "given" aspect of a concrete situation, the non-arbitrary determinants of individual action. This focus shifts the analysis of concrete situations from the actor's point of view which was originally assumed by the utilitarians (i.e. desires and preferences), to the analyst-observer's reconstruction of the external elements in the individual's environment (the social-normative order) that constrain and organize his "chaotic, undisciplined impulses" (p. 377). Thus, "from this point of view any element which forms a part of the determinism of external nature exercises constraint over the individual and the term constraint has a tendency to become identified with causal dependence in general" (p. 378). And yet,

Parsons argued, if normative constraint is conceptualized to work in the same manner as a force of nature, the crucial social aspect of norm violations and the whole dense fabric of sanctions becomes inexplicable, because "presumably one does not violate a *courant suicidogene* " (p. 379). In other words, Parsons maintained that Durkheim had developed a conceptual dilemma. If people merely accord their conduct with a set of rules and norms external and a priori to their actual situations, then their actions are, regardless of their awareness, "coerced" (p. 379). By "coerced" we may understand Parsons to mean that social action, conceived in this way, is "unfree" because it is determined by forces "outside" and "beyond" individuals responding to their exigent circumstances.

Durkheim's formulation at this stage, according to Parsons, does admit an element of volition, in that rational people (people without defective understanding of the applicable rules and social consequences) clearly do violate norms and rules, but it is a severely circumscribed notion of volition. It seems still to suggest the utilitarian conception of action from the standpoint of the utility calculating individual, in that rules and norms are conceived as providing some of the significant conditions of individual action but not the *sine qua non* of action itself. The rules may constrain, but they do not provide intrinsic motivation (p. 380). This view, Parsons argued, accords well with the utilitarians' focus on the utility-maximizing, strategic action associated with economic activity, but it does not solve the primary

issue Durkheim raised with regard to action that is seemingly motivated by non-self-interested adherence to the customs and traditions of a group or collectivity. Without any qualifications, the picture presented is of pre-social individuals “originally” motivated by arbitrary (situationally or biologically dependent) assortments of ad hoc desires aimed at increasing pleasure (or avoiding pain), which are then channeled by an interlocking network of pre-existing social norms into the coordinated interactions that sustain and reproduce social organization.

In a now famous turn of phrase, Parsons called this formulation the “Hobbesian problem of order” (p. 89). When rules and norms are conceived as the conditions *qua* causal determinants of action, individuals may be understood to be engaged a kind of coordinated social action, but they cannot really be construed as creating or even freely consenting to the social orders in which they participate. Nor, significantly for my argument, can they be understood as acting *cooperatively* in any meaningful sense, which seems to exclude what philosophers have called “the moral point of view” from social action, assuming that by moral we mean other-regarding action that furthers the interests or goals of the social group or individuals one cares about.

Parsons, as I have indicated, thought that Durkheim provided a theoretical resolution to this problem that enabled sociology to advance on its own terms. But before exploring Parsons’ interpretation of the putative solution, I must take a few historical steps back to Hobbes in order to explain

my disagreement with Parson's understanding of the resolution.⁶

The "Utilitarian Dilemma," Hobbes, and the Problem of Obligation

Like many of his contemporaries and some scholars today, Parsons interpreted Hobbes' political philosophy through a secular lens.⁷ Parsons claimed that "Hobbes' system of social theory is almost a pure case of utilitarianism" (p. 90) and it is "almost devoid of normative thinking" (p. 89). In essence Parsons was asserting that Hobbes subscribed to a version of psychological and ethical egoism. Hobbes defined "the good," according to Parsons, as "that which any man desires" (p. 89). Each person, although rational (meaning able to conform his actions to serve his ends), pursues his own "passions" (desires / goods) and in the process will inevitably come into conflict with others. Since no person has any basis for trusting any one else, some will attempt to secure their ends through, in Hobbes' term, "force and fraud." This is "the state of nature" that Hobbes (1651/1996) famously described as a "war against every man by every man" in which the life of man is "solitary, poor, nasty, brutish, and short."

As Parsons interpreted Hobbes, the most fundamental "passion" is self preservation, "which finds a solution of the difficulty in the social contract" (p. 90).⁸ This is the standard claim that Hobbes understood individual consent (in the form of a social contract) to a Sovereign's or State's power as a necessary choice each individual makes in the interest of self preservation. In

other words, individuals recognize that they must sacrifice some liberty to ensure the social cooperation necessary for their survival. But Hobbes' "solution," according to Parsons, merely presents with "unsurpassed clarity" the most forceful version of the "utilitarian dilemma." The social contract is "inherently unstable" because:

This solution really involves stretching, at a critical point, the conception of rationality beyond its scope in the rest of the theory, to a point where the actors come to realize the situation as a whole instead of pursuing their own ends in terms of their immediate situation, and then take the action necessary to eliminate force and fraud, and, purchasing security at the sacrifice of the advantages to be gained by their future employment (p. 93).

If the above analysis is correct one might suppose that Hobbes' early experiments with logical thinking on a utilitarian basis would have brought that type of social thought to a rapid and deserved demise. But such was very far from being the case, indeed in the eighteenth and nineteenth centuries it enjoyed a period of such vogue as to be considered almost among the eternal verities themselves. But this was not because the Hobbesian problem was satisfactorily solved. On the contrary, as so often happens in the history of thought, it was blithely ignored and covered up by implicit assumptions. How did this happen? (p. 94).

I do not believe that Hobbes himself constructed the "Hobbesian problem of order" as Parsons described it. So one might first object, as I will below, that the above analysis is not correct, although the basic outlines of Parsons' interpretation, with its "implicit assumptions," has had a long lineage that has continued up to the present day.⁹ The point of this discussion, to anticipate, is that Parsons' misreading of Hobbes' arguments is highly significant for his reconstruction of Durkheim's solution to the

putative “Hobbesian problem of order.” Durkheim’s irresolution, I will argue, is more nuanced and draws more from Hobbesian assumptions than Parsons allowed.

Hobbes did argue that humans were motivated by many competing passions.¹ Passions, as Hobbes described them, are humans’ most primary kinds of “interiour voluntary motions.” Humans “endeavor” for things beyond their basic animal (physical) appetites for food, etc., because they form internalized or mental attitudes towards those things which, through experience, they desire.

But whatsoever is the object of any mans Appetite or Desire; that is it, which he for his part calls *Good*: And the object of his Hate, and Aversion, *Evill*; And of his Contempt, *Vile* and *Inconsiderable*. For these words of Good, Evill, and Contemptible, are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and Evill, to be taken from the nature of objects themselves; (p. 39)

. . . . and the differences of Passions, proceedth partly from the different Constitutions of the body, and partly from different Education. For if the difference proceeded from the temper of the brain, and the organs of Sense, either exterior or interior, there would be no lesse difference of men in their Sight, Hearing, or other Senses, than in their Fancies, and Discretions. It proceeds therefore from the Passions; which are different, not onely from the difference of mens complexions; but also from their differences of customes, and education. (p. 53)

As I will explain, Hobbes did not view passions in utilitarian terms as the exclusive, motivating source of individual action. But I would suggest that Hobbes’ definition of the “good” as individually variable and related to a

¹ All following references are to Hobbes’ *Leviathan* (1651/1996).

person's "customs and education" derives from the Renaissance humanist influences to which he had ample exposure (Tuck, 1996). Hobbes' subjectivist and relativist perspective on this point represents a break with earlier, pre-modern Christian and Aristotelian beliefs that define the ends or goals of human life objectively (Martinich, 1992, p. 119), in terms of their relationship with a *summum bonum* derived either from divine revelation or from the truth gained from a life virtuously led¹⁰ (MacIntyre, 1966 and 1981). In the sense that Hobbes used the term "passions," we may make an analogy to our current use of the term "values." Value is another way of speaking about "good" and "evil" and "contemptible" things that are either desired or avoided by individuals. In Parsons' and almost all contemporary social theory, values are conventional, just as Hobbes described them.

Contrary to Parsons, however, Hobbes did not believe that self-preservation was the most fundamental passion. Self-preservation for Hobbes was a *right of nature*, "the liberty each man hath, to use his own power, . . . for the preservation of his own Nature; that is to say of his own Life; and consequently, of doing any thing, which in his own Judgment, and Reason, hee shall conceive to be the aptest means thereto" (p. 91). The right to self-preservation, because it is established "by nature," is not transferable, unlike other rights that may be established through individual contract or positive law (p. 93). Most significantly, "rights of nature," for Hobbes are understood within the medieval theological framework of natural law.

"Nature" does not exist independently of divine will, but is rather an expression of it. A right of nature and a law of nature are not therefore variable, like the passions, according to human experience (Martinich, pp. 100 - 134).

Since the right of self preservation is a natural right, man in his "original condition"¹¹ can use any means he can devise to preserve himself. Consequently, "there can be no security to any man." (Hobbes, p. 91) But this is not because all individuals *will* use force and fraud against others who stand in their way. Hobbes did not think that in their original condition people were in a state of war because they lacked moral precepts that would prevent them from destroying others to further their own ends. Nor did he think that individuals would always act on the basis of their right to self-preservation and not altruistically (Tuck, pp. xxxviii-xxix). Consistent with his Christian (Calvinist) religious inheritance, Hobbes believed that the terms of basic morality were provided by natural law and therefore accessible to all people in the original condition, as well as within the civil estate (Martinich; Tuck, 1996). A "Law of Nature," which Hobbes distinguished from natural right, "is a general Precept, or Rule, found out by Reason" that obligates people to follow it; or, in other terms, "Divine Lawes" are "Dictates of Naturall Reason; which Lawes concern either the naturall Duties of one man to another, or the Hounour naturally due to our Divine Sovereign" (Hobbes, p. 248).

Nonetheless, Hobbes' argument here should not be confused with that of eighteenth century rationalist philosophers. He argued that it is not *reason* that establishes the obligation to follow natural law, but the source of the Law, namely God. Hobbes was quite clear on this point. No rule (such as "the rules of reason"), he maintained, could have the force of law unless it originated in a power greater than the one who was obligated to obey (p. 97). Human beings are essentially equal to one another in their mental and physical capacities and so are not obligated to each other in any intrinsic way (p. 87). The ultimate authority and force of natural law over humans derives from the fact that God is omnipotent (pp. 246 - 247).

In short, Hobbes' held a divine command theory of morality which was not modern (Martinich 1992). He does not distinguish between moral and non-moral laws, but rather assumes that all Laws of Nature pertaining to human behavior are moral. His detailed description of these (he lists nineteen in Leviathan) is unsurprising and conventional. Significantly for this discussion, he summarizes the Laws in the context of their relationship to the passions: "For the Laws of Nature (as *Justice, Equity, Modesty, Mercy*, and (in summe) *doing unto others, as wee would be done to,*) of themselves, without the terrour of some Power, to cause them to be observed, are contrary to our naturall Passions, that carry us to Partiality, Pride, Revenge, and the like" (Hobbes, p. 117). So for Hobbes, moral laws, delivered and commanded by God, are supplied in the original condition and do provide "other-

regarding" restraint on the pursuit of individual passions. . . . So why then, we might ask, is there a "Warre against every man by every man" ?

In the course of pursuing their various goods, individuals need the assistance of others (services and friendship) and so enter into contracts, which Hobbes defines as "the mutual transferring of Right" (p. 94). Contracts may be "expresse" (as in positive law) or "by inference" (as in Durkheimian norms). In both types, each party makes a promise to the other which obligates her or him to the terms of the contract (p. 94). Here's the monkey wrench, however: no person could reasonably expect compliance with the terms of contract from another person because "the bonds of words are too weak to bridle mens ambition, avarice, anger, and other Passions. . . ." (p. 96). As discussed, Hobbes did not assume a priori that individuals in the original condition would always or necessarily fail to meet their obligations, because natural law is available to everyone. But in a "condition of meer Nature, (which is a condition of Warre . . .) upon any reasonable suspicion, it [a contract] is Voyd" (p. 96). This is because any reasonable suspicion by one party that the other party may be pursuing self-advantage through breach of promise may justifiably invoke the natural right of self-preservation in the one being deceived, thus voiding the contract altogether. In other words, for Hobbes, natural (moral) law intrinsically obligates, but in itself cannot guarantee the normativity of mutual obligation in man's social relations (Korsgaard 1996). "The Lawes of Nature oblige in *foro interno*, that is to say,

they bind to a desire that they should take place: but in foro externo; that is to putting them in act, not always" Hobbes, p. 110). In my view, this formulation is not inconsistent with standard Christian theological doctrine: "For I do not do the good I want, but the evil I do not want is what I do. Now if I do what I do not want, it is no longer I that do it, but sin which dwells within me" (Romans 7:19-20).

Hobbes solution to the problem of normativity – the "civill estate, where there is a Power set up to constrain those who would otherwise violate their faith" (p. 96) – is well known, and like Parsons, I will not dwell on it. But the most important point for my argument is that, contra Parsons, Hobbes was not maintaining that a secular, sovereign authority ("Leviathan") is necessary to establish the *content* of the rules of cooperation, because for Hobbes (and virtually all of his contemporaries) these are established by God in natural law and available to all persons through reason. The secular sovereign is by no means the source of morality, but is rather its putative guardian – a "bulwark" of defense (Korsgaard, 1996; Martinich, 1992) whose primary role is to guarantee reciprocity in social relations (Ewin, 1991). In Hobbes' own terms, morality or natural law commands our assent (in *foro eterno*), so with or without the secular sovereign, the "just man's" will is framed by "justice" (Hobbes, p. 104).

A secular sovereign, however, has no intrinsic authority as the only "official" enforcer of contract and so must maintain its authority through the

fear engendered by the application of punitive measures against non-conformers. In Parsons' interpretation of Hobbes, read through the lens of eighteenth century secular utilitarianism, fear is the Sovereign's objective because, since humans are strictly self-interested "utility maximizers," there is no other means to establish and ensure the ground rules of cooperation. But Hobbes was actually making a significantly different point. The Sovereign relies on the fear of punishment because it needs to establish the authority to protect "just men" from those who are weak. Just men understand that by alienating certain of their private judgments (which may be well-founded and justified) to the public judgment and arbitration of a civil authority, they are "seeking peace" (Hobbes' first "law of nature") – a clear refutation of any perspective based on "might makes right" (Ewin 1991). In terms of political philosophy, Hobbes was "modern" in his claim that a "worldly" authority was essential to securing the social harmony required to advance the future and progress of humanity, but he was pre-modern in that he premised the basic terms to which both the secular sovereign and its citizens were subject on natural law, established and commanded by the Divine Sovereign (Tuck. 1996; Martinich. 1992)¹²

One point on which many scholars of different philosophical persuasions have tended to agree is that Hobbes provided a powerful, conservative justification for existing political authorities everywhere, regardless of their forms of government (see Hobbes, p. 414; Tuck, 1996).

This is because Hobbes saw virtually no warrant for a citizen's disobedience to an established civil authority or its laws, short of two conditions: (1) if the authority violates its citizen's natural right by commanding him to kill himself or to kill another person, unless the command to kill another fulfills the authority's duty to protect its citizens (as in a war between states); and (2) if the authority relinquishes its power to protect its citizens or if its ability to protect is fatally compromised (pp. 151-154). "The Obligation of Subjects to the Sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them" (p. 153).

Consistent with natural law tradition, Hobbes thought that all governments the world over had incorporated moral (natural) law into their civil laws, and that these "contain each other." Of course there are always positive laws made by sovereigns to address specific conditions that do not entail natural law, and people will disagree in their interpretations of both kinds of law (pp. 151-154). The final authority both to interpret and enforce all laws, however, rests with the Sovereign by way of its duly appointed representatives. In sum, for Hobbes the authority of morality, in the form of natural law, is autonomous from, but constitutive of, secular authority and law. But natural law is not sufficient to secure the social cooperation necessary to protect individuals from a "war of each against every one," such that they may have any possibility of seeking their version of the good life. And so all persons must agree and submit to a "sovereign" to whom they

delegate the sole authority to make and enforce the terms of their cooperation. As against Parsons, therefore, if Hobbes could be said to have identified a “problem,” it was the problem of *how obligation to pre-existing moral laws could be ensured so that all persons would be free to act without fear, given that conflicts will inevitably arise between them in their pursuit of different goods.*

Contrary to the Enlightenment democratic political doctrine grounded in natural rights that succeeded his, Hobbes opposed citizen revolt against authoritarian, and possibly very oppressive, forms of government (pp. 121 - 129). This aspect of his thought makes him seem especially conservative. Nevertheless, he did not *condone* authoritarian governments or oppressive practices; civil authorities, as well as their subjects, were subject to the “dictates of reason” derived from “Divine Lawe.” Indeed the main outlines of Hobbes’ thought provide a powerful and consistent example of early modern liberal political philosophy (Tuck 1996). As discussed in the beginning of this chapter, political liberalism is premised on the important distinctions Hobbes draws (a) between definitions of “the good,” which are relative to individuals or affiliation groups, and definitions of “right” action (“men’s duties towards each other”) which are discovered by reason; and (b) between the source of our obligations (which for Hobbes is God, for his Enlightenment successors, Reason) and the secular authority whose role is to ensure that we fulfill them. The Sovereign’s (modern state’s) duty is not to

provide an apriori definition of the good towards which its citizens should strive, but to provide the enabling conditions for each person to pursue his or her own definition without being subject to force and fraud. Nor, concomitantly, is the Sovereign's duty to teach the content of morality to its citizens: they already know it. Rather, the Sovereign should conform the laws to that which reason and morality require. This formulation provides one kind of philosophical basis for classical liberalism's doctrine of the "neutral state" (Galston, 1991), which governs within the framework of negative political rights.

Enlightenment philosophy eliminated the theological underpinnings of natural law and took two directions, both of which drew upon a secular conception of reason as providing its own normative force. These directions, utilitarianism and Kantianism, were the two poles of thought with which Durkheim struggled for his entire career (Lukes). Enlightenment utilitarianism conceptualized Hobbesian "passions" – values defined in terms of utility maximization – as both the ground and the goal of individual action, and defined reason narrowly in terms of instrumental calculation. Without Hobbes' underpinning of natural law, however, modern utilitarian thought could not provide individuals with a source of obligation to the terms of social cooperation or "contract." Neither reason, which is normatively directed towards the efficient coordination of means and ends, nor passion, which is self-interested, can produce those "other regarding"

actions which, as Durkheim recognized, cooperation seems to require, at least sometimes.¹³

To reiterate, according to Parsons, Durkheim conceptualized social norms – the “non-contractual elements of contract” – as providing the impetus for individuals to enter into cooperative agreements with each other. But this formulation could not overcome the “utilitarian dilemma” because social norms theoretically accounted for the “causes” of obedience, but were thus stripped of their psychological role in motivating it. Hence the conundrum of sociological determinism. As the following analysis will show, the “normative order” in Parson’s reconstruction does indeed become a Leviathan, a *deus ex machina* of social order. But in his later work, concerned with the question of authority posed for the liberal state by secular Enlightenment philosophy, Durkheim did attempt to reformulate and preserve the distinctions found in Hobbes’ thought – and turned to Kantianism in this attempt. In other words, I will argue that Parsons’ reconstruction made possible a theoretical elision of the Hobbesian problem of normative obligation, but Durkheim himself did not abandon this issue.

Parsons' Reconstruction

Parsons’ reconstruction of how Durkheim resolved the “utilitarian dilemma” provides a succinct, but flawed, interpretation of the main outlines of Durkheim’s otherwise somewhat diffuse arguments on this issue. In his

earlier thinking, Parsons contended, Durkheim postulated that people followed externally constraining norms because they had an attitude of "respect" toward the "authority" of society that was manifested through these norms. This was the only way to explain how individuals' arbitrary desires and interests ("passions") could be channeled into the observable, enduring, coordinated practices of social organization. But, as we have seen, this formulation still pits internal desires against external rules. So whither comes the respect? Durkheim's answer, Parsons (1937/1968) argued, was to eliminate the utilitarians' "pre-social" desires as the motivating source and *telos* of individual action:

It was no longer a question of concrete ends or desires *against* external constraining factors, but the constraining factors actually enter into the concrete ends and values, in part determining them. And since normative rules, conformity to which is a duty, become an integral part of the individual's system of values in action, it ceases to be strange to think of them as also desired. This rigid ethical dualism of duty and the good is an aspect of the old utilitarian dilemma, . . . [which began with] a wrong conception of the concrete human personality. So not only desirability, but even happiness, comes back – as a concrete state of the individual who is integrated into a set of social norms (p. 387).

Parsons thus concluded that the term "collective representations," which Durkheim developed to refer to a social group's shared beliefs, norms, and values, ". . . has been radically altered in its meaning It is not a system of ideas *about* an existent empirical reality exterior to the minds of individuals. It is rather a body of ideas which themselves form the effective factor in action, that is, the effective factor is itself present, 'in the minds of individuals, not merely a representation of it'" (p. 389). Now the individual

is no longer pitted against others, but is in harmony with them in so far as the social-moral order forms an "integral" part of his selfhood; his deepest happiness, therefore, is bound up with the solidarity of his group. The utilitarian dilemma has apparently been resolved: the respect accorded to externally constraining rules is the respect accorded to oneself. The subjective element of action which the utilitarians explained in terms of arbitrary desires has been reconceptualized in Parsons' reconstruction as voluntariness: in the fully developed, "ideal type" individual, "adherence [to normative rules] is voluntary, on the other hand, that adherence is binding on the individual. But it is binding not from physical necessity but from moral obligation" (p. 384; See Durkheim 1924/1953, pp. 35-79).

In sum, obligation to the system of norms does not derive from the existence of a concomitant set of sanctions delivered by an external authority, but rather from the existence of individuals who are each their own moral authority, and whose self respect and integrity are bound up in their ability to exercise that authority (Parsons, p. 402). Moreover, this formulation, Parsons contended, has significantly expanded the scope of constraint exerted, as it were, upon and within the individual, who stands in a "double relation" to the existing social order. First, as in the original formulation, a body of explicit rules and norms governs both the background and the foreground means of achieving the contingent array of individual goals; but now, second, "the direct ends of specific acts and complexes of them" also pre-exist the

individual and are normatively defined (p. 401). The “problem of order,” such as Parsons reconstructed it, has been eliminated. Nevertheless, as I will contend, this resolution presented new problems.

Durkheim's Evolving Conception of Morality

Durkheim, as I am underscoring here, undertook his analysis of social regulation within the context of his ongoing attempt to develop a sociology of morality. Hence whatever advances he made over his earlier thinking were established within the context of his consideration of the distinctive characteristics of moral regulation, which, as we shall see, he distinguished from the broader rubric of normative regulation. Although he followed Durkheim's thoughts on these matters closely and with great insight into their implications for sociological theory, Parsons' reconstruction and analysis ignores this critical distinction. Before summarizing what I understand to be the disparities between Parsons' reconstruction and resolution to the “Hobbesian problem” and Durkheim's analyses of these matters, I will review the key elements of Durkheim's views on morality. Several principal texts, most notably Sociology and Philosophy (1906/1953) and Moral Education (1925/1973) suggest the direction he was taking.¹⁴

In his earlier work, Durkheim defined morals as a subset of a collectivity's norms and argued that, “Morality, at all levels, is never met with save in the state of society and has never varied save as a function of

social conditions. . . . In reality the duties of the individual to himself are duties to society. They correspond to certain collective sentiments which it is no more permissible to offend when the offended person and the offender are one and the same person than when they are two distinct individuals" (1984, p. 332). As we have seen, moral norms or rules are conceptualized as "system-level properties" (Giddens, 1979) through which the contingent actions and attitudes of individuals and groups can be analyzed and explained. In its basic outlines, this is the perspective which has influenced the contemporary versions of descriptive and functionalist ethical relativism discussed above.

Throughout the lectures which were later published as Moral Education (1925/1973), Durkheim struggled with the question of how individuals could be motivated to act on the basis of rules and norms that were both "external" and "constraining." The social institution in which Durkheim saw this problem manifested was higher education. In short, the question guiding these lectures was the Hobbesian problem of obligation, which a secularized political order had rendered acute: How could secular, rational education in modern Europe, now independent of religious authority, inculcate the ideals that would inspire students to contribute to the intellectual and political future of their society, rather than use their education to pursue independent, self-interested goals?

Durkheim's analysis began with the terms of his earlier perspective, by

defining morality in terms of rule-governed behavior. This definition does not, as he acknowledged, differ from the presociological conception of morality developed by eighteenth century rationalists, in its most influential form by Immanuel Kant (p. 36). Moral rules ("morale"), he maintained, must be distinguished first from the internalized dispositions to act in certain ways which originate in social custom ("moeurs"). Although violations of custom may invoke similar reactions of disapproval, moral rules are characterized by their apparent objective authority which commands assent regardless of individual desires. It is worth citing Durkheim's own words at length on this point, not only because they illuminate his thinking on issues which Parsons ignored, but because these passages set out in basic form terms that are crucial for a sociological framework for the study of morality which I outline in Chapter 6.

Morality is basically a constant thing, and so long as we are not considering an excessively long time span, it remains ever the same. A moral act ought to be the same tomorrow as it is today, whatever the personal predispositions of the actor. Morality thus presupposes a certain capacity for behaving similarly under like circumstances, and consequently it implies a certain ability to develop habits, a certain need for regularity. So close is the connection between custom and moral behavior that all social customs almost invariably have a moral character. When a mode of behavior has become customary in a group, whatever deviates from it elicits a wave of disapproval very like that evoked by moral transgressions. Customs share in some way the special respect accorded moral behavior. If all social customs are not moral, all moral behavior is customary behavior. Consequently, whoever resists the customary runs the risk of defying morality.

Regularity, however, is only one element of morality. This same conception of the rule when carefully analyzed will disclose another no less important feature of morality.

To assure regularity, it is only necessary that customs be strongly founded. But customs, by definition, are forces internalized in the person. It is a kind of internalized accumulated experience within us that unfolds itself, activated as it were, spontaneously. Internalized, it expresses itself externally as an inclination or a preference. Quite the contrary a rule is essentially something that is outside the person. . . .

A rule is not then a simple matter of habitual behavior;. . . It is . . . beyond personal preference. . . . Rather than expressing us it dominates us. . . .

Thus we see. . . what there is in the conception of rules beyond the notion of regularity: *the idea of authority*. . . . [author's italics]

In one sense, one can say that there is no single rule. . . which does not have this imperative character in some degree, because, once again, every rule commands. . .

Morality, however, constitutes a category of rules where the idea of authority plays an absolutely preponderant role. Part of the esteem we accord to principles of hygiene or of professional practice or various precepts drawn from folk wisdom doubtless stems from the authority accorded science and experimental research. . . . But in all [these] cases if we abide by the rule it is not only out of deference to the authority that is its source; it is also because the prescribed behavior may very well have useful consequences, whereas contrary behavior would entail harmful results. . . . There is involved here, therefore, a feeling other than respect for authority. . . .

It is quite otherwise with morality. Without doubt, if we violate rules of morality we risk unhappy consequences. . . . But it is a certain and incontestable fact that an act is not moral, even when it is in substantial agreement with moral rules, if the consideration of adverse consequences has determined it (1925/1973, pp. 28-30).

Embedded in Durkheim's discussion we may discern three possibilities for explicating action: (1) strategic action of the utilitarian type, which is the expression of individual preferences formed by the habits of custom (both the individual's and the larger culture's); (2) normative action, guided by the

socially sanctioned rules of particular groups; and (3) moral action (action from a moral point of view) which has its own distinctive characteristics. For reasons that will become evident, Durkheim never followed up on the implications of analyzing social situations using more than one framework for explicating the nexus of action and order in specific social contexts. As mentioned, we shall return to these possibilities. But first we return to how Durkheim proceeded to resolve his original problem of how rules can be both external and constraining. Since Durkheim followed Kant as the authority on these matters, the contrast in their perspectives is instructive.

A little more than a century before Durkheim produced his major work, Kant, in one of his more polemical essays, formulated the distinction between "mores" and "morals" within the context of the Enlightenment's explicit rejection of a form of social and political organization in which external regulation of the individual was all encompassing. In pre-Enlightenment Europe, Kant argued, the moral person was a person who conformed his actions, without question, to God's will and to the customs handed down through the intermediary dictates of traditional authorities, such as churches, clerics, kings, and "tax collectors" (Kant, 1784/1959b). Kant's genius was to articulate and respond directly to the deepest conundrum of the Enlightenment perspective and its attempt to define a new source of moral authority for the modern person. If authority did indeed reside "internally" within the individual, deriving from the dictates of reason rather than from

God, then how could morality, if it arises within and is determined through individual consciousness, ("will") override action which was rational, for example, prudential, but not strictly moral? In other words, if I alone impose my obligations upon myself, then may I not also excuse myself from these same obligations without penalty? (Schneewind, 1992, p. 314). This is an analogous question to the one that Durkheim reformulated within the context of late nineteenth, early twentieth century educational practice.

Kant's well known answer was that only by acting in accordance with a moral law based solely on my duty to do so, (i.e. making duty a necessity) rather than any external reason such as the good which might be brought about as a result, do I discover the freedom that defines me as a human being. This is because if I act to bring about an outcome because I perceive the outcome to be good, then it is the desired outcome -- my own or other's happiness or welfare, God's or another's approval -- that is dictating my action, not myself. Moreover, if the desired outcome determines what I do, then I may, in fact, bring about the desired outcome through immoral acts and still believe that my acts were justified, since the good outcome was achieved.

The person who acts according to the moral law -- who recognizes the intrinsic necessity of the moral law -- is, according to Kant, characteristically engaged in a struggle to do what he ought to do, rather than what he wants to do. For the person who acts in conformity to some external constraint, even

in the form of a standard that promotes some form of goodness such as communal harmony, there is neither struggle nor, in Kant's (1785/1959a) view, any virtue. Hence we intuitively comprehend the paradox of the Good Samaritan who, upon rescuing a person in mortal danger, rejects the appellation of hero because, she argues, "I was just doing the right thing." If she affirmed her act as heroic, we would be strongly inclined to dismiss her, tacitly, at least, because we would doubt her motives.

Durkheim's analysis in Moral Education followed Kant's moral philosophy almost to the letter (see also Durkheim, 1924/1953, pp. 35-29). The autonomy of the social actor, he argued, is pivotal to an adequate approach to the study of morality: "We do not regard an act as completely moral except when we perform it freely without coercion of any sort. We are not free if the law by which we regulate our behavior is imposed on us, if we have not freely desired it. The tendency of the moral conscience to link the morality of an act with the autonomy of the actor is a fact one cannot deny and which must be accounted for" (p. 112). Here, as Parsons later suggested, Durkheim's affirmation that the moral point of view – now defined by autonomy – can be explicated only within the internal reference point of the actor, came into sharp conflict with his collectivist, normative conception of social order which was necessary to maintain sociology's membership within the positive sciences. The original utilitarian dilemma, however, has not been resolved. How can rationally autonomous individuals be "required" to act in

accordance with morality, now defined as a moral-normative code generated and transmitted within a given society, yet remain "free" when doing so? This sounds like the problem Parsons reconstructed, but it is actually significantly different. Durkheim's acceptance of Kant's insistence on the autonomy of moral deliberation from utilitarian ends or "values" forced him to reject any answer that would subsume one within the other.

Durkheim essentially naturalized Kant's moral philosophy, but with unsatisfactory results. Since Kant was a Newtonian, he explained the "necessity" of the moral law – its obligating force – by drawing an analogy to the laws of nature. Like natural laws, moral laws are prior to and independent of the events they govern. To know the general laws which govern the relationship between certain physical entities enables the prediction of outcomes when these entities are acted upon under specific conditions; to act according to the moral law because duty alone demands it, regardless of one's desires or inclinations (even if one is inclined to be good),¹⁵ *always* enables one to effect a right, and therefore good, outcome. Upon reflection we may recognize a set of precepts which have several characteristics, chief of which are universality and consistency. All moral laws, in Kant's view, will meet the test of the categorical imperative, which he initially formulated as, "Act only according to that maxim through which you can at the same time will that it should become a universal law" (Kant 1785/1959a, p. 39). This rule or "formula" is equivalent to a law of the



physical universe (a "covering law") in that it has no exceptions and *ipso facto* yields the correct result when applied to a contingent set of circumstances. As such, it is a purely formal rule which sets limits to an individual's actions but does not prescribe the ends or goals of these actions.

Durkheim argued that Kant's solution was unacceptable because it removed the will to some "abstract place" devoid of contact with nature or society. Kant was correct in arguing that morality, like nature, is prior to and not determined by individuals. But morality's objective form is conditional upon particular, historical societies and their various material and cultural conditions, not upon what to Durkheim seemed like the logical fiat (transcendental deduction) proposed by Kant.¹⁶ Historically contemporaneous to Freud's similar perspective, Durkheim (1925/1973) maintained that the "spirit of discipline" imposed by morality develops character by constraining transient whims and arbitrary passions and focusing individuals on the "work of civilization," or in his own terms, on the "nourishing milieu of society." Hence, "The totality of moral regulations really forms about each person an imaginary wall, at the foot of which a multitude of human passions simply die without being able to go further. For the same reason that they are contained, it becomes possible to satisfy them" (p. 42).

Furthermore, although these regulations are "outside" the person, they "cannot be applied mechanically in identical ways in each particular

circumstance" (p. 23). The problem for the individual is to determine which rules apply to a given situation (as in "applicational relativity" discussed above). In his late work, Durkheim's perspective on the issue of whether rules dictate actual behavior, that is whether they are "causes" of action, remained consistent with his earlier positivism of The Rules of Sociological Method (1895/1966). Rules do, he argued, "predetermine conduct" (p. 24). This conceptualization of rule-following nevertheless contributed to the need to provide some account of the autonomy of the moral actor that did not negate the principal characteristic of a moral rule – its reflexively recognized external constraint upon the individual. To put this in the terms discussed earlier in this chapter, Durkheim's formulation explicates how rules explain order, but it does not establish how rules provide reasons for an actor to act.

The Dissenter's Dilemma and Durkheim's "Two Stools"

The significance of the major discrepancy between Durkheim's thought and Parsons' reconstruction of it can now be explicitly stated. As noted, in his discussion of the evolution of Durkheim's thinking on the nature of constraint, Parsons did not recognize any distinction between the normative and the moral dimensions of social action. Parsons reconstructed Durkheim's arguments as if the two terms "norms" and "moral norms" were interchangeable in Durkheim's discussion. But they were not. It is true that such an interpretation is understandable because Durkheim's discussions so

strongly implied that the specifically moral aspects of a society's normative order and an individual's personality are paramount for explaining the fundamental features of social order, conflict, and change. But since he collapsed the distinctions that Durkheim did in fact make, what might be called the "dissenter's dilemma," a problem Durkheim originally recognized in his own arguments,¹⁷ became even worse for Parsons (1937/1968): "The identification of the moral and the social seems in danger of elevating social conformity into the supreme moral virtue" (p. 390). In other words, if we accept Parsons' reconstruction of Durkheim's putative resolution to the utilitarian dilemma, how can we explain the reality of moral dissent, and the fact that such famous dissenters as Socrates, Jesus, Gandhi, and Nelson Mandela, often become symbols of the highest ideals of their own, or any, society?

This new dilemma highlights once again the issue of whether sociological analysis of action and order in concrete settings should proceed from the internal point of view of the actor or from the external point of view of the analyst-observer, or, in other words, whether a sociology of morals should analyze moral rules as explanations of social order or as reasons for action. The attempt to overcome the utilitarian dilemma with a formulation that locates the source of moral obligation in society leads logically to a confusing conflation of moral dissent and "conscientious objection" with crime and deviance. Durkheim's earlier positivistic

framework would suffice if norm violation could be explained as the individual's lack of successful integration, that is, as his anomic pursuit of self-interested, noncooperative goals. Social conflict and deviance would be explained in terms of changes in the social order that initiate a condition of collective anomie which is manifested in increased deviant behavior (e.g., as in Durkheim's analysis in Suicide). The analyst-observer would have access to the "social facts" which have explanatory status, but the individual norm violator, who is merely an "expression" of the larger picture, would not. The perspectives of ethical leaders like Socrates and Mandela, however, cannot be understood as self-interested without obvious contradiction, although they were deliberately noncooperative on certain issues. It was this account of the nature of constraint which, by making obedience dependent on non-contingent social facts, prompted Durkheim's original examination, by way of Kant, of the characteristics of *moral* rules.

As indicated in the passage cited above (" . . . And since normative rules, conformity to which is a duty, become an integral part of the individual's system of values in action, . . ."), Parsons introduced a *new* term into the discussion -- "values in action" -- which became the center of his own theoretical constructions:

The analysis of human action shows that it cannot be understood apart from a system of ultimate values. These ultimate values are, in terms of the means-end relationship, their own justification, and not means to any further ends. At the same time, they assume to the individual a character of obligation, for being good, not merely *for* something, i.e., as means, but in themselves; the general obligation to pursue the good is

to pursue them (p. 391).

Thus the ultimate goal or *telos* of individual action, as Parsons formulated it, is the "system of common values" which guarantee the observable "social facts" of a community. The existence of a plurality of conflicting values which expresses itself in the fact that some individuals in any given community invariably recognize different moral authorities than those generally acknowledged, is "explained" by the fact that different communities historically overlap each other. Hence a diversity of "social types" will occur, and with it the possibility of moral dissent (p. 392).

As Hilbert (1992) has cogently argued, Parsons' reconstruction was actually a radical reformulation of Durkheim's "society-morality equivalence" (pp. 47-65). Durkheim's thoroughgoing conceptual relativism led him to reject a theoretical separation of the normative-moral and the factual, *sui generis* orders. For Durkheim, the social order *was* the moral order. In the language of contemporary debates, this perspective negates a distinction between "facts and values," and implies that all theories about the empirical world are by definition "value laden," meaning essentially that both scientific and common sense theories construct the very entities that they purport to describe and explain "objectively" (Hollis, 1994). As Parsons recognized, if Durkheim followed these ideas to their logical conclusion, he would have been led to reject positivistic empiricism as a viable foundation for the social sciences. Instead, he seemed to hold on to both possibilities.

Parsons, on the other hand, reformulated Durkheim's thought and made the all important distinction between a factual order, defined as observed, organized behavior, and a normative order, defined as both the body of rules that regulate the means and methods individuals employ to realize their goals and the ultimate values that determine the goals that they pursue (Hilbert, p. 54). The observable, objective factual order was thus for Parsons analytically distinct from, but congruent with the nonobservable, normative order. The normative order, in turn, defines social actors' "subjective" view points (the "pattern variables"), which are the "internalized value orientations" reproduced in the ongoing process of socialization.

In sum, Parsons' analytic separation of facts and values enabled him to posit a causal relationship between the two, a move which reconfirms the observer-analyst's positivistic-scientific goal of establishing the exact relationship and direction between the specific variables that define both "orders" within a concrete "social system" (Bohman, pp. 30-40; see Parsons, 1951). Nevertheless, although Parsons theoretically separated facts and values, he conflated *values* – Hobbes' "objects of any mans desire" – and the *means* of achieving them, Hobbes' "dictates of natural reason, which laws concern the duties of one man to another. " As a logical consequence, Parsons subsumed morality within the "normative order," thus presupposing that all morality is conventional (particular to specific,

historical societies), but not subjective (particular to specific individuals). As I indicated earlier, this analysis led him to ignore the difficult question -- Hobbes' primary question -- of how and why individuals are obligated to "obey" norms. Obligation is only made theoretically problematic (as it should be) when ends are distinguished from means.

By interpreting Durkheim's attempted resolution to the "dissenter's dilemma" through the introduction of the concept of ultimate values, Parsons essentially returned Durkheim to a premodern conception of ethical action, which was precisely what Enlightenment rationalists like Kant had sought to refute: the "good," defined in terms of a shared way of life, dictates the "right," how individuals should act in concrete situations. Once again, this interpretation is not entirely unwarranted. Durkheim's society -- "the benevolent and protecting power, the nourishing mother from which we gain the whole of our moral and intellectual substance and toward whom our wills turn in a spirit of love and gratitude" (Durkheim, 1925/1973, p. 92) -- has much in common, but does not share the same problems with Kant's conception of the "kingdom of ends." The kingdom of ends, as defined by Kant, is a hypothetical community of people, each of whom is to be treated only as an end and never a means, through which the individual "tests" his or her maxims for action. If the individual can conclude that each person in the kingdom could act on his or her maxim without contradiction, then the maxim has met the criteria of the categorical imperative and the act is

morally obligatory (see Kant 1785/1959; Schneewind 1992).

For Kant, the "community" must always be hypothetical or else our actions would not be free (because, as discussed above, they would be dictated by external circumstances). Hence if one of my maxims passes the test, a morally obligatory act may put me at odds with the real community. For example, if the members of my community are suffering under an unjust and oppressive government and believe that it is "right" (justified) to steal from the rich to give to the poor, the categorical imperative will most likely dictate the opposite, that it is wrong. If I act in conformity to the rule, rather than in conformity to community norms, I may well be ostracized and rejected.¹⁸

For both Durkheim and Parsons, however, the community has become actualized.¹⁹ Instead of a "kingdom of ends," in which each person is an end in his or her self, the kingdom of the here and now, society, is in its totality a "thing in itself." Moral conflict has been explained from the analyst-observer's external point of view, as a clash between communities (expressed, for Parsons, as the clash between members who have different "values in action"), rather than from the actor's internal point of view, as a conflict in choosing to follow one rule or (perhaps a moral rule) over against another rule (perhaps a group norm or ideal standard). At this stage in his own development, Parsons saw this as a serious and unresolved problem, which he summarized in his famous "two stools" comment:

Thus he [Durkheim] is in the unfortunate position of falling between

two stools. He has gone so far away from true positivism that he no longer satisfies the real positivists and utilitarians as to his scientific soundness – to them he is a metaphysician. To the ethical idealist, on the other hand, he is guilty of the repression of their dearest tenet, individual moral autonomy, and hence worthy of epithets even so harsh as materialistic (p. 395).

It seems that Parsons was correct. At the conclusion of the theoretical section of Moral Education, Durkheim suggested what from a much later vantage point appear to be two incompatible resolutions to the "dissenter's dilemma."

Standing on the first stool, Durkheim (1925/1973) reaffirmed the embeddedness of both morality and rationality in a society that is "sui generis": "For our reason is not a transcendent faculty; it is implicated in society and consequently conforms to the laws of society" (p. 110). And further, "Since morality expresses the nature of society and since this nature is no more directly apprehended by us than the nature of the physical world, individual reason can no more be the law maker for the moral world than that of the physical world" (p. 116). Nevertheless, reaffirming the tenets of classical positivism, he argued that the methods of science can provide objective knowledge about the conditions of both nature and society that shape us. And confirming the perspective and goals of functionalist analysis Durkheim additionally maintained that, "on condition of having adequate knowledge of moral precepts, of their causes and their functions, we are in a position to conform to them, but consciously knowing why." Consequently, we will also be in a position to "root out" any "abnormal elements" that have evolved under specific social conditions (p. 117). This direction, carried to its

logical conclusion, would presumably entail "rooting out" the full range of deviants as well, including moral dissenters.

The problems with this direction, which has already been addressed in terms of Parson's reconstruction, have been given much attention by contemporary critics. Durkheim's argument that scientific rationality can provide an independent means by which to judge the adequacy of moral precepts to particular social conditions is self-contradicting. "By assuming that the needs of society could ultimately be specified by scientific inquiry alone, and that adaptation to them required no further justification . . . , Durkheim failed to confront . . . the crucial role of evaluation within the structure of his own thought" (Lukes, 1973/1985, p. 430). As Lukes implies, Durkheim was articulating a version of the naturalistic fallacy, by proposing that we can discover what we ought to do by analyzing what it is we do (do). Some prior notion of what constitutes a "good" or a "normal" society must be presupposed in the assertion that science can discover "abnormal elements" in a society's moral codes through empirical analysis. This stool, the one which Parsons will ultimately stand on, represents the focus on the latter aspect of the individual's "double relation" to the normative order: the values which inform the "direct ends of specific acts and complexes of them" (Parsons, p. 401).

But Durkheim did not give up modernism's distinction between the good and the right. Standing on the second stool, he returned to the internal

standpoint of the actor's point of view, and stressed another important ingredient of the moral point of view, that of intentionality. Morality requires not passive deference to a rule, but "enlightened assent": ". . . we must have knowledge, as clear and complete an awareness as possible of the reasons for our conduct." (Durkheim, 1925/1973, p. 120) Hence the sense-making, interpretive capacities of actors is an essential element their identity as *moral* actors. It was specifically at this point in his discussion of these issues that Durkheim returned to his original consideration of the demands of modernity in terms of how to develop a "moral education." The conditions of the modern world require that we relinquish the "old" (premodern) way of inculcating morality, which lay emphasis on the act or behavior itself as either in conformity or not with authority, as either acting in accordance or not with one's predetermined statuses and roles in society. Instead, ". . . beyond this first level of awareness, we require another, which goes deeper into the nature of things – the symbolic explanation of the rule itself, its causes and reasons for being." And so teaching morality "is neither to preach nor to indoctrinate; it is to explain" (p. 120).

This direction of Durkheim's thought returned to Kant's philosophical rationalism, which gives a privileged, transcendental or quasi-transcendental role to reason both as an arbiter and, if not an architect, then an organizer of experience. His prescient comment about explicating the "symbolic nature of the rule itself" suggests a focus on the second stool, on the activity of

practical-moral reasoning within the concrete settings that provide the occasions for participants to make their own and each others' actions accountable. This focus on moral rules maintains the Hobbesian distinction between the objects of our desire or "values," and the rules of cooperation that enable us to achieve them. Stretching Durkheim's language, I would argue that Durkheim implicitly realized that values motivate, but they do not obligate. As many scholars of modernity have put it, we are obligated to follow the rules of "fair play," or in other terms, to "procedural justice," in striving to achieve our diverse goals, but not to any goals themselves (Habermas, 1990). But Durkheim's secular, scientific perspective discounted both Hobbes' natural law and Kant's apriori deductions as the source of these rules. Ultimately, he could find no source of obligation other than the "rules of duty" dictated by and within one's own society, which, significantly, gives moral rules the same standing as the norms of custom and habit. As discussed earlier, Durkheim wished to preserve the distinction between moral and non-moral norms, and to describe moral norms in non-conventional terms.

Nevertheless, although the first direction or "stool" was a rejection of Kant's asocial conceptualization of rationality, Durkheim always referred to himself as "renovated rationalist" (Mestrovic 1988, pp. 40-53²⁰). And his attempts at integrating Kantian epistemology and moral philosophy with empirically derived insights into the deeply social nature of human reality

anticipated some of the most contentious and significant debates in Anglo-American analytic philosophy during the 1970s and 1980s.²¹ For the present purposes of this study, Durkheim attempted but was unable to integrate both "stools" in the development of a sociology of morality. That he raised these issues and addressed them specifically in the context of the defining characteristics of morality has gone virtually unnoticed by most sociologists. Instead, the problem of necessity and freedom, first posed by Enlightenment thinkers in terms of providing an adequate, nontraditional basis for moral authority, was transmuted by twentieth century American social scientists into the series of bifurcations which dominate contemporary theory today: between collectivist versus individualist explanations of social order, between macro- and micro-levels of analysis, between a focus on structures versus a focus on interactions, between deterministic and contingent frameworks for explicating social action. In the meantime, Durkheim's ambitious, life long project slipped almost unnoticed between the stools of "either/or" into the discipline's collective, if nebulous, affirmation of ethical relativism.

Talcott Parsons realized the complex ramifications of the "dissenter's dilemma" and how far Durkheim had come from his earlier work in recognizing the limitations of positivistic analysis for explicating individual action and social order. And many subsequent commentators have

scrutinized Parsons development of a "voluntaristic theory of social action" in The Structure of Social Action as an attempt to overcome the bifurcation of the subjective (participant) and objective (observer) perspectives, so sharply confronted by both Durkheim and Weber. As the title of the pivotal chapter discussed here suggests, Parsons framed this issue in terms of "the development of the theory of social control." Although one of the central sociological issues that directed all of Durkheim's work was the locus of constraint on individual action, social control was not a term that he employed. Even before Parsons' generation, however, this term played a prominent role in the development of American sociological theory (Ross, 1991, pp. 219-256). It was therefore no accident that Parsons drew upon this legacy in his attempt to develop a new synthesis of the insights of classical sociology.

As we have seen, Parsons' crucial shift to the focus on values, as conceptions of the good which internalized become "moral" orientations, is a shift away from the actor's point of view, from the cognitive engagement of following a (moral) rule. Concluding his chapter, Parsons reiterated that Durkheim had developed a "theory of social control" which provides a framework for the study of social institutions: "This body of rules governing action in pursuit of immediate ends in so far as they exercise moral authority derivable from a common value system may be called social institutions" (Parsons 1937/1968, p. 407). Consequently, as Anthony Giddens later argued,

"The attempt to provide a treatment of voluntarism in the context of a theory of institutions becomes reduced to an emphasis that social theory needs to embody a theory of motivation rather than providing a framework that relates motives to the rational monitoring of action" (Giddens 1978, p. 281). Nevertheless, Giddens conclusion about Parsons, in my view, continues Parsons' error of overlooking Durkheim's original discussion, which recognized that the relationship between motives and rational deliberation arises specifically within the context of and becomes critical for the sociological study of morality.

Many writers have discussed Parsons' legacy to sociological theory.²² Following Wrong's early critique, the consensus of these discussions is that Parsons developed an "oversocialized concept of man" in which social order is merely reproduced, in Harold Garfinkel's term, by "judgmental dopes" (Wrong, 1961 and 1994; Garfinkel, 1967). For Parsons, social norms internalized become reasons for action (the actor's "mode of orientation") which in turn become the causes for the existing social order. The observer/sociologist, but not the subject/participant, has access to the elements of normative social order that constrain and determine the "pattern variables" of subjective actions. In the familiar terms of the longstanding "freedom versus determinism" debate, deliberation and its cognates, intentionality and reflexivity, deemed so essential by both rationalist philosophers and ordinary English language users for understanding the

"moral point of view," has been eliminated.

Social Control and the Concept of Morality

His inheritance of early American sociological theory probably influenced Parsons to interpret Durkheim's sociology of morality under the rubric of social control. Social control is one of the most significant, or at least prominent, concepts in the history and development of American sociological thought (Ross, 1991; Janowitz, 1991; Meier, 1982; Gibbs, 1981).²³ Although Parsons' broader theoretical framework has largely been rejected, the normative approach has become sociology's ubiquitous underlying assumption about the relationship between individual action and social order. The history of social control theory is therefore important for understanding the abandonment of theory and research on the sociology of morality. It is also important, constructively, as I will argue later, for developing an approach to the study of morality which takes into account issues about the legitimacy of a particular social order as they affect participants in that order, such as, for example, how channels of authority and power in an organization influence its members' deliberations about which norms are applicable to given situations.

Following E.A. Ross, early sociological conceptualizations of social control focused on virtually all those social practices and arrangements that contribute to the social order, including religious rituals and voluntary associations. But Ross and the later Chicago School sociologists lacked a

social-psychological theory to explain the relationship of organized social practices to concerted individual choices. Both Parsons, as we have seen, and G.H. Mead turned their attention to this question, and Mead, as well, cast his discussions in terms of social control.²⁴

The concept of social control has undergone several major connotative transformations in which the emphasis on the locus of control has shifted. On the one hand, sociologists influenced by the Chicago School tradition or Parsonian structural-functionalism have conceptualized social control as providing the precondition for a stable social order, constructive social change, and well developed individual identity. Social control is thus conceived as the internalized dispositions of adequately socialized individuals who further the work and aspirations of their culture. On the other hand, those influenced by the Marxist and critical theory traditions generally have conceptualized it as the outcome of the relations of power between classes or other groups. Under the postwar influence of Marxism and post-Marxists like Michel Foucault, emphasis was placed on social control as institutionalized responses to perceived or actual violations of the social order (i.e. crime and deviance). (See Black, 1993, pp. 3-4.)

Although the explanatory frameworks of structural functionalism and earlier versions of "scientific" Marxist social theory are different, both conceptualized morality as one aspect of the normative or normative *qua* ideological social order. Sociological analysis in this vein has been

consistently "constructionist" with regard to morality, but objectivist with regard to the principal factors that determine the content of moral beliefs and values.

Recent critics of normative analysis who continue American sociology's longstanding focus on social control have rejected the second, objectivist explanatory framework that was linked to empiricist and positivist methodological assumptions. These critics developed what became the broader social constructionist perspective on social problems, which rejects the existence of any *a priori* set of objective factors that determine (are causally connected to) the content of social institutions and putative definitions of deviance, and the outcomes of social conflict.²⁵ Scholars who embrace a more moderate version of social constructionism do not add anything substantive to the older view of morality; they simply historicize the normative approach in order to achieve a more pluralistic perspective on normative definitions of deviance and morality within a given society. This moderate constructionist perspective focuses on the ". . . 'emergence and maintenance of claim-making and responding activities'" (Kitsuse and Spector, 1973, quoted in Schneider 1985, p. 211).

More radical versions of the constructionist approach, which are based on anti-positivistic, interpretive methodological theory, assume the meta-ethical version of ethical relativism described above. Proponents of this view argue, in essence, that there are no rational concepts or criteria by which

we can assess the moral commitments of other groups that are not themselves already implicated in a "form of life." (For examples, see the essays collected in J. Margolis, M. Krausz, and R.M. Burian, Eds., 1986; MacIntyre, 1981; Taylor, 1989.) In traditional normative analysis, morality is generally understood as a positive aspect of well integrated societies and individuals. But in radical versions of the constructionist social problems approach, morality is (tacitly, at least) framed negatively, as part of the symbolic support system (ideology or claims-making rhetoric) which serves the goals of those who endeavor to control various aspects of the social order and to limit freedom – at least other people's (hence the term "moral entrepreneur").²⁶ Scholars who appropriate this perspective, therefore, often explicitly associate morality with moralism and analyze putative moral discourse in terms of the politics of coercion and conversion. The logic of this point of view leads inexorably to the conclusion that intellectual activity which seeks to explain and understand the process of coercion and conversion itself cannot be exempt from certain *a priori* commitments. When confronting this issue, therefore, constructionists have tended to redefine the classical notion of scholarly objectivity to an obligation to articulate their own commitments to particular forms of life and worldviews openly, without "universalizing" the values and perspectives obtained from these commitments.

Normative Sociology and Ethical Naturalism

Normative sociology's approach to morality is perhaps best understood as a version of "ethical naturalism," a doctrine that emerged within the context of nineteenth century empiricism.²⁷ One of this doctrine's most prominent philosophical proponents has argued that, "In its [ethical naturalism's] most plausible version . . . different agents are subject to different basic moral requirements depending on the different moral conventions in which they participate" (Harmon, p. 189 in Krausz and Meiland, 1982). In turn, moral conventions are a product of other, nonmoral conditions. Since morality conceived from the observer's external point of view is part of the nonrational (not irrational) social order, social scientists have often confused or conflated their levels of analysis and inferred that individuals' moral deliberation about specific circumstances entails *arbitrary* choices, because the content of these deliberations (moral precepts, standards of evaluation, etc.) is ostensibly dependent on operative socializing influences beyond individuals' control. These socializing influences then may be construed as part of larger cultural or ideological perspectives which are somehow related to a collectivity's or group's material constraints and social institutions. From within this perspective, therefore, "truth in morals is determined by the goings-on in some other realm" (Pidgen, 1993, p. 423).

The sociological version of ethical naturalism avoids the immediate

pitfalls of ethical subjectivism, the view that morality is merely the expression of individual feelings or desires and therefore not related to the social or intersubjective realms. To this extent sociological naturalism, as illustrated in Durkheim's early work, has cognitivist implications in that it implies that individual justifications or evaluations entail deliberation about the applicability of various norms or principles, the origin of which is external to the individual deliberator (Pidgen, 1993). Public evaluation of whether an individual's judgment is "right" or "wrong," therefore, is independent of considerations about his or her subjective states of mind. Nevertheless, each individual's actual judgments will be influenced by motivations that *do* originate in subjective states of mind that include both conscious and subconscious content. In our everyday communication, we allow that some of these subjective motivations may lead us to an incorrect application of a moral rule or "more" to a specific situation.

For example, a young child attempts to obtain a portion of food larger than the equal shares her parent is serving to other siblings or friends. It is customary (in our culture) for the parent to admonish the child and in some fashion to assert that, in *this* kind of situation, equal shares or "reciprocity," rather than fairness based on criteria of greater need or desire, is the appropriate principle of distribution.²⁸ Unless exceptions are explicitly and publicly stated otherwise, the reciprocity principle is the normative criterion of apportionment at virtually all social functions in our culture at which food

is served. This is why, on the occasion of a norm violation, reactions (sanctions) can vary from outright social ostracism to a more subtle form of chastisement liking joking about the violator's weight. By definition, however, the "rightness" of actions or evaluations that entail consequences with significance beyond an individual's immediate satisfactions are judged in terms of the individual's competence at applying nonsubjective, "externally derived" normative rules and principles to a given situation.

In taking the observer's point of view and identifying those aspects of the environment which determine the value orientations that become "reasons" for actions, Parsonian influenced normative sociology embraced ethical naturalism. Despite the fact that a cognitive aspect was at least implied in the normative model of social action, however, the focus on this aspect or "stool" of the evaluative process was suppressed. Instead, normative sociology's explanatory framework continued classical sociology's collectivist approach to the problem of social order by assigning causal priority to macro-level features of the environment and ignoring the constitutive dimension of intentionality and reflexivity, or, more broadly, the meanings people assign to their experiences. Social constructionist critics of normative analysis have not challenged the fundamental assumption of ethical naturalism, they have merely denaturalized the nonmoral conditions from which moral conventions are ostensibly derived. Both the Parsonian influenced normative approach and the newer social constructionist and

critical theory approach to social analysis continue to conceptualize morality as one aspect of a group's or a culture's systems of social control, and thus as one in a larger constellation of factors that explain social order. Both perspectives make the connection between a society's institutions of social control and its moral "conventions" an explicit aspect of social theory and analysis. Lost in these perspectives was Durkheim's latent recognition that a well developed and conceptualized sociological approach to morality may present a special kind of challenge to a collectivist, "social fact" conception of moral norms.

The disciplined detachment of the analyst-observer's point of view helps us to explain why the contingent choices of individuals result in the enduring features of coordinated behavior we call social institutions. As Durkheim (pace Kant) realized, however, the observer's explanations obscure the most distinctive aspect of our moral experience:²⁹ the unique coalescence of obligation and freedom in the moral point of view. Morality is, as Durkheim so eloquently argued, implicated in the social order both as an external and an internal force. Lacking a framework for identifying, much less, explicating social action that includes action taken from a moral point of view, social scientists have been unable to explain stability, conflict, and change in local social orders (such as organizations or communities) without explaining away the way in which the participants in these settings describe their own and others' contributions to it. Consequently, the approach to

morality as an external factor of an environment which exerts pressure on individuals "behind their backs" to act in certain ways cannot make sense of the acute distress people experience in environments which seem to reinforce the ongoing violation of moral principles and rules in favor of group specific norms or self interest. This theme will be developed in subsequent chapters.

Refocusing on the cognitive aspect of normative codes of conduct involves recognition that individuals' selection of rules or norms as guides to action in concrete situations is not predetermined, even when they are not reflexively aware of making choices. The fact that a person may have a set of rules and norms applicable to certain situations available to her as part of her membership in a given culture or group does not imply that she attaches any specific meanings to these rules in those settings. As Wittgenstein observed, if this were the case, then knowing the rules would be same as acting on them, which would eliminate the possibility of "playing the game," or to be more precise, would eliminate the concept of a game (Wittgenstein, 1958, Section 197; see also section 208). Meanings, from the actor's point of view, are derived from contexts, and the "social facts" of contexts are indubitably intersubjective, based, in Jurgen Habermas' term, on communicative action. It is in this sense that social scientists standing on Durkheim's other stool have argued that social order is not maintained through structure, but is the ongoing construction of "local knowledge" (Geertz).

1. There are many accounts and interpretations of the Enlightenment separation of morality and religion, summarized too briefly here. For example, see MacIntyre, 1981/1984; Toulmin, 1990.
2. The terms "norm" and "rule" are used interchangeably by both Durkheim and Parsons, presumably because evaluative statements expressing a norm, such as "she is polite person and always says 'hello' when I see her," can be formulated as a social rule, such as, 'always return a greeting.'" (See Chapter Four.)
3. This list undoubtedly does not exhaust all the syntactic forms for or semantic possibilities of regulative rules. See Edgerton, 1985 for an anthropologist's discussion on the cultural variety of rules and rule exceptions. There is also the cross cultural question as to whether some cultures conceptualize prescriptions for and evaluations of social conduct in "regulatory" terms at all, which is clearly significant for cross cultural work in the sociology of morality and for the assessment of empirical claims for ethical relativism. See also Ladd, 1957, pp. 49-60.
4. Unless the person's acts are being examined in a criminal trial, in which case the two standard common law exceptions, duress and insanity, might apply.
5. In The Division of Labor in Society (1893/1984) and The Rules of Sociological Method (1894/1966).
6. For the purposes of this study I cannot hope to do more than outline the ideas that I take to be germane to the concerns of this chapter. Durkheim's ideas on morality, for example, were influenced by many other strains of nineteenth century social theory that Parsons does not discuss and that I do take up here (Lukes 1973/1985; Hall 1987). Since my objective is to isolate the concepts and theoretical assumptions that I think are most important for the sociological study of morality, my account of the ideas each of the thinkers discussed, including Hobbes, is necessarily selective.
7. Martinich (1992) makes this point in reference to philosophers' interpretations of Hobbes' theory of human nature and its relationship to social order and political organization. But secular interpretations by sociologists are common as well. For example, see Wrong's (1994) nuanced assessment and Travis Hirschi's (1969) perfunctory treatment in his Causes of Delinquency (Berkeley, CA: University of California Press) which has so influenced control theory in sociological criminology.

8. Although he is critical Parsons' interpretation of Hobbes' thought, Wrong (1994) also describes Hobbes' analysis of self-preservation as a "passion" which provides the primary motivating force behind much of man's behavior (p. 72). As I discuss below, I think this interpretation is incorrect, and it leads to misleading conclusions about Hobbesian social theory.

9. The most recent and prominent school of thought on Hobbes has been developed by neo-utilitarian rational choice theorists who interpret him as the most important modern progenitor of a radically individualist perspective on human nature for which religion has no direct implications. David Gauthier's (1986) Morals by Agreement (NY: Oxford) is probably the best known example of this kind of interpretation. Gauthier argues that, "Hobbes transformed the laws of nature, which lay at the core of Stoic and medieval Christian moral thought, into precepts of reason that require each person, acting in his own self-interest, to give up some portion of the liberty with which he seeks his own survival and well-being, provided others do likewise" (p. 10). My own interpretation, which draws most heavily on Martinich's (1994) and Ewin's (1991) more historically grounded exegeses, directly contradicts this view. The point for the reader is that contemporary Hobbes scholarship on the issues discussed here is very contentious, with remarkably divergent interpretations of the same texts.

10. This is an over simplification of both the vagaries of Christian theology over the centuries and of Aristotle's ethics, but I think the point can still hold. Christian theology generally equated passions with man's propensity to sin and his concomitant suffering. Thus man's happiness, which can only come from God, cancels out his desires (Martinich, 1992, p. 119). On Aristotle, MacIntyre (1981) writes, "An Aristotelian theory of the virtues does . . . presuppose a crucial distinction between what any particular individual at any particular time takes to be good for him and what is really good for him as a man. It is for the sake of achieving this latter good that we practice the virtues and we do so by making choices about means to achieve that end . . . (p. 150).

11. Various interpretations have been offered by Hobbes scholars as to what Hobbes meant by man in his "original condition," or "state of nature." The Parsonian-sociological interpretation is that Hobbes was making empirical claims about human psychology and its relation to the evolution of human societies. More historical-exegetical accounts are offered by Tuck (1996) and R.E. Ewin (1991). Ewin argues that Hobbes' method was to develop logic-based models of explanation, as in the mode of Euclidian geometry (pp. 7-25). Tuck suggests that we might think of Hobbes' invocation and description of the state of nature as a "thought experiment," but goes on to point out that Hobbes sometimes seemed to indicate that people might actually devolve

their social relations into something closely approximating it (xxix-xxx).

12. Many of Hobbes' less elite contemporaries in the Dissenting tradition, for example, would vociferously disagree with him on this point. Radical seventeenth century Dissenters, in particular, took to antinomian extremes the Pauline view that "the law" (which was equated broadly with Mosaic moral law, the doctrines of the Established (Anglican) Church, and the secular power of the monarchy), was established in man's state of sinfulness and could not overcome it. Only "Faith," not law, could justify man before God and release him from the temptations and suffering of this world (see Galatians 3:10-29). See E. P. Thompson's (1993) Witness Against the Beast (New York: The New Press) for a discussion of these issues in seventeenth and eighteenth century England.

13. I am not suggesting that the various versions of utilitarian social theory do not provide possible rejoinders to the kinds of objections that Durkheim, Parsons, and many others have raised. But it is beyond the scope of this study to explicate these.

14. Based on the bibliography of Durkheim's publications compiled by Steven Lukes (Lukes 1973/1985, pp. 561-590). Sociology and Philosophy reproduces three essays published in 1898, 1906, and 1911. Moral Education is a collection of eighteen lectures Durkheim delivered during the years 1902-1907.

15. For Kant, inclinations are derived from psychological, natural, or social influences and therefore are an expression of "heteronomy," determined by forces external to the will, rather than an expression of autonomy, determined by an agent who freely wills to act according to the law.

16. Kant and other eighteenth century thinkers did not, of course, apply their understanding of the empirical knowledge made possible by science to the study of society. That task lay beyond them. My discussion here oversimplifies Kant's attempt to reconcile Newtonian determinism in terms of the physical world with his postulate of an absolutely free will, uninfluenced by motives derived from empirical experience. See Schneewind, 1992 for a discussion and summary.

17. Durkheim, 1925/1973, pp. 90-94 and 1924/1953, pp. 65-68.

18. I do not mean to suggest that the Kantian formulation does not have its own problems, but it is beyond the scope of this discussion to address them. See Williams, 1985, pp. 54-70 for a critical summary and analysis.

19. This discussion obviously alludes to the much written about dispute

between rationalists (in the deontological tradition) and communitarians which runs throughout modern intellectual history, from Hegel's critique of Kant and Marx's appropriation of it onward. To the best of my knowledge, however, this dispute has not been analyzed in the context of the issues raised here.

20. Mestrovic cites a good (and one of many) example(s) of Durkheim's attempt to articulate his new synthesis: "Thus renovated, the theory of knowledge seems destined to unite the opposing advantages of the two rival theories, without their inconveniences. It keeps all the essential principles of the apriorists; but at the same time it is inspired by the positive spirit which the empiricists have striven to satisfy. It leaves the reason its power, but it accounts for it and does so without leaving the world of observable phenomena. It affirms the duality of our intellectual life, but it explains it, and with natural causes. The categories are no longer considered as primary and unanalyzable facts, yet they keep a complexity which falsifies any analysis as ready as that with which the empiricists content themselves. . . ." (Mestrovic, 1988, p. 43, citing Durkheim, The Elementary Forms of Religious Life, 1912/1965, p. 32).

21. See the essays collected in Krausz and Meiland, 1982 for an overview.

22. For example, see Wrong, 1994; Hilbert, 1992; Giddens, 1979; Bohman, 1991; Alexander, 1988; Heritage, 1984.

23. See Ross, 1991, pp. 219-256, on the historical context that contributed to genesis of and subsequent preoccupation with the concept of social control in American sociology.

24. For example, here is one of Mead's classic statements: "Social control is the expression of the 'me' against the expression of the 'I.' It sets the limits, it gives determination that enables the 'I,' so to speak, to use the 'me' as the means of carrying out what is the undertaking that all are interested in. . . . [and so] an institution is, after all, nothing but an organization of attitudes of the others that control and determine conduct" (Mead, 1934/1977, pp. 238-239). Moreover, *social control* is effective *moral* control when the individual takes the point of view of his society (the "me"): "He is putting himself in the place of the generalized other. . . ., and a person who has such an organized group of responses is a man whom we say has character, in the moral sense" (p. 226).

25. See Schneider, 1985 for an overview of the social constructionist perspective on social problems.

26. Another alternative is found in the strain of postmodernist social theory most heavily influenced by Nietzsche which seems to incorporate his view that morality is an expression of the vindictive false consciousness of "the oppressed." This perspective, therefore, may have nihilistic overtones not found in Durkheimian and Marxist-influenced theory. See Rosenau, 1992, who defines this perspective under the rubric of "skeptical" postmodernism.

27. Other forms of ethical naturalism include the psychological naturalism of Freudianism, the hedonistic naturalism of some utilitarians (i.e. the good and the right are determined by whatever is defined as pleasurable), and the neo-Darwinian naturalism of sociobiology (Pidgen 1993).

28. Note that the child's *motivation* is subjective. She may be trying to take more than her share because she's hungry, because she's greedy, because she's attempting to show off in front of her friends, or because she is "acting out" anger toward her mother which originated in another context. It is the invocation of the norm by the parent on such an occasion, and the reasons given for its invocation which are not subjective. The child will learn that the motivations of mild hunger, desire, and bravado cannot provide acceptable reasons (as justifications) for her behavior.

29. At least of moral experience as it has been described and explicated in the Western tradition. I add this qualification because, as argued above, I do not think an adequate framework for social scientific research on morality has been developed that would enable generalizations to or comparisons with other cultures (although the suggestive and insightful theories and documentation of certain scholars, discussed throughout, should be acknowledged).

Chapter 4. Ethnomethodology and the Constitutive Model of Rule Following Behavior: Towards a Sociological Approach to Mundane Morality

Not surprisingly, it was one of Talcott Parsons' students, Harold Garfinkel, who refocused the sociological agenda on the Kantian/Durkheimian conundrum.¹ Garfinkel's "respecification" in sociology was part of a much larger trend – the "linguistic turn" (or to coin a more encompassing term, the "cognitivist turn") in American social science, literary criticism, and philosophy. As I shall argue, the focus on and reevaluation of rule-following behavior is an essential step toward developing a theory of social order which on its own terms does not ignore moral deliberation as one possible aspect of communicative interaction. Ethnomethodology continued the Durkheimian focus on the relationship between the factual and the social orders, and Garfinkel's critique of Parsonian sociology can be understood, as I have suggested, as a direct continuation of the "two stools" problem.²

Durkheim, it will be recalled, conceptualized norms as rules which regulate the means by which individuals pursue their objectives. Parsons accepted this conceptualization of norms or "values in action," and added the concept of "ultimate values" to define the objectives individuals pursue as the internalization of ends that preexist in the socio-normative order. Durkheim's and Parsons' regulative conception of rule-following suggested a

"Russian doll" paradigm of normative behavior: every social interaction could be interpreted as a display of actions which conform to a potentially infinite series of norms, each norm referencing another "deeper" one, and so on. The resulting conception is of human action, including putatively deviant action, as entirely "normalized" (or "moralized").³ In contemporary terms, this is a picture of humans acting like very sophisticated computers which have been programmed with a vast set of software applications (i.e. a series of interconnected rules) that guide their "intelligent" communication with each other.

Harold Garfinkel argued, in sum, that for people other than social scientists, this "model of man" seems inadequate:

A favored solution [of the sociologist] is to portray what the member's actions will have come to by using the stable structures – *i.e.* what they *came* to – as a point of theoretical departure from which to portray the necessary character of the pathways whereby the end result is assembled. Hierarchies of needs dispositions, and common culture as enforced rules of action, are favored devices for bringing the problem of necessary inference to terms, although at the cost of making out the person-in-society to be a judgmental dope (Garfinkel, 1967, p. 68).

The Intelligibility and Intersubjectivity of Action: Rules of Play

Like Wittgenstein in philosophy, Garfinkel explicated the inadequacies of the regulative concept of rule-following and its concomitant model of action through the analogy of playing a game (Wittgenstein, 1958; Garfinkel, 1963). On first consideration, games seem like a perfect prototype in miniature of human behavior as theorized by the regulative model of

rule-following assumed by normative sociology. Games have a set of "basic rules" which stipulate, ". . . a scheme for recognizing and interpreting the other players' as well as [one's] own behavioral displays as events of game conduct. . . .[and]. . .define the situations and normal events of play for persons who seek to act in compliance with them (a *player*)" (Garfinkel, 1963, p. 190). In addition to the basic rules, every game will have what Garfinkel termed "rules of preferred play" and "game-furnished conditions." Rules of preferred play stipulate "pre-game conditions" such as the order of players' turn-taking, the number of players in the game (if these are variable), or even aesthetic considerations such as the assumption (normative expectancy) of silence or minimal communication between players and spectators, etc. Game-furnished conditions include such considerations as whether all the information a player requires to make his move is provided by the preceding move of his opponent (as in chess), or whether moves are determined by bluffing and speculation as well as the information revealed in a previous move (as in poker) (pp. 191-193). These three types of rules identified by Garfinkel may be understood as comprising both the contractual and the pre-contractual elements of concrete settings identified by Parsons in his discussion of Durkheim's critique of the utilitarian model of rational action.

Two significant and interrelated questions arise from this description of game playing. First, suppose we observe a group of players who are engaged in playing a game and we observe them long enough to put together

a list of the apparent set of rules which are governing their moves in the game. Will we be able to determine, on the basis of this list, that these people are playing a "game"? Second, if we describe these people's activity by iterating a set of rules to which they ostensibly subscribe, will we be describing what they are actually *doing* when they play the game?

Both questions entail the interrelated issues of the intelligibility and intersubjectivity of social action. Wittgenstein illustrated the problem when he described two possible scenarios of putative game playing. In the first, two members of a tribe who "are unacquainted with games" go through all the moves of chess, including the "appropriate mental accompaniments." In the second, the game of chess is, "... translated according to certain rules into a series of actions ... not ordinarily associated with a *game* -- say into yells and stamping of feet" (Wittgenstein, 1958, Sec. 200). Wittgenstein proposed that if we observed the first game, we might be *inclined* to say that a game of chess was being played. But the second example seems uncertain. On what basis would we assert that these people were playing a game?

The first scenario actually provides a good illustration of the regulative model of rule following in normative analysis, and further reflection reveals that our tribespeople are not *playing* a game; they are dupe-licating one. This is because their actions are actually unintelligible to both themselves and to each other. Playing the game of chess requires not only that the players have knowledge of the rules, but also that they be knowledgeable *about* how to use

them. Being knowledgeable about rules is, among other things, knowing "how to go on" in virtually every instance of rule breaking, which could include, for example, responding to an incorrect move (I move a bishop laterally), responding to a breach of etiquette (I sing loudly as you decide how to make your next move), or responding to a new requirement, such as a third party who suddenly appears with a clock and says, "here, use this for your next game." The basic rule, "bishops can only move diagonally" cannot tell you how to respond when I move it laterally; nor can a "precontract" rule in the form of a sanction, such as, "refuse to play any more when your opponent moves a piece incorrectly" provide any real guidance. (How do you know that I knew that I was moving the piece incorrectly; or suppose I say, "Oh, but I won't do it again." What should you do?)

Knowledge of the "rules of play" does not exhaust what the players need to know in order to go on with the game. What the players need to know is "what everyone knows" in this situation, which, in sum, is a social context that includes the practice of game playing with an accompanying set of reasonable expectations about "going on" in the exigent circumstances of their actual game playing. Only people who know "what everyone knows" can engage in the kind of "accountings" of their actions that will enable us (the observers) confidently to assert that a game is being played. (Garfinkel, 1967) The "morally relevant property" (MacIntyre, 1992) of game playing, therefore, cannot be knowledge of the rules of a game. What makes our

actions intelligible to each other when we play a game is our "sharing," not "having," a social context in which games are played. Only if we share a "form of life" which includes playing games will you be able to ascribe any meaning at all to my mistaken move, that is to perceive my act as an action, as an intentional communication requiring a response, or alternatively, as an unintelligible action that requires some kind of acceptable explanation before we go on with the game.⁴

Wittgenstein's second group of putative chess players – the people who translated the original game into foot stomping and yells – will meet these criteria. Some reflection on the communication between the players that was required to make their project successful will lead us to conclude that their activity can indeed be construed as playing a game. If we observe them long enough we will see that are indeed "knowledgeable about" their game. Unlike the earlier tribespeople whose chess "game" would undoubtedly be of very short duration, these players will stop and start with a great deal of confidence in their ability to manage whatever unforeseen circumstances occur. Nevertheless, whether, upon meeting these players for the first time with no knowledge that the game they are engaged in playing was originally derived from chess, we would ever arrive at the conclusion that "this game is chess," is questionable. After lengthy and systematic observation, I suspect we might conclude that "this game is 'sort of like' chess." ⁵

Thus far we have seen that a compilation of rules which serve as the

reference points for the players' moves is not sufficient for determining whether they are in fact playing a game. We first must be able to determine whether their actions are actually intelligible to each other, and this will depend upon whether they share a social context that includes "game playing." Our next move as social scientists trying to discover the relevant properties of game playing will thus be to try to describe what goes on when people "share a social context." Garfinkel undertook this task by creating his famous series of "breaching experiments," to which my (much more) simple example of breaking a basic rule of chess alludes. His idea was that an "economical" way of exposing the stable and enduring features of an interactional event would be to introduce artificially anomic elements into it. In such a situation, "The operations that one would have to perform in order to produce and sustain anomic features of perceived environments and disorganized interaction should tell us something about how social structures are ordinarily and routinely being maintained." (Garfinkel 1963, p. 187). Garfinkel developed several key terms to describe the results of these experiments which I will employ to continue the original example of violating a chess rule.

So: your response to my incorrect lateral move of the bishop will, first, be influenced by the conditional features of our situation, which may include among other things the nature of our relationship (we are friends) and our present moods and perceptions of the other (you see that I am particularly

agitated but you're not sure why), and so on. Second, you will employ what Garfinkel called "*ad hocing*" procedures with which you will explore the *et cetera* clauses of our common understandings ("what everyone knows") about the situation in order "to go on" with it. In response to my breach of the rule, therefore, your *ad hocing* may proceed as: (1) You respond initially by questioning my action, but then wait for my reply before continuing. . . (*et cetera*). (2) If my response fits into a range of acceptable justifications (such as forgetting the rules, very poor eyesight, a proposal to change the rules of the game and "see what happens," etc.), you will counter respond without great alarm or hostility, and then . . . (*et cetera*). (3) If I indicate that I'm not taking the game seriously, you may (or may not) object and we'll argue a bit. . . (*et cetera*). (4) If my response does not fit a range of acceptable justifications, e.g. if I refuse to explain my actions, you then have a "right" to protest. . . (*et cetera*).

Each of these *ad hoc* responses to a perceived anomic event includes both our "common understandings" and an *et cetera* clause to these common understandings. The *et cetera* clause essentially specifies that any contingent response on the part of the players will be reconciled, if necessary, with their "reasonable" or "constituent expectancies" of the situation. These expectancies are an unstated aspect of all communication; the players must assume an attitude of "trust" (Garfinkel 1963) as a prerequisite to meaningful interaction. If, however, I respond to your questioning about my incorrect

move as in (4) above, I may breach this a priori trust, which is what the "investigators" in Garfinkel's experiments did. In any case, neither the "what everyone knows" common understandings and the *et cetera* clauses attached to them, nor the practice of *ad hocing* is included in any of the three types of rules that define a specific game. As Garfinkel's experiments revealed, however, they are essential to the practice of game playing.

A most significant fact about Parsons' "model of man," therefore, is that although it described how social order is shared, it did not really show how it is reproduced because "reproduction" requires more than having and applying the rules. If rules are not employed by actors to specify "necessary" courses of action, then neither can they be used by social scientists to predict outcomes. This insight might incline us to conclude that the "utilitarian problem of order" was not, after all, resolved by Parsons' Durkheimian reconstruction. Following Heritage's analysis, however, it seems that Garfinkel, (drawing on the work of Alfred Schutz, discussed below) actually identified a "cognitive 'problem of order'" which may be construed as prior to the traditional Hobbesian formulation. (Heritage 1984, p. 70) In this "problem," the social actors are continuously engaged in making sense of a set of pre-given rules under completely unspecified conditions. Yet it was this process of "making sense of" that Parsons ignored: "To treat instructions [i.e. rules/norms] as though *ad hoc* features in their use were a nuisance, or to treat their presence as grounds for complaint about the incompleteness of

instructions, is very much like complaining that if the walls of a building were only got out of the way one could see better what was keeping the roof up." (Garfinkel 1963, p. 22)

Parsons conceptualized a "moral" consensus of institutionalized and internalized norms and values (the normative order) that explained why people could and would cooperate in terms of both the ends they seek and the means of achieving these ends. But this formulation assumed the intelligibility of action as an unproblematical given. If, as we have seen, the application of a rule can never be specified in advance of an actual situation, and the rule is in itself insufficient to cover all the contingent possibilities of its own application, then the conditions for achieving any consensus (or, conversely, conflict) between players are distinct from, and analytically prior to, a set of game-relevant rules (Heritage, 1984, pp. 120-129).

In an important early essay, Garfinkel drew directly upon the work of the Austrian-American phenomenologist, Alfred Schutz, to define the a priori conditions for "concerted stable action" (Garfinkel, 1963; Schutz, 1970). Schutz subsumed these conditions under the rubric of what he termed the "general thesis of reciprocal perspectives," which described the features of common sense thinking, or the "attitude of daily life." These features, he proposed, enable individuals to overcome the temporal flux of their own biographically unique perspectives and immediate objectives in order to communicate intelligibly within the context of an interactional event.

Minimally, intelligible communication assumes a tacit process of defining a mutually recognized situation, its relevant features, and a set of related, mutually meaningful actions (Schutz, pp. 183-184; Garfinkel, pp. 210-217; 1967, pp. 35-75).

In Schutz's phenomenological description, common sense thinking includes the following features which provide the "constitutive accent" (Garfinkel) of the everyday world. The first assumption is that within the unfolding intersubjective nexus of activities, the persons involved share the same temporal ordering of events ("one big clock identical for all" as Garfinkel puts it). The second assumption can be subsumed under what today would be called a correspondence theory of truth, or of the subject-object relationship. The "correspondence theory" presupposes that objects, including mutually shared events, can be and are known by persons independent of the immediate intentions and background contexts that they bring to these object-events and will therefore remain the same for future reference, regardless of any changes in related persons' intentions and contexts. The second feature is especially important because, without a presupposition of the invariancy of the object world and persons shared competency to access it, there would be no basis for disputing and resolving the claims to alternative interpretations of object-events which are a routine part of our daily communications. Schutz's term for this feature was the "the idealization of the congruency of the system of relevances."

Lastly, the third assumption is that, if one person experiences an event in a typical way, any other person who trades places with her would experience the events in the same typical way. This is not to say that each person does not realize that another may arrive at a different interpretation of the same events. Rather, this feature of everyday common sense assumes that anybody's alternative interpretation can be made interchangeable with anyone else's by modifying the relevant aspects of their different experiences. Thus, if you were a woman rather than a man, a pauper rather than a fat cat, a believer rather than a heretic, a biologically normal adult rather than a schizophrenic, you would experience the world as I have described it to you. Schutz's term for this feature was "the idealization of interchangeability of standpoints," and it is obviously linked to the second feature of a world (the known) independent of its knowers.

Garfinkel's own rubric for social actors' compliance with the apriori assumptions of the "attitude of daily life" was "trust." Without trust social actors (the "players") would be unable to go on with their games under the constant uncertainty of unfolding events, an uncertainty which is of course vastly amplified in the complex events of everyday life. Contrary, therefore, to Durkheim's early thesis about why people follow rules that violate their immediate self interests, ". . . with respect to the problematic relationship between the normative regulation of action and the stability of concerted action, the critical phenomenon is not the 'intensity of affect' with which the

'rule' is 'invested,' or the respected or sacred or moral status of the rule, but the perceived normality of environmental events as this normality is a function of the presuppositions that define the possible events" (Garfinkel, 1963, p. 198). When trust is violated, which is exactly what Garfinkel undertook in his breaching experiments, individuals react with various combinations of "moral sanctioning" in the form of expressed bewilderment, dismay, indignation, outrage, irritated dismissal, or sarcastic humor. This demonstrates, according to Garfinkel, that social actors treat the perceivedly normal environment of everyday life as a product of their personally motivated compliance with the background expectancies described above, or in other words, as instances of trust (1967, pp. 38-53). Following Schutz, therefore, Garfinkel took the radical step of removing the burden of social order from the shoulders of externally constraining regulative rules and placing it upon what might be called a "deep structure" of intersubjective agreement between actors within specific social settings.

The Constitutive Model of Rule Following

Garfinkel's interest, however, was not in expanding the Husserlian-Schutzian phenomenological project, which was an approach to social behavior essentially based on psychological inferences about (unseen) mental events.⁶ His focus was and remains the development of an empirical approach to describing and analyzing the processes and procedures whereby

social actors make their actions intelligible and accountable to each other, or, in sum, the "ethno methods" and "artful practices" through which social facts are constituted in concrete settings. This focus inaugurated both a critique of traditional sociological preoccupations and a "respecified" research agenda:

Despite the topic's centrality, an immense literature contains little data and few methods with which the essential features of socially recognized "familiar scenes" may be detected and related to dimensions of social organization. Although sociologists take socially structured scenes of everyday life as a point of departure they rarely see, as a task of sociology in its own right, the general question of how any such common sense world is possible. Instead, the possibility of the everyday world is either settled by theoretic representation or merely assumed. As a topic and methodological ground for sociological inquiries, the definition of the common sense world of everyday life, though it is appropriately a project of sociological inquiry, has been neglected (1967, p. 36).

My objective here is not to describe in greater detail the ethnomethodological project as developed by Garfinkel and his students, which has been amply documented and discussed elsewhere.⁷ It is, rather, to analyze ethnomethodology's significance for the Durkheimian project of developing an empirical approach to the study of morality. Nevertheless, several points about ethnomethodology's approach to the study of social order must be reiterated to clarify this significance.

Garfinkel's work may be understood as following Durkheim's critique of sociological positivism to its logical conclusion, that is, as an attempt to find an empirical approach to the study of social order which does not analytically presuppose a separation of facts from values, or in Parsonian terms, the factual from the normative orders. The direction Garfinkel followed, therefore, was previously identified by Parsons as one possibility for Durkheimian sociology if it were to "climb up" on the first stool. From the ethnomethodological perspective, both the researcher's and her subjects' descriptions of a social order partake of the same order they seek to describe, and contribute to the process of making this order intelligible and their actions within it accountable (Garfinkel 1967, pp. 96-103).

This recognition, however, should not be construed as some vicious hermeneutical regress. The difference between the activities within which the ethno methods are at work and the researcher's description of these activities does not consist in the researcher's employment of an analytically discrete and prior formula (i.e. a theory or covering law) to explain the intended or unintended outcomes of a group's activities. Garfinkel's "documentary method" does not employ deductive-inductive inference as in the standard positivist account of scientific reasoning, but is rather consistently and exclusively empirical: the researcher's account of various interconnected activities or practices should "lift out" the common sense, taken-for-granted procedures of accountability the subjects employ to make

their warranted assertions about the "social facts" of their situation. The researcher's account of these procedures will be the same kind of achievement as his subjects' ongoing accomplishment of the specific activities *cum* social order under investigation. The difference will lie in the researcher's specific focus on those essential features of subjects' accounts of their actions which cannot be "breached" without threatening the very order that they are seeking to accomplish.

The goal, then, of documentary reportage is "to catch the work of 'fact production' in flight" (Garfinkel, 1967, p. 79), in which various semantic (justificatory) practices or cooperative, means-end related activities are supported, emended, or rejected in-process by the subjects undertaking them. And, as Garfinkel *pace* Durkheim reiterated, this is *not* the same sociological goal as a social-psychological or ethnographic account of the subjects' interpretations of their own or others' motivations relative to their situation and its conditions (e.g. Garfinkel 1967, pp. 64-65; Durkheim 1966, pp. 110-111).⁸

Because Garfinkel has insisted that ethnomethodological sociology combine a focus on research subjects' own "accountings" of their organized activities with a strictly empirical approach to analyzing these accountings (i.e. not reading intentions and motivations "behind" or "into" the subjects' statements), ethnomethodology should be understood as a continuation of Durkheim's "renovated rationalism," and, in practice, an attempt to integrate the two stools of "apriorism" and "empiricism," not an attempt to reject

either one of them. Ethnomethodology takes as a given that, "[i]nquiries and objects are intertwined" (Garfinkel, Lynch, and Livingston, 1981, Note 28, p. 142). The "respecified" sociological goal is to describe in what way, or how, the inquiries (mutually recognized and articulated purposes) of specific groups or associations of people are intertwined with the objects that they take to be the "facts" of their situation and of the object world.

To return to our earlier discussion, ethnomethodology shares some significant assumptions with Wittgensteinian language theory.

Wittgenstein's greatest influence on post-World War II Anglo-American philosophy was to provide a way out of, or at least an alternative route from, the traditional problems associated with theories of meaning which asserted that fixed sets of concepts (an ideational reality) supplied meanings to variable sets of words (natural languages).⁹ From its most mundane to its most sublime possibilities, the activity of "making sense" of something is, from this perspective, radically indexical; meaning – the sense-making of words – is derived from use, that is from the purposes at hand towards which particular language users are directed. In order to understand what a group of language users mean by what they say, an investigator must analyze what they are "doing" with their words. A dictionary will help, but only to a limited degree – the very limited degree to which, as we saw above, a rule book for a game from a foreign culture will teach you all you need to know about how to play that game with a member of that culture.

From a Wittgensteinian perspective, the investigation of what people are doing with words, with the way in which their sentences are part of a larger set of customary practices, leads to an immersion in a group's (or culture's) institutions (as patterned activities). Within these social institutions, words, concepts, and practices are part of a seamless web that the investigator cannot remove himself from without introducing a new set of practices which derive from an entirely different set of purposes, as if the researcher were to insist that a group of players engaged in the game of "Go" employ a rule derived from the game of "Monopoly." Hence Wittgenstein's well known dicta: "What has to be accepted, the given, is -- so one could say -- forms of life" (Wittgenstein, 226e).

Garfinkel also respecifies the traditional focus on "meaning," identified in normative sociology as "conforming to a rule or norm," to the purposes of communicative (interactional) activities and the uses to which various concepts are put within those activities:

It is not satisfactory to describe how actual investigative procedures, as constituent features of members' ordinary and organized affairs, are accomplished by members as recognizedly rational actions *in actual occasions* of organizational circumstances by saying that members invoke some rule with which to define the coherent or consistent or planful, i.e. rational, character of their actual activities. Nor is it satisfactory to propose that the rational properties of members' inquiries are produced by members' compliance to rules of inquiry. Instead, . . . [t]hese phenomena are contingent achievements of organizations of common practices, and as contingent achievements, they are available to members as norms, tasks, troubles. Only in these ways rather than as invariant categories or as general principles do they define, "adequate inquiry and discourse" (Garfinkel, 1967, p. 32-33).

The demonstrably rational properties of indexical expressions and indexical actions is an ongoing achievement of the organized activities of everyday life. Here is the heart of the matter. The managed production of this phenomena in every aspect, from every perspective, and in every stage of retains the character for members of serious practical tasks, subject to every exigency of organizationally situated conduct (p. 34).

Both Wittgenstein's "forms of life" and Garfinkel's "social facts," therefore, are conceptualized as the exigent historical products of practical reasoning. For practical reasoners, rules or norms are employed as resources in the ongoing process of making sense of shared environments and activities and negotiating the immediate and longer range objectives and goals that arise within these environments and activities. As resources, rules do not dictate required or "correct" action; they provide a framework or "interpretive base" (Heritage, 1984) within which actions are understood and responses to these actions are communicated.

John Heritage's example of a "greetings exchange" provides an excellent illustration of what he termed the "constitutive model"¹⁰ of rule following (Heritage, 1984). The rule, "when greeted, return the greeting" is one which members of contemporary American society would easily recognize as the basic norm covering social encounters in which people who know each other to some degree cross paths. But these social encounters are not wholly constrained or shaped by the prior existence of the rule, rather the rule provides each actor with (a) a choice as to whether he or she will follow

it and thereby "normalize" the situation, and (b) a "base" or "frame" from which to notice, to interpret, and to sanction (positively or negatively) the other party to the exchange (p. 107). Most significantly, each actor's choice irredeemably transforms the situation into a new series of possibilities for future action and interpretation. As Heritage argues, we need only reflect on the infinite possibilities that are available in virtually any greeting exchange to realize how much more accurate is the conceptualization of rules as providing resources for, or as "constituting" rather than determining, action. Choice and interpretation in a greeting exchange may be influenced by such factors as disparities between the actors' statuses, past relations between them (such as the ill feeling that might provoke a "snub"), knowledge of each other's idiosyncracies (such as the propensity of one often to be "lost in thought" and therefore oblivious to, but not culpable relative to the social niceties), and so on. Thus,

The norm is . . . *doubly constitutive* of the circumstances it organizes. It provides both for the intelligibility and accountability of 'continuing and developing the scene as normal' and for the visibility of other alternative courses of action. It follows, therefore, that whatever the outcome of the 'choice', the availability of the norm will provide a means by which the conduct and its circumstances can be rendered sensible, describable and accountable (p. 107-108). [

Heritage's discussion of ethnomethodology's perspective on rules and their role in the ongoing production of social order brings into sharp relief the way in which ethnomethodology returns a cognitive focus to the sociological understanding of the relationship between individual action and

social order, a focus which reasserts Durkheim's insistence on the "symbolic nature of the rule," the recognition of which enables us to see that we teach mores and morality by "explaining," not "preaching or indoctrinating." As Wittgenstein's analysis demonstrated, explanation of how to use a word or apply a rule is not undertaken in the abstract, but on the basis of specific cases, that is, by reasoning about specific situations or activities with the rule "in hand." And these specific situations and activities are embedded within the "forms of life" and constitute the "social facts" which provide the "etcetera clauses" for the actor's reasoning about the rule.

Ethnomethodology's cognitive orientation to social action treats actors as fully knowledgeable about and reflexively engaged in their environments. After all, it is they who are engaged in the ongoing applications of norms to situations, and thus they who produce, maintain, and transform these situations. Nevertheless, this is a radically different way of incorporating the cognitive component of action than that developed in the utilitarian tradition. As discussed above, in Durkheim's original formulation of the "Hobbesian problem," actors in the utilitarian tradition are treated as discrete "decision units" who pursue their individual, subjective goals (interests and preferences) based on cost-benefit ("rational") calculations about how the environment may constrain or enable their pursuit of these goals. Social order or specific social outcomes are explained by the aggregation of these individual choices. Ethnomethodology, on the other hand, incorporates

Durkheim's critique of utilitarian "psychologism," and avoids, as discussed, being subsumed by phenomenological psychology and its focus on individual-level subjective intentions or motivations as the causal locus of action.

To reiterate, ethnomethodology's focus is on the explication of social facts, now understood as the ongoing contextual accomplishment of *intersubjective* interpretation and choice. In this important sense, ethnomethodological analysts claim to reject the traditional bifurcation between a sociology of action, focused on agency, i.e., actor's intentions, and a sociology of structures, focused on externally constraining "system-level properties" (Giddens) which ostensibly exert pressure on and shape actors' intentions and actions. Summarizing this point, Sharrock and Button (1991) contend,

Social actions are irreducibly events-in-a-social-order and they cannot therefore be adequately identified independently of the social order in which they are embedded. Neither, on the other hand, can the social order which is the site of those actions itself be identified independently of them. The particulars (the actions) and the pattern (the social settings/social order) are inextricably connected, are mutually elaborative (p. 158).

The Contexts of Justification -- A Reconsideration of Rules and Their Uses

Nonetheless, ethnomethodology has received trenchant criticisms for its apparent disregard of sociology's traditional "unit of analysis," a *sui generis* social order which can be distinguished from and which exerts

independent pressure on the activities of the individuals who exist within it. In other words, ethnomethodology seems to disregard American sociology's preoccupation with social control, dispensing altogether with the concept of normative and normative-moral regulation. For example, in her often-cited essay, Karen Knorr-Cetina (1981) characterized ethnomethodology as supporting "methodological situationalism," and argued that ethnomethodology participates in one side of the "micro-macro problem" in sociological theory. This latter phrase has since entered the sociological vernacular as a synoptic reference to these issues.¹¹ The idea of a "micro-macro problem" is one of many bifurcated formulations which comprise sociological theory's meta-narrative on the relationship between individual action and social order which I argued earlier resulted, at least in part, from Parsons' reconstruction of Durkheim's thought.

Knorr-Cetina's and other's critique of ethnomethodology is somewhat misplaced, I believe, as evidenced by the fact that it has generally contributed to the theoretical cul de sac on these issues manifest in contemporary sociology. Several other differently focused criticisms -- less well rehearsed by sociologists -- have been made, however, of ethnomethodology's formulation of the distinction between regulative and constitutive rule following. These criticisms focus on whether (a) the distinction between regulative and constitutive rule following is as sharp as ethnomethodologists tend to suggest, and (b) ethnomethodology has not overlooked or

downplayed the importance of the fact that, within a given site of interaction, social actors accord rules different statuses and functions which are related to aspects of broader decisionmaking environments. These criticisms will, I hope, become clearer in the following discussion.

Garfinkel and his interpreters like Heritage discuss constitutive and regulative rule following as two alternative approaches to understanding the way individuals appropriate and communicate social norms. As such, these are alternative social-psychological accounts, or "models," of the relationship between social action (or interaction) and social order, the former representing the ethnomethodological perspective and the latter representing the normative approach. In sum, the normative model conceptualizes actors as "internalizing" or "introjecting" norms derived from the social environment in the ongoing process of socialization and social control; the ethnomethodological model conceptualizes actors as reflexively engaged in choosing, interpreting, reformulating, and applying intersubjectively shared norms in the ongoing process of constructing, defending, maintaining, resisting, or deconstructing mutually recognized social environments.

Garfinkel, as we have seen, was the direct inheritor of a set of problems concerning the "Hobbesian problem of order" and conceptualized constitutive rule following as a Durkheimian resolution to these problems. As I have suggested, in its fullest implications ethnomethodology's social-psychological perspective on social interaction and the individual's

acquisition of social norms demonstrates a much richer understanding of how people learn, communicate, and transmit the social facts of culture from one environment or generation to another than the perspective of normative sociology, or of recent utilitarian theory as represented by rational choice and game theory. Furthermore, ethnomethodology's perspective in this regard is not (as sometimes both its detractors and supporters seem to imply) unique; it is consistent with the basic assumptions developed and supported by both post-Wittgensteinian language theory and research and scholarship in cognitive and cognitive-developmental psychology, a connection which I shall develop in the next chapter.

As anticipated by Parsons, the ethnomethodological perspective leads to a rejection of the possibility of nomothetic explanations of social phenomena, and therefore (to some extent, depending on various possible interpretations) challenges sociology's status within the mainstream traditions of the positive sciences. When not responding to its detractors working from collectivist or "holist" assumptions, ethnomethodologists have developed methods of examining specific contexts of social interaction, as exemplified in conversation analysis, which demonstrate the innumerable ways in which local organizational /institutional/socio-cultural contexts are "endogenously generated" (Heritage, p. 283) within apparently mundane communications between social actors. The end result has been that ethnomethodologists have largely left behind Garfinkel's original concern

with the status and function of rules *per se*.

In contrast, numerous philosophers and philosophers of social science have continued developing topologies of rules as they relate to various contexts of decision making, while generally ignoring the social-psychological question of how rules link social actors with social orders. Viewed as types of rules, rather than models of action which describe what actors are *doing* when employing rules, constitutive and regulative rules have not been understood as mutually exclusive. Instead, constitutive rules are conceived of much as Garfinkel described the "rules of preferred play" and "game-furnished conditions," which Durkheim and Parsons characterized as the "precontract" rules of contract which make social order possible. Understood this way, constitutive rules may create both reasons for engaging in contract relationships in the first place, as well as regulate some aspects of these relationships.

Philosophers commonly distinguish regulative from *constitutive* rules. According to this distinction, suggested by H. L. A. Hart, Max Black, and John Rawls, and most prominently associated with John Searle, regulative rules govern antecedently existing behavior — behavior defined without reference to the rule and therefore logically prior to the rule. Speed limits are a good example, for the capacity to drive an automobile at 65 miles per hour is independent of any rule governing activity.

By contrast, constitutive rules create the very possibility of engaging in conduct of a certain kind. They define and thereby constitute activities that could not otherwise even exist. Rules of games are the archetypes, for the very possibility of winning a trick or castling or hitting a home run is created by rules. . . .

Although the distinction between regulative and constitutive rules is illuminating, it is also misleading, for many constitutive rules have their regulative side. . . . The rule has a double aspect — first defining

the behavior and then regulating it. Take the rule prohibiting *clipping* in American football. Although it is possible to hit a person from behind without reference to the rules of football, clipping is different, being constituted by certain of those rules. Yet the same rules also *prohibit* clipping, . . . (Schauer, 1991, p. 6-7).¹²

Recognition that constitutive rules may have a regulative aspect need not result in a return to the normative model in which rules become internalized causes of actions. The extent to which in any given situation rules-norms (a) provide specific *reasons* for individuals to act in certain ways, and (b) rules-as-reasons provide *motivations* for these individuals is a subject of both theoretical debate and empirical inquiry.¹³ Thus, as some have argued, a rule may be acknowledged by an actor as applicable to a decisionmaking context, but the actor may not see the rule as providing any valid reason *qua* justification for acting in a certain way. For example, a prisoner does not need formal instruction or any direct communication from his fellow prisoners to realize the existence of the rule, "don't rat on your fellow prisoners," but he may never see this rule as providing any reasons for his own decisions and actions. Alternatively, the recognition of a rule's applicability may be interpreted as providing a sufficient, but not a necessary reason to act in a certain way. In the latter case, the rule might be acknowledged by the actor as having normative force, but not provide motivation, over against other more powerful or compelling reasons that are not backed by a rule's normative force. Thus a student may know the rule "don't cheat" and acknowledge its institutional validity and affirm its

normative force, but he may override it for reasons related to his perceived fear of failing and the subsequent consequences.

In the first case, the prisoner might, under certain conditions, treat the rule in much the same way as people generally treat the greetings exchange rule described above. He may perceive that prison administrators are equitable and fair, that their rules of conduct are appropriate, and that the procedures to ensure compliance and to sanction violations are impartially enforced. In such a (very hypothetical) case, the "don't rat" rule is much less likely to have normative-regulative force, since the prisoners' collective well being will be less dependant on the quasi-loyalty between prisoners imposed by the inmate code. Thus, the prisoner may treat the "don't rat" rule in much the way a socially well adjusted child might treat a "don't tattle" rule, as an interpretive base for judging when loyalty to one's siblings or peers is morally more relevant than following parental instructions like, "don't play with so and so's kids (because we don't like their parents . . .)." But under a new, less enlightened prison administration, the rule may acquire deeper normative force (because as a group the prisoners' well being is acutely threatened) and be backed up by the possibility of severe sanctions delivered by other prisoners to rule violators. Under these conditions, the rule becomes, in Schauer's term, "entrenched," and a prisoner will think carefully about violating it, even though not doing so may have equally dire short or long term consequences for him (Schauer, p. 51).

This example illustrates the point made by some of ethnomethodology's critics, including most notably Jurgen Habermas (1984), that the regulative aspect of rules -- their "idealizing" function -- is related to the broader contexts which provide the justificatory content behind the rule. In the example provided, the inmate code, of which the "don't rat" rule is the first commandment, has been observed by researchers to develop independently in virtually every prison context and consequently has been understood as a normative response to the unique conditions of the prison environment (Sykes, 1958). Hence while, *pace* Wittgenstein and Garfinkel, we can affirm that the rule does not dictate its own application, we can see that the existence of the rule is related to the values of survival and well being in an environment that intrinsically threatens those values. These values, which as Parsons understood, inform collective and individual goals, provide the first-order justification for the rule. Furthermore, we can see that the rule's normative force -- the extent to which decision makers (prisoners) treat it as strictly regulative and "entrenched" or as constitutive "marker" -- is influenced by other features in the environment which either reinforce or diminish its original justificatory content, namely the practices established by prison administrators. These features, which may affect particular locations or groups within the institution differently and at different times, provide second-order justifications for the rule. As Schauer notes, some decisionmaking environments may contain "prescriptive generalizations"

(e.g. tacit or formal rules) which operate at many different levels of discourse, and at each of these levels, an array of second- or third- (and so on) order justifications may inform particular instantiations of the rule (Schauer, p. 85).

Bohman (1991) argues that, because Garfinkel stresses the reflexive aspect of rule following, which is consistent with "applicational relativity" described in chapter two, he has tended to approach all rules as if they had equal social standing.

By comparison [to Habermas' conception], Garfinkel's concept of rules is not complex or multifaceted enough; it is too inclusive and often over generalizes particular cases over types of rules. . . . Indeed, reflective agents may be able to distinguish between norms on the one hand and values on the other. Both can be implicit presuppositions in communicative action, as agents come to an agreement about how to coordinate their actions in light of them; both can also be explicit points of reference in a discourse when asked for a justification of an action and hence can figure as reasons for action. Thus values and norms have both contextual and idealizing features. Where they differ as rules is in their epistemic character and social function. . . . The function of norms is to legitimize particular institutions and to solve problems of interpersonal conflict. They, too, can be merely implicit in the ongoing course of interaction; however, norms become explicit when actors take a critical distance from this ongoing social life and publicly reflect upon and justify their beliefs and interests from the point of view of claims and expectations that others may have. . . . Just as rules can stop proscribing actions, they can also cease to provide the framework for accountability, if the very type of accountability is called into question as illegitimate, unjust, or unfair . . . (Bohman, p. 97-98).

To function as reasons, rules must be cognitively acceptable relative to individual and collective forms of knowledge. In this case, the challenge to rules may be a challenge to the institution that is the larger context of justification (p. 99).

Recognition that rules achieve different statuses for groups or individuals in relation to the broader contexts of institutional or cultural

justification and legitimation does not cancel out the ethnomethodological insight that, "[t]he particulars (the actions) and the pattern (the social settings/social order) are inextricably connected, are mutually elaborative . . . (Sharrock and Button, p. 158). Rather, this recognition should lead us to a closer examination of the processes by which certain rules within designated environments achieve their particular statuses and functions, such as, for example, the circumstances by which some rules become entrenched, or conversely, "soften," and are employed with greater indexical leeway. Justifications for finding a rule applicable or nonapplicable to a specific situation, or which provide reasons to act according to the rule, or which motivate such reasons, may well operate, as suggested by my example of the prisoner, at several levels of the decisionmaking environment.

Furthermore, the type and degree of socially sanctioned rule exceptions may be key to understanding the legitimating or delegitimizing values and goals that inform a group's interactions. As James Edgerton (1985), an anthropologist, forcefully argued in his well documented book on this subject, rules also come in the form of exceptions to rules ("rules for breaking rules"). Every known society has a wide variety of both formal rules and informal social norms which allow greater or lesser degrees of flexibility in their application, for example rules for which certain socially designated exceptions are normative and other rules which are normatively "exceptionless." Exceptions may be based on a multiplicity of factors,

depending on, for example, other cultural practices related to the social statuses of rule followers/violators, beliefs about the conditions of agent responsibility, or thresholds of legitimacy (e.g. normatively recognized conditions under which not telling the truth is justified) (pp. 23-34). Once again, rule exceptions do not determine their own application, and normative exceptions, like the rules they modify, may be rejected by specific groups or individuals who in turn may "normalize" their own.

Thus far several types of rules have been identified, including descriptive (e.g. scientific laws), regulative, constitutive, and a subcategory of rules-for-breaking rules. This topology basically categorizes rules in terms of their broad functions.¹⁴ Another kind of topology, suggested by Durkheim's comments discussed earlier on the distinctions between habit, custom, and morality, classifies rules according to the spheres of life within which they function. Edgerton proposed that the following five types of rules, "appear to be present in all societies: (1) personal routines, (2) conventions, (3) secular regulations, (4) moral rules, and (5) supernatural injunctions" (p. 34).

Garfinkel and subsequent ethnomethodologists' treatment of all norms and rules as indexical expressions with equal social standing obscures, as Bohman's statement above can be construed to suggest, the fact that social actors themselves reflexively accord different types of rules different statuses. Moral rules are the paradigmatic example of rules to which social actors confer a special or distinctive status. Indeed, an individual who reasoned

about a moral rule such as "tell the truth" in the same way as he reasoned about a rule like "chew your food with your mouth closed" would most likely exhibit serious social-interpersonal problems. In Garfinkel's term, "what anyone knows" (i.e. any competent social actor) is that moral rules cannot be treated in the same way as one would a rule of etiquette, or, for that matter, a rule covering greetings exchanges. (See Chapter Five for further discussion of this claim.)

Moral philosophers have emphasized the unique characteristics of moral rules and moral reasoning which shape practical reasoning in the context of concrete problem-solving Garfinkel and other sociologists influenced by European phenomenology (including Erving Goffman whose work on prisons is discussed in Chapter 6), however, strongly imply that all interaction is deeply "moralized" because, as discussed earlier in relation to Schutz's arguments, social actors' "motivated compliance to the expectancies that make up the attitudes of daily life consists from the person's point of view of his grasp of and subscription to the 'natural facts of life' (Garfinkel 1967, p. 64). Breaches of these expectancies therefore threaten a person's perception of his own connection to a sensible world, or in other words, his own deepest sense of coherent selfhood.

The phenomenological-ethnomethodological perspective does, I believe, express an important insight into the complex and deep-seated connection between ontology and morality. We do not merely appropriate

the "social facts" from our environment; we confront them within ourselves as our core assumptions about the nature of reality and reaffirm or damn and doubt them everyday in the most mundane of our actions. Durkheim, as I have endeavored to show, expanded and deepened Kant's insights about the connection between rationality and morality by explicating how both were generated and "mutually elaborated" within society and the individual. Durkheim was thus able to continue Kant's project and explain, and in another sense provide an historical meta-narrative about, how the self identity and integrity of the modern person is bound to her ability to exercise reflexive moral authority independent of the normative constraint imposed through traditional authorities and local customs within particular social contexts.

Expanding on Durkheim's "second stool" and incorporating the insights of phenomenology and Wittgensteinian language theory, Garfinkel returned to Durkheim's under-appreciated cognitive understanding of rule-following, and thus provided sociology with an alternative social-psychological model of social action that presupposes autonomous, reflectively engaged practical reasoners. Restated in other words, therefore, the ethnomethodological perspective enables us to avoid the pitfalls of a strictly deontic and normative-regulative approach to the social contexts of practical and practical-moral reasoning, of the kind, for example, suggested by Lawrence Kohlberg's early work. As Schutz and Garfinkel understood,

reasoning with rules presupposes "trust" and all that it implies. And as he so brilliantly demonstrated, deference to and breach of the apriori trust which enables communication engages each of us at emotional as well as cognitive levels and affects our deepest sense of psychological well being.

Nevertheless, at the empirical level of social interaction with which we are concerned, the criticism discussed above of ethnomethodology's tendency not to distinguish different types of rules is significant because, as I argue throughout, the elimination of the moral point of view from a theoretical framework of the relationship between social action and social order impoverishes – and distorts – our understanding of social conflict and social change. The next chapter (6) is dedicated to describing the characteristics of moral rules which moral philosophers and empirical researchers working in the fields of cognitive developmental psychology have identified. Chapter Six is therefore an attempt to provide the conceptual-definitional clarity which in Chapter Two I argued has been generally absent from sociological theory and research.

Mundane Morality: A Durkheimian Reconstruction

Before turning to this project, however, I have a concluding supposition on the distinction between constitutive and regulative rule-following with regard to the domain of morality. The purposes of this study do not allow me to develop a full blown argument for this supposition

here, but it deserves attention because it is a significant guiding hypothesis for my study and derives from the preceding discussion in this chapter.

One of the confusions commonly perpetrated by defenders of moral relativism like Donald Black (whose views on this subject were discussed in Chapter Two) is the view that moral rules and norms are *either* "absolute," i.e. dictate their own application, *or* that they are somehow infinitely variable according to cultures, groups, or institutions. But a much more considered view – the view held by contemporary moral philosophers influenced by Wittgensteinian and post-Wittgensteinian language theory – is that like all other rules, moral rules are not exempt from the constitutive model of rule following. In other words, moral rules are "applicationally relative": the competence of a practical reasoner is related to his or her ability (a) to determine which conditions or situations justify the application of specific moral rules, (b) to weigh the possible social and personal consequences of particular decisions based on these rules, and (c) to make a decision to act in a way that makes sense within the broader social context of the rule's justification and in terms of the social consequences of the decision.

A distinguishing feature of moral rules previously alluded to is the weight they carry in any given decisionmaking context (Wallace, 1988, p. 60; Gert, 1988, p. 62-76). When the potential social or personal consequences of making a decision based on a moral rule are considered, negative consequences do not ipso facto cancel the rule's application; in many cases

normative social expectation would be for the moral rule to trump considerations of self interest or social welfare. In this sense, the constitutive model of rule following helps us to understand the moral rule's regulative aspect. In Kantian and Durkheimian terms, moral rules have considerable or "categorical" authority. This authority or weight, however, does not negate the possibility of justified exceptions or rules-for-breaking rules.¹⁵ On the contrary, it suggests that when moral rules are broken, acceptable justifications for the violation are a social requirement. And if the violator does not *realize* that a moral rule has been broken, then he will not be considered a competent member of the social group.

To restate this point as proposition: a working knowledge of moral rules and norms are a fundamental feature a person's social competence. This proposition seems noncontroversial enough, but a significant implication which follows from it is that moral *rules* (not *rule-following*) are best understood and analyzed, within the second topology discussed earlier, as uniquely *both* constitutive and regulative. Moral rules are regulative in that they relate to "antecedently existing behavior" (Schauer, p. 6) such as harming, lying, stealing, etc., but they are constitutive in Durkheim's sense of the "precontract rules of contract," because social order does not and cannot exist without them. Concomitantly, while the individual, in the sense of physiologically unique mammal, exists prior to social order, the individual as a being with a unique personal identity capable of what we call self expression

does not exist prior to social order. Again following Durkheim's insights, individuality is made possible by society, and society is made possible by a social order sustained by morality. To assert this is not to deny that at least some moral rules and norms may vary from culture to culture or within historical timeframes to some empirically unspecified degree, because, as we know, both the apriori conditions of social life which affect the forms of social cooperation and conflict and the conceptual-linguistic resources which affect interpretation and communication vary considerably.¹⁶ But where social cooperation and communication exist, so too does morality.

Philosophers have often conceptualized morality as deeply embedded within our cognitive framework, which is suggested by the close relationship of morality and rationality averred by some noted Western philosophers and debated by others since Plato. For example, a contemporary moral philosopher, Bernard Gert suggests that,

A useful analogy for our morality is knowledge of the grammar that all competent speakers of a language have. Even though almost no such speaker can explicitly describe the grammatical system, they all know it in the sense that they use it when speaking themselves and in interpreting the speech of others. If presented with an explicit account of the grammar, competent speakers have the final word on its accuracy. Although there are some variations in the grammar, the appropriate test is to determine if it allows speaking in a way that everyone regards as acceptable and rules out speaking in a way that is recognized as completely unacceptable to all who are competent speakers of the language. An explicit account of our grammar must accurately describe the way competent speakers actually use the language. Unless we have an adequate reason for doing so, it would be absurd to change the way we speak in order to conform to some proposed explicit account of the grammatical system (Gert, 1994, pp.3-4).

Hence, to draw out this analogy, morality is constitutive of social order in the same way that grammar is constitutive of verbal and written communication.

Understanding moral rules as constitutive may be further explicated with reference to another ethnomethodological concept, mundane reason, developed by Mel Pollner (1988). Pollner's conceptualization of mundane reason draws heavily on the phenomenological assumptions discussed above which Garfinkel appropriated from Alfred Schutz and Husserlian philosophy. According to Pollner,

Mundane reason provides the resources for generating or constructing innumerable conceptual and discursive possibilities. At the most general or abstract level, the concept of truth, most especially the concept of truth as correspondence between a "perception" or "description" on the one hand and the "real" on the other, obviously requires the distinction between "knower" and an "objective" or "real" domain to which perceptions might (or might not) correspond. Indeed, the very notions of "perception" or "description" are intelligible possibilities only by virtue of the assumptions of an enduring or invariant objective domain which is intended (not "created") by perception (p. 18).

Mundane reason is also a resource in that it stands as a background scheme of interpretation which provides the intelligible or accountable character of mundane inference and interpretation. As a shared idiom or language game, mundane reason provides members with resources for the formulation and grasp of a range of claims, comments and concerns without their having to be articulated in so many words (p. 19).

Th[is] conceptualization of mundanity as assumptions or beliefs is not so much to describe mundanity as to move within the idiomatic space of mundanity itself (p. 21).

In Pollner's formulation, therefore, mundane reason is constitutive of "the-world-as we-know-it." What might be called basic morality, the simple

moral rules and norms which in themselves seem to be self validating, I propose, partakes of and shares similar characteristics with Pollner's formulation of mundane reason. I do not want to argue that basic morality is equivalent to mundane reason, because as Pollner has defined it, mundane reason relates to epistemic standards and beliefs. But basic morality can also be conceptualized as a "resource" which "stands as a background scheme of interpretation" or "idiomatic space" and provides actors with both the intelligibility of certain actions and the means of holding themselves and others accountable – not only in the regulative sense to the basic rule or norm, but in the constitutive sense to the scheme of intelligibility of which the rule partakes. Hence it makes no more sense, for example, to a competent moral and mundane reasoner to ask, "why do you believe the chair you are sitting on is here?" than it would to ask, "why do you believe that is it wrong not to tell the truth?"

Of course, mundane reasoners with some reflection and a little education can play a language game called, "epistemological" or "moral" theory, in which these questions are brought into the foreground as puzzles to be solved, but the game player must always move back into the terms of mundane reason and basic morality to retain her status as a competent social actor.

Pollner also raises the question of what happens when mundane reasoners' accounts of the world conflict, which is a most salient question for

moral reasoners as well. Here, Pollner draws upon the Schutzian thesis described above under the rubric of the "idealization of interchangeability of relevances," and the "idealization of the interchangeability of standpoints" to provide an answer:

Thus, . . .disparate or conflicting accounts may be reconciled by inferring that observers were not observing the self-same scene, object or event (level of the object), that their experiential or cognitive processes were distorted or impaired (level of experience) or that their accounts are not designed as literal reflections or reports, that is, one is "lying", "joking" or "speaking metaphorically" (level of accounts). *At each level, the objectivity of the world is retained while the processes through which the world is encountered, experienced or described are sources of candidate explanations of contradictory versions* [italics mine] (p. 62).

I submit that the same processes as Pollner describes for the reconciliation of disparate accounts or conflicts related to the "social facts" of mundane reason occur in much the same way for the reconciliation of disparate accounts or conflicts related to the "social facts" of what I shall now refer to as "mundane morality."

This formulation of mundane morality suggests a radical departure from the common claim made by many social scientists and others that moral conflicts arise because social actors hold different moral norms. Indeed, I am making a phenomenological suggestion of a kind of unanimity at a deep level of intersubjective reality. In contrast to the common view, I hope to show that the degree to which many moral conflicts are fraught with sustained and acute emotional distress on the part of the social actors involved cannot be understood apart from this deep-seated shared agreement

– the constitutive aspect of mundane morality. This claim has also been made in recent moral philosophy. Jeffrey Stout (1988), for example, argues that,

If you start by interpreting some other society as differing from yours *all the way down* on what is right or good and what is not, you'll have trouble saying why the disagreement is about rightness or goodness after all. If somebody applies terms like *right, good, and desirable* in ways *completely* unlike the way you do, you have no good reason to translate the terms as *right, good, and desirable*. So there's no such thing as evidence of total disagreement about rightness and goodness, any more than there is about [epistemological claims] about clocks and cars.

. . . there is a limit to how much disagreement on moral matters we can reasonably posit between any two people (or cultures). It is a vague limit, but a limit nonetheless. Positing too much disagreement simply changes the subject (p. 20).

We can now offer a provisional definition of mundane morality.

Mundane morality sets the boundaries of and provides the idiomatic space for social actors interpretations of and choices about matters pertaining to social cooperation and individual welfare. Similarly, Gert (1994) maintains that, "Morality is an unstructured public system that has no authorities and no decision procedure that provides unique answers to all moral questions" (p. 15). Mundane morality is constitutive in that, within the broader social and institutional frameworks of practical problem-solving, social actors employ it to render intelligible and interpret various values, goals, and practices. As I have suggested above, moral conflict and social actors' understanding of it cannot be explicated apart from an analysis of the complex relationship between mundane morality and the contexts which provide the

original justifications for practices and the array of first and second order rules that support them. In addition, mundane morality may sometimes "surface" and be reflectively employed by social actors within practical problem-solving contexts to assess the legitimacy of first- or second-level justifications for particular practices. Hence mundane morality can also be regulative.

For all the reasons I have discussed, sociologists have ignored the operation of mundane morality in both their conceptual frameworks and their empirical research, just as Pollner argues that they have ignored the operation of mundane reasoning. In general, sociologists have explained away mundane morality as a "naive folk ontology" and imposed a Parsonian layer of "normative regulation" (of putative values and norms) to which only they, the observer-analysts, have access and which "explain" the folk-level of discourse and action. This has been accomplished, however, at peril of (in Garfinkel's term) "confusing topic with resource" and ignoring the way mundane morality features in the construction of their own interpretations of social reality. Hence, to the mundane moral reasoner, social scientific descriptions of events and particular social orders which purport to explain conflict and change by virtue of a "higher order" set of assumptions about reality which assume the relativity of mundane morality's features, seem to defy "common sense" and the theorist-researcher is viewed as somewhat of a self regarding educated fool.

Explication of the operation of mundane morality employed in

practical problem-solving that pertains to specific institutional and organizational contexts requires the analyst not to suspend her own mundane moral reasoning, but to engage in ethnomethodological "documentary reportage" that "catches the work of fact production in flight" (Garfinkel). Moreover, the assumptions of this explication lead to a rejection of the usual bifurcation between micro- and macro-level explanations of social order because, as I have emphasized, mundane morality is always employed within the broader contexts of moral and epistemic justification which bring to bear public discourses about the values, moral ideals, and goals which inform these institutional contexts. Mundane reason and mundane morality are "mutually elaborated" within the intersubjectively communications of practical reasoning and the social orders which are reasoned about.

Durkheim's original project for the sociology of morality may, I believe, be reestablished on the basis of these premises.

1. See Heritage, 1984, Chapter 2, pp. 7 - 36 for this history.
2. A typical characterization of this preoccupation is of an "opposition between a sociology of social system and a sociology of social action" (Dawe 1978, p. 366). See Hollis, 1995 and Bohman, 1993 for overviews of the philosophical issues entailed in deterministic versus "rational action" accounts of social order. Both Alexander (1988) and Wrong's 1994 expansion of his original critique of Parsonian social theory (1961) illustrate attempts to resolve these bifurcations.
3. Deviant action is normalized action because, as Durkheim argued, it is not the act that defines the wrong doing, but the existence and recognition of a rule/norm which has been violated.
4. My discussion here draws heavily on Alastair MacIntyre's essay, "The intelligibility of action" in which he argues, from a Wittgensteinian standpoint, that although it is possible that computers may achieve something like what we call "consciousness," they are incapable of *intelligible* actions (such as playing a game *with me*, as opposed to merely following the rules like Wittgenstein's tribespeople) because they do not participate in social relationships and related social practices (MacIntyre 1986, pp. 63-80).
5. See Peter Winch's "The Idea of a Social Science" (1958) for a fuller discussion that was subsequently very influential on theories of social action. Winch was the first to draw out the implications for social science of Wittgenstein's language theory, which included the analysis of rule following action discussed here.
6. "I shall exercise a theorists preference and say that meaningful events are entirely and exclusively events in a person's behavioral environment Hence there is no reason to look under the skull since nothing of interest is to be found there but brains. . . . Instead questions will be confined to the operations that can be performed upon events that are 'scenic' to the person" (Garfinkel, 1963, p. 190).
7. For example, Heritage, 1984; Button, 1991; Hilbert 1992.
8. See Bohman's (1993) appreciative, but critical discussion of ethnomethodology's "explanatory pattern," especially p. 80.
9. There are many primers and critical treatises on Wittgenstein's philosophy and influence. A few of these concerned with Wittgenstein's language theory and its implications for social science are: Winch, 1958; Hollis, 1994; Pitkin 1993.

10. Heritage was not the first to use the term "constitutive" to provide a contrast to the concept of regulative rule-following, however. Legal and analytic philosophers influenced by Wittgensteinian language theory, most notably H. L. A. Hart, have employed it for some time. It should be noted that differences exist in the way ethnomethodologists and philosophers have employed the term. I discuss these differences and their implications below in this chapter.
11. Sharrock's and Button's (1991) essay cited above offers a sustained rebuttal to such characterizations and criticisms. See Bohman's (1991) reference to Knorr-Cetina's term and his criticism of Sharrock's and Button's defense, pp. 76-82.
12. Schauer (1991) also references debates between various author who dispute the extent to which a distinction between constitutive and regulative rules should be made or is valid.
13. There is an immense philosophical literature on this subject. The issue is debated in moral epistemology under the rubric of "internalism" (moral rules intrinsically motivate action) and "externalism" (moral rules exist independently of actor's reasons for action and do not necessarily motivate action). See Schauer, 1991, pp. 112-134 for a discussion focusing on nonmoral rules; Arrington 1989, pp. 17-73, for a summary of these issues in moral epistemology. It is not germane to the purposes of this chapter or study to pursue this issue further. Nevertheless, it may be the case that -- buttressed by a well-developed theoretical framework and empirical analysis -- the sociology of morality will confront this issue in possibly new and challenging ways.
14. These topologies serve a heuristic purpose, so I am not suggesting in any way that they are the best or only classification of rules.
15. That moral rules have exceptions has been noted both by anthropologists (Edgerton, 1985, p. 42) and moral philosophers (Gert, 1988, p. 70). For example the rule, "don't kill," has normative rules-for-breaking rules such as "except in self defense," or "except when you are a soldier during a declared war."
16. I cannot address much less attempt to answer all the questions related to cultural and moral relativism that this statement begs and which raises again the issues discussed in Chapter Two. See Chapter Five for a related discussion.

Chapter 5. What is Morality? A Review

In the preceding chapters I made the distinction between social-psychological models of rule following, which are an essential element of a theory of social action, and types of rules that serve different linguistic and social purposes. I argued that, in terms of the former, the constitutive model of rule following applies to both moral and non moral rules. As types of rules, however, moral rules have distinctive characteristics. An important aspect of everyday communication is that social actors themselves make these distinctions and employ them to render their own and others' actions intelligible and accountable. I then made the further claim that moral rules are significant for the study of social order and conflict because they simultaneously define the bedrock conditions of social interaction and enable social actors' to interpret their activities in mutually accountable terms. Nevertheless, the discussion thus far has begged the question of what the putatively significant differences are between moral and non-moral norms. If moral evaluations are particularly significant for understanding and analyzing social cooperation and conflict, then how can we recognize them? In chapter two, I argued that sociologists have largely ignored this important question, in part because of the pervasive presupposition of ethical relativism. Consequently, the concept of morality has been seriously under-analyzed in empirical sociological research. In this chapter I will therefore turn to specifying a basis for identifying moral rules and norms and, more

generally, moral discourse.

The sources of my discussion are twofold. The first is the historically well-developed field of moral philosophy; the second is cognitive developmental moral psychology, which has evolved since the early 1970s from the pioneering work of Lawrence Kohlberg. Kohlberg was philosophically informed, and developed his theory of stage sequenced moral development with direct reference to its Kantian influences, especially the work of his contemporary, the political philosopher John Rawls (Kohlberg 1981). Although a now longstanding debate exists about Kohlberg's philosophical assumptions and their relationship to his and his successors' empirical findings, this debate has been a productive one, I believe, precisely because Kohlberg insisted on a well articulated theoretical and conceptual foundation for his research. His colleagues and critics have been thus obliged to attempt to define their differences with the same degree of conceptual clarity (Wren, 1990).

My analysis has directed the sociological study of morality toward (a) employment of the "documentary method" developed by Garfinkel (1967) to "catch the work of 'fact production' in flight," and (b) the language of moral justification employed by social actors in the process of fact production. Unlike moral psychology, which is primarily concerned with the intrapsychic processes of individual moral development, the sociology of morality addresses classical sociology's most famous question: how is social order

possible? The answer to this question should not therefore be framed in terms of individual motivations, choices, or behavior, but in terms of the intersubjective processes of communication in which social actors draw upon a stock of available linguistic, cultural, and institutional resources and (re) produce, maintain, challenge, and change the definitions and conditions of their situations. In this perspective “. . . social order is organized *from within* and social structure is endogenous to action” (Boden 1994, p. 46).

Despite these differences, both the sociology of morality (as described here) and cognitive developmental moral psychology focus on the analysis of *talk* -- the language people use to communicate and interpret moral judgments and their social and behavioral contexts (Boden). Cognitive developmental psychologists have for the most part described the form and processes of moral reasoning (Shweder, et al., 1987). Unlike socio-linguistic analysts, they have generally approached taped verbal or transcribed conversations as the neutral bearers of the phenomena (the individual's mental objects) which are to be analyzed and explained. Accordingly, they have favored traditional research methods and designs, such as multivariate statistical analysis of questionnaires, to carry out their inquiries (e.g., Haidt, et al., 1993). Regardless of their methods, however, cognitive developmental psychologists' focus on moral reasoning entails analysis of moral language -- the same kind of analysis recommended here for the sociological study of morality. There seems therefore to be no fundamental incompatibility or

contradiction for sociologists to draw upon the characteristics of moral language-reasoning identified by moral psychologists in order to provide initial definitions of the proposed phenomena.

Some Philosophical Premises

I am commenting on the dialogue between psychologists and philosophers in the psychological study of moral development because I want to introduce a metatheoretical caveat at the outset of my own discussion that leads to some issues in moral philosophy. The caveat concerns the contentious question of the relationship between theory and empirical observation, or, in other terms, value and fact, evaluation and description. To what extent should prior notions about the characteristics of moral norms or moral reasoning inform observation and analysis of natural language that occurs “in the field”? Do these notions obscure more than they reveal by exporting the researcher’s own pre-given beliefs about morality to his subjects’ reality, thus reducing the research process to interpretive tautology?¹ These questions raise many issues about the status of scientific reasoning and knowledge, which I will address to a limited extent for the purposes of this study in the chapter eight. But they also return to the point raised in chapter two of this study that, without some initial definition of a phenomenon, researchers cannot delimit, in Durkheim’s phrase, “what it is and what it is not.”

Before providing a more direct answer to this question, the point should be made that to argue that a concept should be defined is also to assert that it "exists" – in other words, that it is a concept of *something*. So to insist that the concept "moral" requires definition is also to make a claim that there are moral phenomena, however one wishes to think about the form in which such phenomena "appear." This assertion implies, minimally, a denial of the subjectivist view that moral discourse is equivalent to emotive exclamations, something like spontaneous expressions of pleasure or protest that have no significance beyond an individual's sensate preferences. From this latter perspective, which has been dubbed "Ray-Booism," when a speaker makes a moral judgment or states a moral belief he is simply expressing a strong "hooray!" or "boo!" about the matter at hand (Railton, 1996, p. 52). Ray-Booism is the most simplistic version of a family of positions described under the general heading of moral non-cognitivism developed by moral philosophers on the epistemological status of moral judgments (Railton, 1996; Arrington, 1989; Frankena, 1973). Non-cognitivism has also been incorporated into several psychological theories, most prominently social learning theory (Shweder ,1991, pp. 225-229; Wren, 1991, pp. 40 - 74), and, as I argue throughout, is an unstated assumption in much sociological theory and research.

Since non-cognitivists believe that statements of moral judgment do not have cognitive content, they argue that such statements are not "truth

evaluable," meaning that they do not describe or express facts that can be evaluated as true or false. Cognitivists, however, object to this assumption. While our linguistic resources include types of statements that do not function to report or assert facts (such as commands, questions, or exclamations), moral judgments in their usual form do purport to be statements of fact, for example: "John should not have lied to her about his finances." Contrary to the non-cognitivist view, social actors seem to deliberate about these "facts" in much the same way as they deliberate about non-moral facts, explicating and defending or opposing the appropriateness of and conditions under which a moral judgment was made. Given these observations, the moral non-cognitivist has the task of convincing us that his understanding of "what's really going on" when we make moral judgments makes more sense than we do in our everyday communication, that we really do not mean what we say, but actually mean something else (here he fills in his own non-cognitivist theory²) (Railton, p. 52-53).

I argued in chapter four that a cognitivist perspective on morality is tacitly implied in Durkheim's views and in Durkheimian-influenced approaches to social action and interaction. If social actors draw upon a stock of mutually recognized mores, norms, rules, standards, and values to make their own and others' actions accountable and to assert and interpret the social facts, then their evaluations of whether an individual's judgments are right or wrong are independent of their knowledge of that individual's

subjective state of mind (although they might explain the individual's motivation for making particular judgments with reference to psychological states). In other words, one feature of the social fact character of (mundane) morality is that social actors communicate "as if" moral evaluations are based on "objective" criteria – criteria that are independent of both the individual's subjective point of view and the exigent circumstances that provide the impetus for making moral judgments. Social actors' competence in making moral evaluations depends, therefore, on the cognitive-practical reasoning skills they employ in their deliberations about the applicability of norms and rules to particular contexts of decision making and action.

From this perspective, a person may be "blameless" because, according to others' assessment, he acted appropriately with regard to the application of a moral rule or norm to a particular decision making context. Nevertheless, unless he acted with the appropriate motivation, i.e. because he believed the norm was correct and that it was his duty to act accordingly, his actions will not be perceived as having moral worth. Following this logic Hobbes, Durkheim and many others have argued that social order cannot (at least for very long) depend on people acting legally solely because they fear punishment for their violations. In such an unfortunate society, either the laws are unjust so people cannot be morally motivated to follow them, or the citizens are themselves amoral and incapable of establishing a society in which justice and charity are primary moral ideals. This describes in a

nutshell the “Hobbesian problem of order” of the prison discussed in Chapter Eight.

Based on these premises, I would like to propose two positions in meta-ethical theory that I believe provide important assumptions for the sociological study of morality. The first is moral cognitivism, which I have just defended, and which is also an explicit assumption of Kohlberg’s and most of his successors in the field of moral psychology (Kahn 1991; Wren 1991; Darley 1990). The second position concerns what I will term “elementary moral realism.” Moral realism entails a cognitivist view of moral judgments, that they are statements of fact and are truth evaluable, but asserts the further claim that at least *some* of these statements are actually true. Hence moral realists believe that there is such a thing as “moral knowledge,” just as many people would claim that there is such a thing as scientific knowledge, such as, for example, the knowledge that is summarized as the “theory of relativity.”³

Although moral realism entails cognitivism, the reverse does not necessarily obtain. One could be a cognitivist about moral discourse, but an “error theorist” about the ontology of moral facts, believing that the “facts” in question do not actually refer to anything. In other words, an error theorist would argue that, although we can and do commonly evaluate of the truth or falsity of moral claims, these evaluations are like the Zande tribe’s judgments about whether witches are behind the bad fortune of their kinsmen, or, if you

are an atheist, like the theologian's claim that the universe proceeds according to God's plan (Railton, p. 54). From the error theorist's perspective, discourse about witches, gods, or morals is *meaningful* in that it describes and makes sense of the world as we know it, but in error about the reality we purport to know. Statements that concern the activities of witches or make moral claims can be evaluated on logical and other grounds (such as the degree to which these statements take into account other relevant information), but their ultimate referent is a fabrication. The theologian may assert facts about the world that can be fully justified within theistic terms of reference, and these facts may be further evaluated as "true" or "false" within the same terms, but, in "actual fact," the atheist insists, "God does not exist." (Of course, the atheist/error theorist has the burden of demonstrating why his frame of reference for determining ontological error should trump the theologian's.) In contrast, the moral realist believes that moral facts describe "real" things. As one writer maintains, "the realist about X [moral judgments] gives an account of X discourse that is cognitive, non-error-theoretic, literal, and opinion-independent (objective in our sense)" (Railton, p. 57).

Moral realists have developed many positions internal to the realist framework about the nature of moral facts, or, in other words, about the ontological character of these allegedly "real" things (Sayre-McCord, 1988, pp. 1-23). With one qualification, I do not think that the sociologist need delve

into these more philosophically detailed and difficult arguments and decide on one version or another as a prelude to the study of morality (which is why I call the position I am advocating elementary). The elementary moral realist position is important for the sociological study of morality, however, because, in my view, this position is most compatible phenomenologically with the "common sense" view of social actors in everyday discourse. As I argued in chapter five, the common sense view, which I call mundane morality, has been ignored by sociologists, who have employed it as a resource rather than a topic of their inquiries. Sociological explanations often explain social actors' descriptions of moral phenomena in non-moral terms which may tacitly express analysts' non-cognitivist and relativist presuppositions. The cognitivist and realist perspectives of mundane morality, however, are often smuggled back into the analyst's discourse in the form of more general interpretive conclusions and, in some case, policy prescriptions. (See Chapter Seven for illustrations of this point from sociological studies of the prison.)

The qualification I wish to make about elementary moral realism concerns what philosophers refer to as the truth conditions of moral discourse. The second conceptual entailment of moral realism, that some moral judgments are quite literally "true" and therefore moral knowledge consists of true moral facts, raises the question of what conditions or criteria would have to be met to determine the truth of a statement of moral fact.

The arguments that have been developed to answer this question are significant because they return us to the broader issue of ethical relativism discussed in chapter two, which is the source of much debate and, as I argue, much confusion in the social sciences.

In short, the social scientist need not be an objectivist about the epistemological basis of moral facts to maintain the realist position on their ontological status without inherent contradiction. We can agree with Durkheim about conceptual relativity, and hold some version of metaethical relativism. In other words, we need not believe, with the epistemological objectivist, that moral facts are somehow available to social actors without dependence on their conceptual-linguistic and cultural resources.

The objectivist in moral epistemology holds that “the appropriate truth-conditions make no reference to anyone’s subjective states or to the capacities, conventions, or practices of any group of people” (Sayre-McCord, pp. 19-20). While some realists have made strong cases to this effect⁴, others have developed accounts that stress the social basis of moral judgments without supporting a version of cultural-ethical relativism that makes the truth value of moral judgments dependent on their conformity to the prevailing social norms of particular groups (Timmons 1996; Copp 1995). For example, contractarians like John Rawls argue, “I do not claim for the principles of justice proposed that they are necessary truths or derivable from such truths. A conception of justice cannot be deduced from self-evident

premises or conditions on principles; instead, its justification is a matter of mutual support of many considerations, of everything fitting together in a coherent view" (Rawls, 1971, p. 21).

John Rawls and Jurgen Habermas (1990) have developed "intersubjectivist" accounts of moral knowledge to support their normative political and ethical theories that rest the truth of moral precepts on a rational consensus among social actors under certain idealized conditions. Although Rawls and Habermas claim that moral precepts are grounded in particular social institutions and their practices ("forms of life"), they reject the idea that these precepts are equivalent or reducible to the normative conventions of a social group or collectivity, because social actors have specified and agreed to idealized conditions under which decision making will take place (for Rawls, the original position; for Habermas, the principle of universalization "U"). If appropriate truth conditions are met in the determination of an applicable moral norm, a judgment resting on the application of that norm to a given context is justified and therefore defensible, regardless of prevailing social opinion. The moral norm in question may not be considered "objective" in the sense of existing prior to and independent from a particular human community, but a moral claim may be considered "objective" if it meets the agreed upon criteria for justified true belief. "Moral knowledge" defined in these terms is a possibility for both individuals and social groups.⁵

The immediate point of this very brief look at some of the meta-ethical

assumptions on which Rawls' and Habermas' normative ethical theories are based is to illustrate the possibility that elementary moral realism, while asserting the perspective of mundane morality that there are true moral facts, can accommodate numerous presuppositions about the epistemological derivation and ontological status of moral knowledge. The sociological analyst does not need to give up his or her belief in the social basis of knowledge to understand moral claims as more complex phenomena than the internalized norms of social groups.

Returning to the larger point of this section concerning the relationship between theory and observation, the two meta-ethical positions (theories) I am advocating direct observation and analysis toward the language of moral justification employed by social actors, to the "what" and the "why" of moral claims making. This direction is consonant with the focus on social interaction and the production of social order through the activity of "talk" advanced by ethnomethodologists. And by staking a cognitivist view of moral discourse and a realist view on the truth claims of moral judgments, I am agreeing with the basic position on moral phenomena advanced by Kohlberg (1981), Turiel (1985), Shweder (1990, 1991) and others and advocating a metaethical position on these phenomena – that they are not reducible to something else, for example to the psychological attributes of individuals, or to expressions of social actors' class or group interests "defined partly by particular locations and directions in social space" (Black, 1993).

Different assumptions may guide other research frameworks and may demonstrate more fruitful or acceptable results to the community of scholars that cares about these issues. But these different assumptions will also function normatively to guide the definition of phenomena and the kinds of questions that are asked about these phenomena. In the language of contemporary philosophy of science, observations and descriptions are inherently theory and value laden; the point is to articulate one's theoretical commitments so that they may be scrutinized in light of empirical research, future critical argumentation, and our shared intuitions about the world.

The Scope and Content of the Moral Domain

The terms "moral" and "ethical" as often used synonymously, but for the purposes of this study I would like to review and employ some definitional distinctions. Some scholars have proposed that ethics may be best understood as the broader term, referring to the philosophical study of morality (Deigh 1995; see also Frankena 1973; Williams 1985). As a field of study, ethics includes normative or substantive theories that provide systematized prescriptions for the guidance of individual conduct and collective decision making pertaining to matters of social significance and the reflective or "good" life. Substantive ethical theories may draw upon various religious, cultural, and political traditions to propose answers to the age-old question, how should I live? (Williams 1985) The field of applied

ethics draws upon these substantive theories to address specific issues such as abortion or euthanasia or to develop ethical codes of conduct for professional groups who have specific obligations and duties related to their practices.

(Gert 1992) Ethics also includes, as we have seen in the last section, metaethical theories that analyze the epistemological, ontological, and linguistic presuppositions of substantive ethical theories (Sinnott-Armstrong 1996).⁶

The term morality, on the other hand, may be defined more narrowly as referring descriptively to the moral aspects of a society's "system" of social regulation. A moral system encompasses values, ideals, beliefs, codes of conduct that include rules, principles, and standards, and definitions of the moral point of view. (Gert 1988) As discussed above, it is extremely difficult to provide neutral definitions of the specifically moral aspects of a system of social regulation in order to avoid cultural or personal biases (Baier, 1995, pp. 230 - 233). As suggested in Chapter Two, people from cultures with very different beliefs about the way the world "works" (i.e. the "what everybody knows" of mundane reason) may reason about moral issues with correspondingly very different moral concepts, difficult for a researcher from another culture to recognize, or much less understand without significant anthropological study (Huebner and Garrod 1991).

The most common approach to defining the moral domain has been to provide very general descriptions of the role of morality in the larger system

of social regulation and then to proceed by describing moral language or moral reasoning, in other words by describing its *form*, rather than its specific *content*.⁷ (Although even this approach does not solve the problem, as the extensive literature criticizing Kohlberg's focus on principled (deontic) reasoning about justice illustrates (Gilligan 1982; Wren 1990; Larrabee 1993)). The latter approach is taken in the next section of this chapter.

Jurgen Habermas (1990) provides a general description of the role of morality which I find particularly compatible with the perspectives I take up in this study. Habermas has put more effort than any other thinker in the twentieth century into developing a social theory which includes both a normatively and a sociologically sound theory of morality. His description expresses the essence of Durkheim's understanding of the close relationship between individual identity and the moral order of society:

Since moralities are tailored to suit the fragility of human beings individuated through socialization, they must always solve two tasks at *once*. They must emphasize the inviolability of the individual by postulating equal respect for the dignity of each individual. But they must also protect the web of intersubjective relations of mutual recognition by which these individuals survive as members of a community. To these two complementary aspects correspond the principles of justice and solidarity respectively. The first postulates equal respect and equal rights for the individual, whereas the second postulates empathy and concern for the well-being of one's neighbor. Justice in the modern sense refers to the subjective freedom of inalienable individuality. Solidarity refers to the well-being of associated members of a community who intersubjectively share the same lifeworld. Frankena⁸ distinguishes a principle of justice or equal treatment from a principle of beneficence, which commands us to advance the common weal, to avert harm and to do good. In my view, it is important to see that both principles have one and the same root:

the specific vulnerability of the human species, which individuates itself through sociation. Morality thus cannot protect the one without the other. It cannot protect the rights of individuals without also protecting the well-being of the community to which he belongs (p. 200).

Durkheim's insights into the complex connection between morality and social order and his distinction between moral and non-moral aspects of social regulation have been reiterated by many twentieth century thinkers on this subject who maintain that the "moral institution of life" is "coordinate with but different from art, science, law, convention, or religion" (Frankena, 1973, p. 6; see also Baier, 1995, p. 202 - 214). But the differentiation between the moral and the non-moral domains of social life is not an artifact of modernity, although modern thinkers have made much of it. This distinction is woven deep into the historical fabric of western societies, and, as some social scientists have claimed (Hamilton and Sanders, 1992; Shweder, 1991; Edgerton, 1985), into non-Western societies as well, albeit with varying degrees of emphasis. Aristotle (1925/1992), for example, maintained a distinction between a people's conventions and laws and "natural justice." In a similar vein, the apostle Paul claimed that, "For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: which shew the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another" (Romans 2: 14-15).

Contemporary thinkers have called the “core” of moral codes or laws which members of a society universalize “critical” or “true” morality (Feinberg, 1990; Hart, 1961/1991). “Conventional” morality, which may be understood as comprised of the distinctive codes of conduct discernable in different societies, may include some principles or norms dictated by critical morality as well as norms and principles unique to the frameworks of those societies (Feinberg, 1990; Hart, 1991; Dworkin, 1978; Taylor, 1989).⁹ Under the rubric of “judgments of morality,” moral and legal philosopher Joel Feinberg proposed a fourfold distinction between: (1) morality that is descriptive of a particular group, which includes (a) the “anthropological sense” of the group’s “actual consensus of attitudes and feelings, prejudices, etc.” and (b) the “discriminative sense” which constitutes the group’s “consensus of qualified judgments that are critical, reasoned, and consistent”; and (2) advocative morality, which is “put forth as truly moral or immoral quite apart from what is thought to be so in any given community” (Feinberg, 1990, p. 143).

Richard Shweder (1987), a cultural psychologist who has conducted extensive research on morality in India, argues that a sharp distinction between (1) and (2) is not necessarily a feature of non-Western people’s moral reasoning. As discussed below, however, his research supports the contention that this distinction is significant for people in Western societies. Kurt Baier (1995) proposes a more qualified, but similar view: “A moral order

. . . is a social order which raises certain critical questions about its mores and which tends to modify them in light of the answers it gives to them. These questions therefore function as the society's own tests of soundness, that is, tests of the belief that certain directives contained in its mores (and possibly those of other societies as well), and purporting to be moral directives and so to pass a certain appropriateness test, really do pass it; . . . " (p. 212).

Empirical research in moral psychology has generally supported the contention that the distinction between critical and conventional morality is normative for Americans with findings that demonstrate that "critical morality" plays an important role in individual judgment and social interaction. Researchers have disagreed, however, about how moral knowledge is acquired by individuals.

Lawrence Kohlberg's perspective has been characterized as a "structural-interaction theory" that describes moral development as generated by the interaction of individual and environment (Kahn, 1991). According to Kohlberg's (1981; 1984; Colby, et al. 1984) analysis of his findings, all people (regardless of culture) develop within an invariant sequence of cognitive stages in which they employ the moral concepts appropriate to their current stage of reasoning. "Moral stages," he argued, "constitute 'principles' in the sense that they represent the major consistencies of moral evaluation within the individual not directly due to factual beliefs" (1981, p. 127).¹⁰ In Kohlberg's perspective people from all cultures arrive at the same moral

stages, with the post-conventional reasoning of stages four, five, and six universally embodied in a society's just social institutions (Kohlberg, 1990; 1981; 1972).

Eliot Turiel, another moral psychologist whose work has been influential, accepts Kohlberg's view of the distinctive characteristics of moral reasoning, but argues against his conclusion that individuals recognize a distinction between conventional social norms and morality only at the higher stages of cognitive development associated with adulthood (Darley and Shultz, 1990). Turiel (1985) and his research colleagues found that children employ a distinction between moral rules and conventional rules in their responses to social situations at very early ages, in nursery school and kindergarten (p. 44). In Turiel's view, the cognitive distinction that children (and adults) make between (noncontextualized) moral judgments and (context relative) social codes of conduct is fundamental to understanding social interaction, but social environment and experience plays a negligible role in the way in which individuals reason in their interactions, because: "conventional wrongs, but not moral wrongs, can be learned through exposure to group consensus via social transmission processes – commands, sanctions, instructions. Moral wrongs (on the other hand) are learned primarily through direct observation of the harm or injustice caused by a transgression" (Shweder, et al., 1987, p. 28). Turiel's research, therefore, represents one end of the spectrum of views on the autonomy of the moral

domain from the influence of social environment.

In contrast to Kohlberg's and Turiel's theories, Richard Shweder's findings from cross cultural research on the moral reasoning of children and adults in India and the United States led him to a theory of moral development that could be described in certain respects as social constructionist. Shweder disagrees with Kohlberg and Turiel in several important respects. First, he concludes that "moral events cannot be distinguished from conventional events on substantive grounds" (Shweder, et al., 1987, p. 34). In other words, what a group's members determine to be a moral norm or an arbitrary, conventional norm varies according to the group (and presumably over time, within the group). A second, related finding was that some principles and practices were identified as morally binding by research subjects from all cultures (and therefore all moral codes may share some universal features), but there were no invariant or common features identified with conventional norms.

A third finding significant for this study was that only Americans emphasized the importance of a distinct realm of conventional norms, binding them to judgments and practices on a context-specific basis. Both Hindu adults and children exhibited a "postconventional" understanding of morality. They understood "their practices as direct expressions of natural law," whereas Americans, especially adults, tended to emphasize the relativity and context dependence of many of their moral judgments and

evaluations

(p. 35). Shweder, therefore, maintains that what is truly distinctive about Western culture is not the "enlightened" recognition of the universality of certain moral principles, but the recognition of a wide "zone of indifference" encompassing many areas of social activity that people from other cultures resolutely locate in the "zone of moral obligation."¹¹ In Shweder's "pluralistic" perspective on moral frameworks, people do not transcend culturally specific frames of reference when they take the moral point of view. He argues that, to the contrary, "If there has been a confusion in the literature on conventional and postconventional moral reasoning, it has been created by the false separation or opposition of reason and tradition. One does not transcend tradition to become a postconventional reasoner. Instead one carries out a self-reflective analysis of the moral and dignified outcomes served by customary ways of acting" (Shweder, 1991(b), p. 361-362).

Research conducted by cognitive developmentalists in moral psychology provides ample and provocative empirical evidence that the distinction between conventional social norms and morality plays a significant role in individual judgment and evaluation. For Americans, this distinction may be crucial because it is basic to our notions of freedom and obligation. Regardless of where their views on the ontogenesis of moral precepts fall on the spectrum of "self-constructionist" (Turiel) to "social constructionist" (Shweder¹²), they agree that, "social judgments are neither

random nor simply reflective of external content" (Turiel, 1985: 217).¹³

The Characteristics of Moral Language

If social actors communicated by directly stating the norms, rules, or values that inform their interpretations of social interaction, then virtually all of the sociological and psychological theory discussed in the preceding chapters would be unnecessary, or perhaps more accurately this body of theory never would have come into being in the first place. At the very least, the puzzles of social order, interaction, conflict and change would have been quite different and, consequently, so would our questions about them. Instead, as discussed in chapter six, everyday communication is based on multiple layers of inference that entail conversationalists' shared knowledge of the social and natural world (Gumpertz, 1982; Schutz, 1970; Garfinkel, 1967).

By definition, norms are part of the social knowledge upon which conversational inference is based, rather than, for the most part, the explicitly stated topics of conversation. Analysts of talk have therefore developed theories of meaning and corresponding methods for determining the inferential content of social actors' situated interpretations (Boden, 1994; Silverman, 1993; Shweder, 1991, pp. 186 - 240; Gumpertz 1982). The next chapter on method is a more detailed discussion of these theories and methods. For present purposes, we are concerned with the formal

characteristics of moral language on the assumption that the presence of these characteristics conversationally signals a speaker's inference to (a) moral as opposed to conventional or non-moral norms, and (b) a mutually shared stock of situationally relevant moral norms and beliefs (the "moral facts").

Based on the psychological and sociolinguistic research and language analysis discussed in this chapter, we can assume that in everyday conversation social actors do not often cite moral rules directly to account for and interpret their own and others' actions. Instead, English language speakers, such as those with which the present study is concerned, typically draw upon an array of conceptual-linguistic conventions to signal their inferences to presumed shared moral understandings. Notwithstanding these understandings, however, the participants in my research were also typical in that they were not culturally homogenous. They shared a language and a broad cultural landscape (the United States, New York City) and an organizational context (the New York City Department of Correction), albeit with vastly different roles and statuses within it. But, most obviously, they were different genders and came from different class and ethnic-racial backgrounds. Drawing upon research in other social settings that employs sociolinguistic methods of discourse analysis, I hope to show that intra-group conflict within the organization studied may not be based solely, as conventional sociological wisdom has it, on competing and conflicting values and goals derived from different roles and statuses, but on failures to

communicate caused by these groups' differing interpretive conventions ("*contextualization cues*") about (what may or may not be) shared moral facts (Gumpertz, 1982, pp. 6-7, 153-186). A significant aspect of the analytical challenge of the sociological study of morality is to attend to the significance of group differences in terms of conversational inference about moral understandings.

The present discussion of the characteristics of moral language cannot include arguments as to why each of these characteristics should be considered as shared cultural-linguistic resources. To provide such arguments would take me well beyond the purposes of this study. As mentioned, my objective here is to suggest a basis for identifying moral discourse as it occurs in the conversations (transcribed interviews) that comprise the empirical focus of this study. Notwithstanding the possible philosophical arguments that could be raised, however, there has been a good deal of convergence in the philosophical and psychological literature on the general characteristics or "*form*" of moral language or moral reasoning. For this study, the presence or absence of these characteristics in the transcribed interviews should not be considered hypotheses to be "*proven*." Instead, as stated, they are to be considered in sociolinguistic terms as contextualization cues that signal moral discourse.

While this study primarily focuses on social actors' justificatory discourse, it is important to reiterate that moral understanding is not limited

to deontic judgments. People, their actions, and their institutions can be evaluated according to their conformity to moral rules and norms, the moral values or ideals (goals) which they serve, or as exemplary instantiations of these values or ideals. "The three primary modes of moral judgment, and the corresponding types of ethical theory, deal with (1) duties and rights (deontological), (2) ultimate aims or ends (teleological), and (3) personal worth or virtue (theory of approbation)" (Kohlberg, 1981, p. 109). Typically, all three modes of moral judgment contain an implicit or explicit "ought"; they simultaneously describe what is the case as well as prescribe what, *ceteris paribus*, should be the case. Regardless of the metatheoretical controversies about the relationship between "is" and "ought," (Arrington, pp. 45 - 71) Durkheim's insights are surely applicable to everyday moral discourse: fact and value are deeply fused.

A heuristic distinction between judgments involving moral and non-moral values and ideals is also be helpful for the analysis in Part II.¹⁴ There is considerable controversy, as mentioned above, on whether any hard and fast criteria could be used in any or all cultures to discern moral from non-moral ideals and values (see Shweder 1991(a) and 1991 (b)). But some useful distinctions might be made that are applicable to modern Western societies without engaging too much controversy if we look assume a connection between norms, ideals, and values. In Gert's (1988) definition¹⁵, "the most important moral ideals are directly concerned with lessening of such evils as

death, pain, and disability" (p. 161). People who work in international relief agencies, human rights organizations such as Amnesty International that attempt to expose and prevent practices like the torture of prisoners, or any charitable organization that seeks to prevent or palliate human suffering are attempting to live up to moral ideals. In this century Ghandi, Martin Luther King, and Mother Theresa are held up as exemplars of moral ideals.

Although they embody cultural ideals like material success, authoritative power, or creativity, people such as Bill Gates, Norman Schwartzkopf, or Martha Graham are generally not held up as exemplars of moral ideals. As Gert points out, we often like often haul out sundry lofty sentiments when asked about moral ideals. But we rarely seriously consider in practical terms what it would mean to live out these ideals. For example, Jesus' "second commandment" to "love thy neighbor as thyself "(Matthew 22:37-40) is often cited as a moral ideal, but "live and let live" or, more ideally, "live and help live" is more consonant with "what the moral rules demand" (Gert, p. 177) or what I would call mundane morality.

Judgments of moral value involve evaluations of "persons, motives, intentions, traits of character. . . [in terms of whether they are] morally good, bad, virtuous, vicious, responsible, blameworthy, saintly, despicable, or so on" (Frankena, p. 9). When John asserts that "my mother was a good person" he is making a value judgment about his mother's moral worth as a person. When John asserts that his mother was not a good cook, he is making a value

judgment but not a moral one. Ethical theories and philosophies or religious theologies may include their own set of moral and non-moral ideals and values. For example, members of some Christian denominations like the Mennonites believe that Jesus' teaching demands both the negative obligation not to kill prescribed by Mosaic law and a positive obligation to oppose killing. Mennonites are therefore religious pacifists, which distinguishes them from most Americans, including most professed Christians. These distinctions may seem obvious enough, but it is important to see that moral values and ideals are not constitutive in the sense that I am claiming for mundane morality. Moral and non-moral ideals and values may operate in Habermas' term as "regulative ideals" in social actors' justificatory discourse, but they do not set the interpretive boundaries of intelligible action.

In describing the characteristics of moral language it is helpful to think in terms of what is going on when someone is taking the "moral point of view." Taking the moral point of view means that judgments involving the moral norms, rules, or principles which are deemed relevant to a particular situation or event assume a particular form or are defended in a particular way (Frankena, 1973; Baier, 1958).¹⁶ The two characteristics most often cited are objectivity and universality (Gert, 1988 ; Baier, 1958). We have already contended that mundane morality asserts that moral facts are objectively true. If I argue that the government should not force people to work who are

charged with a crime and detained until trial because this would be a form of slavery, I am asserting that the principle involved ("slavery is wrong") is not merely my subjective opinion, nor the particular perspective my social group (e.g., liberal democrats). I am furthermore implicitly including a *ceteris paribus* clause: slavery is not only wrong in this case, but always wrong for all humans at all times, all things being equal (i.e. unless some highly unusual circumstances provided the basis for a justified exception, but this would not invalidate the principle).¹⁷ The most famous articulation of universality as a feature of moral judgment is Immanuel Kant's categorical imperative: "act only according to that maxim through which you can at the same time will that it should become a universal law" (Kant, 1785/1959).

Another characteristic of moral judgment closely related to objectivity and universality is impartiality. Impartiality has been associated with the "test of reversibility" inscribed in the Golden Rule, "Do unto others as you would have them do unto you" (Gert, p. 77). There are many types of activities which normatively require impartial decision making, such as grading examinations, but some philosophers claim that impartiality is a prerequisite of the moral point of view, regardless of one's social or professional roles or responsibilities (Baier, 1958; Gert, 1988). Although there are many disputes about the scope of impartiality (Gert, pp. 85 - 95), it seems intuitively plausible to include it as a feature of the moral point of view. Many disputes about whether a rule or norm is morally legitimate revolve

around whether the rule or norm in question is applicable to everyone ("all rational persons" in Gert's term), or whether it is being impartially applied, without arbitrary preference for some people or groups.

Finally, when taking the moral point of view, moral rules will characteristically preempt non-moral rules. This is similar to the point discussed in previous chapters that moral rules have greater "weight" than customary and conventional rules, or are, in Kant's term, categorical. Part of the "what everybody knows" that provides the basis competent social actors' conversational inference is that violations of conventional rules that exist solely in relation to specific institutional contexts or of the customs of "our group" (e.g. matters of etiquette) cannot be defended or sanctioned in the same way as violations of moral rules (Turiel, 1985). Furthermore, the moral point of view also requires that prudential judgments cannot prevail when the context of decision making calls for the application of moral norms (Baier, p. 188-191).

A different and somewhat unusual approach to defining morality developed by Gert (1988) focuses on identifying a list of "the moral rules." Although Gert's approach is unusual for analytic moral philosophy, it is not unusual in the history of Judeo-Christian culture, the story of which "opens" (it has been argued) with the Ten Commandments. Jesus and his apostolic redactors produced a modified version of these commandments (Matthew 19: 16-30), and Gert's list is a modern, secular formulation that leaves out

specifically religious prescriptions, such as “thou shalt have no other gods before me.” As a contemporary basis for normative ethics this approach is philosophically controversial, among other reasons, because (a) the focus on the content rather than form of morality assumes a normative commitment to a set of action-guiding moral norms that are alleged to be universal, i.e. “discovered” in all cultural and historical settings (Gert, p. 68), and (b) there is no logical or empirically established basis for assuming what rules should or should not be included on the list. For the heuristic purposes of this study, however, these philosophical objections do not need to be engaged. A list of moral rules that combines and refines what is incontestably an historical artifact of Judeo-Christian culture is phenomenologically plausible and therefore can help guide the analysis of moral discourse. There are five rules that, with the differences in phrasing indicated, occur in all three lists (the Ten Commandments, Matthew 19: 16-30, Gert).¹⁸ These are:

- (1) “Honor your father and mother . . .” (Do your duty)
 - (2) “You shall not kill.” (Don’t kill)
 - (3) “You shall not commit adultery” (Don’t cheat or Keep your promises)
 - (4) “You shall not steal” (Obey the law)
 - (5) “You shall not bear false witnesses against your neighbor” (Don’t deceive; don’t lie)
- (Exodus 20: 12-16; The Oxford Annotated Bible, Revised Standard Version 1962; Gert, pp. 284)

Gert’s list gives greater emphasis to the moral obligation not to harm and thus includes as among the most important rules: “Don’t cause pain,” “Don’t disable,” “Don’t deprive of freedom,” “Don’t deprive of pleasure” (p.

96 - 124). For Gert, these rules define negative obligations, not positive ones. We are not, he argues, specifically obligated in the context of everyday practical problem-solving to promote the pleasure or freedom of others, although we may consider moral rules in their positive formulations as moral ideals and choose ways to attempt to put these ideals into action.

An important feature of moral rules discussed by Gert is their generality: "they simply state what kind of action is to be avoided or done, where the kind of action is one that all rational persons . . . know about" (p. 69). Although simple, this is not a trivial point because without recognition of the feature of generality, moral rules might be interpreted as absolute, in the sense of not allowing for justified exceptions (p. 70). Yet as discussed in Chapter Five, moral rules clearly do admit exceptions, and we spend a great deal of time discussing the when and why of them. In Part II, I hope to show that intergroup conflict in the organizational setting studied involves social actors asserting and accounting for "the social facts" in terms of the possibility and plausibility of exceptions to inferred moral rules.

Lastly, empirical researchers in the Kohlbergian tradition have noted that the characteristics of moral discourse discussed – objectivity, universality, impartiality, and generality – seem to be present in the moral point of view when the matters at hand concern individual welfare and social solidarity conceived as issues of justice and fairness. Yet doesn't morality often require the very opposite – commitment to and caring for

specific individuals or groups? “Doing justice” may mean pursuing procedural justice through development of fair and impartial guidelines for decision making. But it may also mean advocacy for a special group, as in the attempt to achieve distributive justice through development of social policies that promote substantive equality of opportunity or outcome for social actors with unequal material and cultural resources. The famous figures mentioned earlier who embody moral ideals acted as advocates for specific groups of people whose suffering was catalyzed or increased because of their unequal social status.

The issue of moral advocacy, or the particularity of compassionate acts, raises the controversy over Kohlberg’s perspective on morality, which is normatively conceptualized as principled reasoning about justice and fairness. Since Carol Gilligan’s (1982) critique, moral psychologists have recognized an “ethic of care” as a different framework of moral reasoning, in which taking the moral point of view implies, “a consideration of care, concern and compassion for others, and an inherent interest in preserving interpersonal relationships. . . .” (Beal, et al. 1994, p. 4). Hence morality also seems to be implicated in the sympathetic attention to the well-being of relationships between particular individuals, such as between a parent and child or good friends. For example, many mundane moral reasoners who recognize “don’t lie” as a moral rule and truth-telling as an important moral value, will opt to tell a “white lie” to a friend if telling the truth would hurt

them, possibly cause a breach in the relationship, and not provide a means to a constructive insight or conclusion. In such cases, caring for others expresses a form of moral concern, without which the primary social units of family, friendship, and community would disappear or be transformed beyond recognition (as in, for example, the case of the Ik tribe famously described by the anthropologist Colin Trumball).

Recent research has emphasized that, in Western societies at least, these different “moral orientations” or frameworks should not be conceptualized as mutually exclusive, nor should they be conceived as inherently associated with “masculine” or “feminine” forms of reasoning. Different contexts of moral decision making rather than the research subjects’ gender may be a significant determining factor of which orientation they express (Walker, 1989). Beal, et al. (1994) confirmed previous studies that found that boys and girls of elementary school age did not demonstrate gender-specific orientations, but rather expressed both care and justice orientations in resolving moral conflicts. Some (but not all) research, however, provides evidence that the differences Gilligan originally found do begin to show up in early adolescence among the middle-class girls who have been the subjects of most of this research. The “gender gap” in moral orientation in adolescents and adults has been theorized as resulting from a host of socializing factors that become highly salient in the transition from childhood into adolescence, with the strongest influence on boys to “move

away from the care orientation toward an orientation that incorporates issues of rights, fairness, and, in some cases, tricks and violence" (p. 15). In any case, if justice, broadly conceived, is a "possible, but not a necessary, quality of a social order regulating the mutual relations of men [sic]," (Kelsen, 1957, p. 1) then both a justice orientation that emphasizes the general rights of generic individuals and the impartial application of moral principles and a care orientation that emphasizes the partiality of individual needs and the flourishing of specifically-defined relationships, are directed at the same ultimate goal. Both orientations are important for the study of morality, interaction, and conflict in organizational context.

This discussion has sketched various issues related to "mapping the moral domain" (Gilligan, et al., 1988) that have long, difficult histories of complex debate and dispute. I have staked out positions on a few of these issues and merely described the outlines of or alluded to others. Kohlberg (1981) argued that, "progress in moral philosophy and moral psychology occurs through a spiral or bootstrapping process in which the insights of philosophy serve to suggest insights and findings in psychology that in turn suggest new conclusions in philosophy" (p. 97 - 98). The objective of this chapter was to undertake the same process in the sociological study of morality.

1. See Kurt Baier's (1995, pp. 230-233) review and discussion of the debates concerning whether it is possible and/or desirable to attempt to provide "neutral" or "morally non-committal" definitions or accounts of "the moral" for the purpose of distinguishing moral from non-moral evaluations, norms, etc. If I understand his argument correctly, Baier concludes that "accepting some committal definition of the moral" is the only analytically productive choice.

2. An example of contemporary non-cognitivist moral philosophy is Alan Gibbard's Wise Choices/Apt Feelings (1990, Harvard Univ.); R.M. Hare's The Language of Morals is the classic account of prescriptivism, a view of moral discourse based on non-cognitivist assumptions (1952, Oxford).

3. J.B. Schneewind has argued that moral theories are similar to scientific theories and need not rest on first principles derived from reason or intuition: "It may be argued that what is scientific about morality . . . is the general structure of its contents and methods. Moral beliefs show the same kind of susceptibility to systematisation, criticism, revision, and re-systematisation that factual beliefs show. There are analogues to theory and data among our moral beliefs; and these can be understood as related in ways like those in which theory and data are related in the sciences. If we can show that this way of understanding morality is feasible, then we can undercut the argument claiming that the model which commits us to classical first principles is the only one" ("Moral knowledge and moral principles," pp. 249-62 in Knowledge and Necessity, Royal Institute of Philosophy Lectures, vol. 3, 1968-69).

4. For example, David O Brink in Moral Realism and the Foundation of Ethics (1989, Cambridge).

5. See Habermas, 1990, pp. 43-115 for his major explication of discourse ethics and the principle of universalization.

My discussion of moral cognitivism and realism is cursory and begs many questions that would not be appropriate or possible to address here. The references I have cited in this section provide good overviews of these topics.

6. A third area, descriptive ethics, has sometimes been claimed for moral philosophy (Ladd, 1957), but since modern scholars generally agree that description entails methods for establishing the relation between observation, analysis, and interpretation, this task is best understood as belonging to the social sciences, which is the door through which moral psychology has entered, as well as the one proposed here.

7. A notable exception to this approach is the work of Bernard Gert. Gert's approach is antithetical to that employed in most normative ethical theories, which begin with a purely logical-analytical defense and proceed to prescriptive generalization. Gert argues that some description of the moral precepts people actually employ should be the basis, in part, of a normative theory. "The central task of moral philosophy is to examine the commonly accepted moral rules, ideals, and virtues to see if they are included in a public system that applies to all rational persons and then to see if this public system is such that all rational persons could advocate adopting it." (1994, unpagged) The content of the moral domain is for Gert provided by a list of these rules, values, virtues, and ideals. (See Gert 1988. See also B. Gert, "Rationality, Human Nature, and Lists" [*Ethics* 100, January 1990, 279-300] and "Defending Irrationality and Lists" [*Ethics* 103, January 1993, 329-336]).

8. Habermas is referring to William Frankena's *Ethics* (1973) cited in this chapter and elsewhere. The argument Habermas references is on p. 45ff.

9. Some philosophers, however, do not accept this distinction. For example, Gert (1988) argues that, by definition, the "moral rules" constitute what morality *is* and therefore apply to all people and societies at all times; it is a confusion about the definition of morality that has led to references to a "Nazi morality," or to "moral norms" unique to particular societies (p. 4).

10. See Kohlberg (1981) for a description of the six stages of moral reasoning. They are summarized below in Chapter Six.

11. I borrowed these terms from James S. Fishkin, *The Limits of Obligation* (Yale, 1982). Fishkin, a political philosopher, makes a similar argument.

12. Shweder's position should not be confused with non-cognitivism in moral psychology, described above. Shweder describes himself as a "neo-rationalist" and holds a version of moral realism (1991, p. 187). His article "In Defense of Moral Realism: Reply to Gabennesch" (*Child Development*, 1990, 61, 2060-2067) outlines the differences between his cognitivist and realist approach to moral psychology and Gabennesch's, who, according to Shweder, is a non-cognitivist ("emotivist") and believes all social norms are conventional, i.e. that they have no justification beyond individuals' subjective, situationally-dependent beliefs. Describing his own position, which I am describing as a qualified social constructionism, he argues: "My own approach to natural law is very similar to what Hilary Putnam describes as 'internal' or 'pragmatic' realism (Putnam 1987, pp. 17, 33). The basic idea is that 'there are "external facts" and we *can say what they are*. What we cannot say -- because it makes no sense -- is what the facts are *independent of all conceptual choices*,' because every reality is internal to some conceptual

scheme. 'Internal realism' does not imply, of course, that every conceptual scheme is real or valid, but it does imply that there is more than one reality" (pp. 2060).

13. See Weinreich-Haste in Kurtines, 1984: 327-331 for a good summary of these differences; Darley and Schultz (1990) for a history of the field of moral psychology and review of the literature; and Kahn (1991) for an overview of the "foundational issues in the study of moral development."

14. One claim of this study is that sociological research should not equate subcultural ideals, such as the macho ideal of manhood expressed by young inner city men, with moral ideals. The "code of the streets," which is loosely based on a macho ideal, includes norms such as "retaliate against anyone who 'disrespects' you to preserve your honor and status" (Elijah Anderson, "The code of the streets," *Atlantic Monthly*, 1994, Vol. 273, No. 5, 80 - 94). To describe this as a moral norm without an extended analytical defense would be to rob the term "moral" of all meaning, whether mundane or philosophical. Furthermore, as I attempt to show in my analysis in Part Two, it is not at all clear that a person who supported and subscribed to this norm would himself consider it a "moral" norm.

15. Gert's (1988) definitions are part of his normative ethical theory and clearly subject to debate. They are nonetheless well-articulated and phenomenologically plausible.

16. Other kinds of judgments may assume the same form, for example many people defend the objectivity of aesthetic judgments.

17. In making this claim from the moral point of view the assertion is not necessarily being made that a person might not be justified in believing that slavery is not wrong. In other words, for example, a typical "white" person living in the deep South in the mid-nineteenth century may have been justified in believing that the institution of slavery was not wrong, because that person's strongest influences were most likely all pro-slavery. From the moral point of view, the hypothetical typical white person may have been justified in holding their belief, but their belief was wrong. The fact that their belief may have been justified does not excuse them from responsibility for the suffering caused by the institution of slavery in which they participated, because slavery was, and is, wrong.

18. This overlap of rules was suggested to me by Louis Tietje (unpublished lecture notes).

PART II
MORAL CONFLICT IN A LARGE URBAN JAIL SYSTEM

Lord, must I do unto
others
before they do unto me
Must I arm myself
to protect myself
from harm and injury

Oh no, that is not the
lesson
that I learned on my
Mother's knee
when she told me to
"Do unto others, only
what I'd have them do
unto me."

("Prayer" by Ysaye M. Barnwell, from
Safe House: Still Looking 1994.
Reproduced in notes to "Sacred
Ground" recording by Sweet
Honey and the Rock, 1995,
EarthBeat)

Chapter 6. Representing the Prison

The Prison as Microcosm

To the best of my knowledge no one has written about the social scientific literature on the prison from the vantage point of intellectual history, asking what these studies say about their authors' preoccupations in relation to the evolution of the broader sociological enterprise. The following discussion will demonstrate, I hope, that social scientific studies of the prison conducted during the past fifty years or so provide an excellent illustration of the conceptual and theoretical issues discussed in Part I. In their representations of the prison, these studies continue and expand many of the familiar themes of late 19th and early to mid- 20th century sociology: the breakdown of cohesive folk communities and the need for representatives of the state (prison custodians) to engage continually in activities that legitimize their authority and power over the "dangerous classes," the multifaceted threat of deviant populations, the corruptions and excesses of the powerful, and the inevitability, regardless of the best laid plans, of social change and its unforeseen, and often alarming, consequences. Nevertheless, as I argue throughout, moral struggle of the kind so central to the presociological imaginations of 16th and 17th century thinkers has been expunged from the discourse of explanation. Several of the major studies of the prison conducted during the past half century are reviewed below in terms of their significance for the sociological study of morality in the context of

organizational conflict.

Since Donald Clemmer's 1940 classic, The Prison Community, scholars have time and again employed the trope "microcosm" to suggest that within the prison, "the conditions and processes of the larger society are observable" (Donald Cressey, Introduction to Clemmer, 1940/1958, p. vii). From the microcosmic perspective, whatever infirmities of social interaction, organization, and, perhaps, human nature, are found in diffuse form "outside" will also be found in condensed, dramatic form "inside." The result, if one ponders for a moment what it means to advance the prison as a synecdochic trope for modern society (i.e. the part standing in for or representing the whole), is an extremely pessimistic and rather dismaying vision. Tropes are by definition not mere (neutral) descriptive devices; the fact that an author has been moved to employ a particular figure of speech suggests that he has moved, at least inferentially, to the level of evaluation, and to expression of his own deep seated convictions about the workings of social reality (Burke, 1989). Few scholars, however, have been reflexively explicit about the normative implications of their choice of metaphors.

The golden age of prison studies, from about 1945 to 1977, was coincident with a tremendous growth in the number and prestige of social science departments in the United States and the development of the major theoretical perspectives that now inform current research. Many of the classics, from The Prison Community to James B. Jacobs' Statesville, were

comprehensive, organization-wide ethnographic studies of particular prison institutions, in which the researcher acted as "participant observer" at his research site. Following the logic of the microcosm theme, the authors of these studies often concluded with some skepticism about the broader social and political environments that sustained the prison organization and the seemingly inevitable cycles of violence and suffering within it.¹

To a greater degree than in many other areas of social science research, successive generations of prison scholars also became reformers and used their research to further social policy goals. As several historians have noted, prison reform is historically coincident with the prison itself (Rothman, 1971/1990; Foucault, 1979), suggesting that from the very beginning the carceral "solution" to the problem of punishment has embodied deep-seated ambivalences in the Anglo-European worldview about the relationship between behavior and environment. In the country that "invented" the penitentiary, so American in its goal of "join[ing] practicality with humanitarianism," (Rothman) scholars have continually used the prison figuratively to represent the State and the state of the Union. Despite their unpopularity in the popular imagination, prisons have never been marginal to our civic consciousness.

The Prison Community and Normative Sociology

In The Prison Community, Donald Clemmer analyzed the social reality of the prison equipped with the sociological imagination for field research and the amalgam of research methods and techniques developed by the Chicago School of sociology. Using survey questionnaires, interviews, descriptive statistics, and everyday documents from prisoners' lives, Clemmer inventoried and categorized information about prisoners' families and cultural backgrounds, their attitudes towards other inmates and the prison administration, and their patterned responses to formal and informal control mechanisms within the institution. Although his research reflected the Chicago School's lack of theoretical-deductive orientation, he brought to bear several of early sociology's key concepts, discussed above in Part I, which have remained abiding themes for prison scholars.

Employing a Rossian conceptualization of social control in which "mores" and "morals" are the "folkways that have become obligatory" (Clemmer, p. 154), Clemmer argued that inmates developed informal channels of control to shape the general attitudes of the inmate community and to promote behavior that conformed to their oppositional stance to the official culture of the prison administration and the larger society. The major product of this process was the inmate code. As social control, the inmate code, (first commandment: "thou shalt not rat on a fellow prisoner") inhibited inmates' self-interested objectives and desires which, in the absence of intervention, threatened to dissolve any and all intra-group social

cooperation into a Hobbesian war of all against all. The fact that Clemmer assumed that the social conditions of the prison are directly related to the forms of social control developed by its inhabitants – and by his own definitions, the mores *qua* morals – ensured his own deeply pessimistic conclusion:

There is no consensus for a common goal. The inmates' conflict with officialdom and opposition to society is only slightly greater in degree than conflict and opposition among themselves. . . . It is a world of "I," "me," "mine," rather than "ours," "theirs," or "his". . . . In a sense the prison culture reflects the American culture, for it is a culture within it (Clemmer, p. 154).

The next wave of prison studies carried out during the 1950s was a variation on Clemmer's themes, but incorporated the more developed theoretical concepts of normative and structural-functional analysis developed by Talcott Parsons and Robert Merton. Following Clemmer, these studies generally portrayed the prison as a site of inherent contradiction. On the one hand prison administrators were charged with the social goal of prisoner rehabilitation and the organizational objectives of stability and order. But the means to achieve these ends – coerced incarceration – generated unintended consequences. Deprivation of autonomy, material goods, heterosexual relationships, and access to legitimate opportunities for esteem-building activities mitigated against the continuing influence of conventional social norms of cooperation (i.e. moral norms) on prisoner conduct.

In response to the conditions of their situation, prisoners developed

their own distinctive subcultures which were characterized by roles and statuses and norms and values that became the unique but consistent features of prison life (e.g. Sykes, 1958; Cloward, 1960). The inmate code, which researchers observed in operation in virtually every prison they studied, did not, they argued, develop as a result of shared psychological characteristics of the criminal mind, but was rather a consequence of the shared features of their environment. Any attempt, therefore, to alter inmates' attitudes and values as part of the rehabilitation process must be directed toward altering the organization of the prison itself. The deterministic implications of normative analysis were writ large in this view; individuals are simply the bearers of group characteristics that result from an organization's structural arrangements. "[The] . . . many traits exhibited by individual staff members and inmates are properties of the organization, not of the person in question. . . . [Hence] if the traits are to be changed the organization, not the person, must be the object of modification" (Cressey 1961, p. 8).

Other scholars of the prison whose research employed concepts and issues borrowed from political science focused on the influence of extra-organizational factors affecting the environments of maximum security prisons (McCleery, 1960, 1961; Jacobs, 1977). In these studies, changing styles of bureaucratic management, along with new penal and punishment philosophies were analyzed in terms of their impact on the way in which official authority was legitimized and power (roles and statuses) was

distributed between prison management, custodial staff, and inmates.

Recognizing that social changes were having a dramatic impact on American prisons during the 1960s and 1970s, these researchers sought to explain some of the subsequent unintended consequences, such as the increase in prisoner violence that accompanied the establishment of "reform" administration policies in many large prisons. Consistent with the assumptions of normative sociology, they explained the increasing disorder that attended "constructive" prison reforms as the effect of these reforms on the normative social orders or subcultures of staff and inmates, especially with regard to the breakdown of traditional inmate subcultures that were formed and maintained by the inmate code first identified by Clemmer (see McCleery, 1961).

Thus while conflict can occur as a result of a clash between two different subcultures within the prison, the worst cases of conflict involve the collapse of any normative cohesion between members. In these cases, inmates (and possibly some staff) revert to the pre-social or pre-contractual mode of behavior described by neo-classical thinkers influenced by Hobbes. Gresham Sykes summarized these possibilities as revolving around two poles:

On the one hand, the prisoner can engage in a highly individualistic war of all against all against which he seeks to mitigate his own plight at the expense of his fellow prisoners; on the other hand, the prisoners can attempt to form a close alliance with his fellow captives and to present a unified front against the custodians. It is the changing mixture of these antithetical behavior patterns and their underlying

values which makes up the social system we label so grossly, so overly simply [sic], as the prison community (Sykes, 1958, p. 131).

Unlike some of their counterparts in criminology, prison scholars have not developed and employed one of these poles, more recently referred to as the rational choice model, as a primary conceptual lens through which to understand social processes within the prison. Rather, action based on calculated self interest is explained as one aspect of the unintended consequences of change and loss of control, and no other framework is offered for understanding social action from the standpoint of interactional deliberation. Hence the "two poles" theory pits decision making that is exclusively intra-psychic and self-regarding against action based on group normative consensus that supersedes both individuals and the contexts of their decisions.

Most authors have argued, or at least implied, that the return of order in an unstable prison could only be accomplished with the establishment of some form of working normative consensus within, minimally, a dominant inmate group. The salient issue, as these scholars understood it, was how much control prison management would be able to exert over the *content* of the new (post-organizational crisis) inmate consensus (e.g. Jacobs, 1977). This conclusion is not surprising since, as indicated, Sykes and others like Richard Cloward whose work was so influential were associated with structural-functionalism in sociology, of which Talcott Parsons was the

founding father.² On the other hand, the major theoretical development that has influenced prison studies since the mid-1970s has come from the alternative critical-theoretical perspective on social control, as exemplified by the work of Michel Foucault (discussed below). Consequently, in terms of social-psychological models of action and social order, there has been little if any theoretical advance on the "two poles" thesis, which, without much notice, has dominated most research on prison organizational culture since the structural functionalism of the 1950s.

In terms of the concerns of this study, the major conclusion that can be drawn from the research of this period is that the prison was depicted as a dystopic organization, doomed to intergroup conflict based in normative dissensus. From the perspective of normative sociology, no appeal to transgroup norms and values between inmates and staff (and between management and custodial staff) is really possible, at least without either cynical insincerity or idealistic naivete. The group was defined as the locus for ongoing socialization of old and new members -- the collective consciousness and the collective conscience in organizational miniature. Each group developed its distinctive norms, codes of conduct, and self-justifying set of beliefs about the "objective" situation. All morality, if one should choose to apply that term, is subsumed under the exigent conventions of the group.

Notwithstanding the possible development of corrupt staff subcultures,

the conventional morality of the noncriminal culture of officialdom will prevail because it has the force (collective will) of the larger society behind it. Within the dictates of the organization's structural imperatives, each group will seek to further its own interests and attempt to manipulate other groups accordingly. Organizational conflict is the result of the clash of incompatible normative perspectives between groups, or within an individual as he copes with incompatible role expectations (e.g. as in Cloward's {1960; 1961} appropriation of Robert Merton's strain theory). The prison is itself the application of strictly negative sanctioning against individuals whose internalization of the conscience collective is insufficient. Within the terms of its own identity therefore, the prison cannot provide the motivation for the loyalty and obedience of its inmates that would sustain positive, ongoing legitimation of its social order.

In general, normative sociology's representation of the "microcosmic prison" can be interpreted as a condensed version of the classical sociological theorists' diagnosis of the "problem" of modernity (i.e. how can social cooperation be achieved in the absence of an absolute authority that links the social to the cosmic order in a "great chain of being"?) coupled with a Durkheimian influenced application of the cultural relativity thesis (in the form of a theory of subcultures) to a uniquely modern organization. The researchers discussed here do not themselves explicitly provide this conclusion, but their appropriation of the microcosm trope clearly invites

such an interpretation. Yet from Marx, Durkheim, and Weber on, social theorists who sharply disagree about both the historical causes and the social consequences of the breakdown of traditional communities and religious authority in the modern era, agree that, at least in rhetorical/ideological form, modernity's solution to the problem of the legitimation of the new social order was an attempt to transfer authority to the rational subject and "a free orientation to universal principles" (Habermas, 1984, p. 213). As argued here, however, the sociological perspectives embraced by the prison scholars of the 1950s and 1960s who appropriated the normative perspective did not include the rational subject in their explanatory frameworks, much less the possibility of intersubjective moral deliberation, when they looked at the problem of inter- and intra-group conflict.

Asylums

Erving Goffman's dramaturgical analyses of inmate and staff social interactions in "total institutions" represented a departure from the normative and structural functional approach to the prison organization.³ Goffman, who was a major figure in the development of the social action or "interactionist" perspective in sociology that was emerging as a theoretical alternative in the late 1950s and early 1960s, turned his attention away from the problem of (the) social order (societal or organizational) as such, to the individual's problematic relation to it. Like other social action theorists, he

was critical of normative sociology's implicit suggestion that individual "selves" are mere bundles of internalized group norms:

The simplest sociological view of the individual and his self is that he is to himself what his place in an organization defines him to be. When pressed, a sociologist modifies this model by granting certain complications: the self may be not yet formed or may exhibit conflicting dedications. Perhaps we should further complicate the construct by elevating these qualifications to a central place, initially defining the individual, for sociological purposes, as a stance taking entity, a something that takes up a position somewhere between identification with an organization and opposition to it, and is ready at the slightest pressure to regain its balance by shifting its involvement in either direction. It is thus against something that the self can emerge. . . . Our status is backed by the solid buildings of the world, while our sense of personal identity resides in the cracks (Goffman, 1961, p. 320).

Amplifying Goffman's interpretation, the "simplest sociological view" can be understood as constructing the self and its relationship to the organization along premodern lines. In other words, normative analysis depicted the individual as congruent with his roles and statuses, which were predetermined aspects of the social order/organization. This framework precludes modernity's construction of an autonomous self, capable of strategic action and critical reflection upon his situation and its defining features, or, in political terms, as the individual bearer of rights who enters into contract with other equally entitled subjects. Goffman's "inmates" (this term figuratively includes staff) are modern in the sense that they – as individuals – "take a stance" in relation to the social/organizational order, which is, as the earlier theorists also depicted it, riven by disparities of power and interest. Those in power prescribe a "being" for the inmate which is

equivalent to the role assigned to him within the organization (e.g. criminal or crazy), and all his subsequent activities are officially interpreted as manifestations of the characteristic features of a person who occupies this role. Further, all of his inevitable protestations of institutional depredation, whether in the form of passive resignation or open rebellion, are noted as confirmations of his "real" identity as a criminal or a mental/psychological incompetent.

Borrowing a term developed by juvenile delinquency researchers, Goffman argued that an inmate's "moral career" begins with the organization's "colonization" of his sense of autonomous selfhood. As his career progresses, the inmate experiences a "distancing" from his earlier, no longer validated conception of an independent self as well as from the new, one dimensional role identity ascribed to him by his keepers. The Goffmanian self that emerges "in the cracks" of the total institution is a person who experiences a "moral loosening" and learns how, "to practice before all groups the amoral acts of shamelessness" (p. 169).

Goffman's richly suggestive analysis of the inmate's reconstitution of identity within the social order of the total institution is, however, problematic in terms that are important for the sociology of morality discussed and developed here. In the first place, although he was critical of the premodern conceptualization of self and role found in earlier studies, Goffman nevertheless conceived of *morality* in the premodern terms of role

expectation and status ascription. As in the passage quoted above, it is "the solid buildings of the world" -- or in other words, those institutions that establish and sustain the customary virtues associated with one's ascribed position in the social order -- which define the inmate's original, nonproblematic pre-institutional self. An inmate's moral career involves detachment from pre-institutional (one is tempted to say prelapsarian) wholeness, a literal splitting off into an "amoral" self who observes the goings-on between his self and the other denizens of his new home from "the cracks." In other words, there is no morality as such in the new social order of the organization, or in the extended metaphor of the microcosm, the modern society. For Goffman, selfhood in the modern terms of an autonomous, self-reflective individual who is not "to himself what his place in the organization defines him to be" is achieved at the expense of, or by dispensing with, morality. Perhaps his representation of contemporary social order as demanding this splitting of identity lends the tone of pathos to Goffman's writings.

My interpretation of Goffman's "moral philosophy" is in partial agreement with, but also diverges from the interesting but rather polemical account of Goffman's sociology in Alasdair MacIntyre's After Virtue (1981). MacIntyre interprets Goffman as a kind of skeptical postmodernist who holds a Nietzschean view of the place of morality in modern society.⁴ In the ostensible Nietzschean-Goffmanian perspective, individuals in a

performative mode employ culturally received moral notions (which are residual products of the premodern religious worldview) to manipulate their audience's emotional reactions in their shameless pursuit of self-interested goals. "It is a sociology one would be tempted to call cynical – in the modern, not the ancient sense – but for the fact that, if Goffman's portrait of human life is a true likeness, there can be no such thing as a cynical disregard for objective merit, since there is no such thing as objective merit for the cynic to disregard" (p. 116). MacIntyre has interpreted the Goffmanian self as a rational actor engaged in the kind of strategic action elaborated by rational choice theorists, but with the interactionist caveat of having a performative, or expressive, attitude towards his own and others communicative actions. While I agree that Goffman was unable to find a place for the morally deliberating subject in his sociology, I would argue that he was a thoroughly non-Nietzschian, humanitarian modernist who was struggling *against* the limitations of the theoretical frameworks he inherited, specifically the determinism of Parsonian sociology, to reconstruct an active, self-reflective subject. After all, Goffman's inmates are not engaged in making consumer choices; they are struggling to defend some place "inside" themselves that is not, as sociologists of that period termed it, "role engulfed." ⁵

In the perspective I develop here, Goffman's "self between the cracks" was only a partial portrayal of human subjectivity, representing, as Jurgen Habermas has argued, an incomplete "model of action" (Habermas, 1984, pp.

90-94). The dramaturgical model of action emphasized the "expressive function of speech acts" (p. 95), in which a reflective subject sets himself apart and in opposition to an external "audience" for whom he must "manage" his self-presentations in order not to be completely subsumed by the publicly defined, negative role that his audience ascribes to him. Other possibilities for intersubjective communication are not made explicit in Goffman's analysis. These possibilities might include the strategic model of action described in rational choice and preference theories that MacIntyre apparently imputed to Goffman's theory, the normative model employed in the studies described above, or the "communicative model of action" developed by Habermas, which would be presupposed in communicative interactions in which individuals negotiated common definitions of a situation from a moral point of view (p. 95). Concurring with Habermas' analysis, I believe that Goffman's sociology is more productively criticized from the standpoint of the limitations of his theoretical framework, not, as MacIntyre would have it, from the standpoint of the limitations of the liberal ethos of Modernity.

Telling the Code

D. Lawrence Wieder's (1974) "Language and social reality: The case of telling the convict code," a study of inmate and staff interaction in a halfway house for men paroled on drug convictions, receives most attention today from theorists who recognize it as a paradigmatic example of

ethnomethodological sociology, and a minor classic in its own right.⁶ By employing the ethnomethodological critique of normative sociology's conceptualization of rule-following behavior, Wieder was able to demonstrate ethnomethodology's alternative theory of social action through a stunning reevaluation of the function of the inmate code in penal organizations. Wieder's analysis, like Goffman's, is an attempt to develop and apply an explanatory framework (or interpretive scheme) that incorporated a richer and more complex social-psychological account of how the social order of an organization based on coercion and force is made possible.

As discussed above, normative sociological analysis described the inmate code as a set of action-guiding maxims that defined the moral order of inmate "contraculture." Socialization of the new prisoner into the inmate subculture involved his successful internalization of the inmate code, which Clemmer termed "prisonization." By identifying the code, the investigator gained access to the normative order, or, in Durkheim's term, the "social facts" of prison life, to those aspects of inmate behavior that are typical and predictable (i.e. not merely subjective or unique to a particular cohort) by virtue of the fact that they are regulated by an externally constraining set of rules. The various forms of inmate deviance from officially sanctioned behavior and prescribed objectives was explained by the sociologist as instances of adherence to the inmate code.

Like his predecessors, Wieder also found that both inmates and staff of the halfway house made reference to a "code" which they used in conversation to evaluate, justify, or describe their own or others' actions. Unlike previous prison scholars, however, Wieder focused on conversation, that is on language itself as social action and an "interactional event." By refocusing in this way, Wieder discovered that, rather than unreflexively "regurgitating" norms that predetermined their attitudes and actions in relation to their situation, inmates and staff who "told the code" were providing each other as well as the researcher (Wieder) with a "schema for seeing the sensible, factual, and stable properties of . . . [their] social world" (p. 146). Thus when an inmate or staff told the code in the context of a particular interaction with other members, he was attempting to structure the members' perceptions about and their responses to those circumstances. In other words, telling the code was an ongoing, constitutive aspect of the social reality of the halfway house. It functioned as both an "exegetical narrative" by which staff and inmates asserted the "social facts" of their situation and a method of moral persuasion, since every occurrence of telling the code had specific consequences, such as the commonplace consequence of providing an acceptable justification for an inmate's refusal to participate in official activity, or a staff's "inability" to gain an inmate's compliance. Ultimately, telling the code provided both staff and inmates with "good" reasons for the "failure" of the whole program, reasons which let both groups off the hook in terms of

responsibility. From Wieder's point of view, therefore, the program did not fail because features of the organizational environment "produced" group subcultures whose normative orientations to action pitted them against each other. It failed because knowledgeable actors (both staff and inmates) continually subverted official goals through their occasioned use of the code.

In arguing that the code was an "*occasioned corpus* of 'cultural elements,' rather than a stable set of itemizable elements which reoccur in, or endure through, a collection of successive occasions" (p. 186), Wieder was making significant use of Harold Garfinkel's ethnomethodological appropriation of ordinary language theory. As discussed in Part II, the basic idea here is that rules, of the sort that appear as the conventional wisdom within different "language games," do not negate context by fixing the outcomes of any given event in which they are invoked, but rather are employed as "interpretive device[s]

. . . to render any behavior . . . intelligible, i.e. as coherent in terms of patterned motivation. . . . The experienced predictiveness of a rule, which renders unforeseen behaviors familiar, is a consequence of the 'open, flexible structure' of (or the etcetera clause of) codes of conduct" (p. 197). In other words any given rule, such as "don't rat on members of your own group," can be expressed by an infinite variety of conforming behaviors. A researcher can easily iterate an array of behavioral patterns among members of a group and generate various sets of rules by which to classify these behaviors, but,

"without the guidance of resident talk, he could have many competitive sets of rules and conditions, . . . [but] no way of arguing which single set among the many were, in fact, operative in the setting," i.e. operative under particular circumstances (p. 198).⁷ As Garfinkel (1967) argued earlier, both the professional sociologist and the "lay member" are engaged in precisely the same activity in their social interactions with each other and with other members, namely, an ongoing, "contextually-based" interpretation of "indexical particulars" relative to their invocation of rules (Wieder, p. 218).

Wieder drew the same conclusions from his observations elaborated by Garfinkel and other ethnomethodologists: all social order or reality is a "local order" that is the continuing, ongoing accomplishment of participants in a concrete setting. In asserting a macro-level order for an organization or society consisting of features independent of its members' ongoing interactional accomplishments, sociologists are engaged in the same activity as the staff and members of the halfway house: they are constructing a "moral order" by asserting the "social fact," non-contingent character of their selected depictions. In other words, prisoners, their keepers, prison sociologists, and reformers are all engaged in "telling the code" (p. 223).

Nevertheless, Wieder recognized that his analysis left a significant dangling question, one not unfamiliar to critics of the ethnomethodological perspective: what determines or influences a member's appropriation or application of the code under any given circumstances? Wieder

acknowledged that his own descriptions lent themselves to a possible answer, one which could be subsumed under a "theory of interests." The theory of interests would posit that the teller always has some ulterior self-interested motives that he advances manipulatively through employing the code to manage the perceptions and responses of his interlocutor. As described by Wieder, the theory of interests is similar to the strategic or rational choice model of action discussed above. Quite aptly, Wieder maintained that as an interpretive framework, the theory of interests would be, "formally identical to an analysis which is accomplished by reference to 'telling the code'" (p. 213). The researcher could generate a set of interests just as he could generate a set of rules, but he would be faced with the same interpretive ambiguities.

Wieder never actually answered the question he had posed. Instead, he reiterated that sociological analysis, as an "accounting of social action" will always be one more instance of "telling the code," a view which today could be subsumed under the broad rubric of social constructionism. Concluding with a statement that easily could have been written by a proponent of Cultural Studies twenty years later, he maintained that, "[c]hoosing between the two theories [the theory of interests and telling the code] finally becomes a matter of preference, for, as we shall see, a strong empirically based choice between them is, in principle, unavailable, even though each is 'demonstrable for all practical purposes'" (p. 214).

Wieder's "methodological situationalism" (Knorr-Cetina, 1981) -- the

view that "all aspects of social order . . . [are] a contingent and context dependent accomplishment" (Bohman, p. 81) – obscures the fact that within a given linguistic/cultural community, all rules do not have the same normative status (Edgerton 1985). As I argued in Chapter Four, members often use moral rules to trump other customary norms, which members reflexively associate with the exigent features of their specific setting, such as a prison. Practical rationality involves deliberation about or "accountings" of the social facts, as ethnomethodologists contend. But social facts are never established *de novo*; they are always advanced or contested by drawing on resources provided within an institutional or organizational backdrop that provides both limiting and enabling conditions for the employment of these resources. The backdrop is what normative sociology defined as the structural elements of an environment, which, as discussed above, was linked to a Parsonian or naturalistic model of social action which assumed a direct relationship between the structural elements of a setting and the internalized norms that motivate individual action "behind the actors' backs."

The focus of the ethnomethodological critique on a conceptualization of structure that ignores the social actor's ongoing reflexive accomplishment of this structure, ". . . obscures the role that regulative ideals and idealizing suppositions play in rule-governed social action and therefore impoverishes its notion of practical rationality" (Bohman, p. 100). Consequently,

ethnomethodological analysis of social or organizational conflict such as Wieder's has been unable to clarify the way in which actors' social accountings reflexively incorporate awareness of relations of power and domination within the setting, or, in other words, the way in which members' accountings are oriented towards reproducing or contesting institutionalized relations of power (Giddens 1979/1990, pp. 49-95).

Besides constructing "exegetical narratives" about the social facts of the setting, members' practical reasoning also involves deliberation about the applicability of a variety of possibly competing rules and norms, including moral rules and moral ideals, that are available as their stock of shared, mutual knowledge. While the choice of rules is contingent, the ongoing accomplishment of local order is achieved by members "orienting their actions to intersubjectively recognized validity claims" that transcend the local order (Habermas 1994). Even when the moral point of view is not assumed in a given situation, therefore, members tacitly assume the ability to provide "good reasons" for their deliberative choices if challenged, which is only possible because action oriented towards mutual understanding presupposes standards of rationality (fundamental regulative ideals) that make understanding possible.

From the perspective of the sociology of morality, therefore, a significant area of inquiry may be opened up when, as in the prison organization, a set of customary rules like the inmate code consistently

trumps a set of (also reflexively acknowledged) moral rules. The question then becomes: (a) for what purposes and under what circumstances do members in a given setting employ the inmate code rather than other normative codes of conduct, including moral ones; and (b) what is the relationship of members' characteristic rule invocations to the "social facts" of the organization which they construct, reproduce, and challenge through their everyday discursive encounters?

By re-posing the question this way, members' practical reasoning is re-problematized for the researcher as the relationship between the "facts of the matter," as those features of the social world (symbolic and material practices) that are reproduced and endure over time and serve as references and resources within situated interactions, and the contingent production of meaning within these encounters. Consequently, topics traditionally associated with the concept of social control in the study of organizations and social groups, i.e. topics which address macro-level features of the social environment, like power and domination, can be reintroduced without assuming that participants are either "situational" or "judgmental" dopes. Framing interpretation with these questions would also reintroduce an integrated concept of social control, one which presupposes a relationship between micro-processes of social interaction (context dependent accountings of social action) and macro-level social practices, including the symbolic representation of regulating values and moral ideals (context independent

features of the social environment).

Lastly, Wieder's conclusions raise the related question as to what criteria, if any, might be employed to determine which version of the sociological "telling" might be given explanatory (epistemological), or perhaps normative (moral), priority. This question concerns the status of the kind of knowledge generated by ethnomethodological or interpretive sociology, but it is an important one for the sociology of morality. It seems that any given setting, constructed as the "social order" through "telling the code" could be (and is) described, on Wieder's ethnomethodological interpretation, as a "moral order." Wieder's analysis therefore continued the problematic conflation of the moral with the normative social order, and the possibility of such counter-intuitive (or "counter-factual") formulations as "Nazi Germany moral order," or (even) the "moral order of the prison." As we shall see, these same questions are raised in the next major work on the prison, which continues the constructionist version of "telling the code."

Discipline and Punish

With Michel Foucault's Discipline and Punish: The Birth of the Prison (1977), the prison trope is perhaps given its most self-conscious treatment. Foucault, a French "poststructuralist" was not schooled in the traditions of American sociology; he did not, therefore, employ social control as a key concept, or address the social-psychological issues related to action theory and

the intersubjective construction of meaning. His background influences were Western European Marxist social theory and the anthropological structuralism of Claude Levi Strauss. In his own generation, he was both an influence on and influenced by thinkers such as Roland Barthes and Jacques Lacan who brought the linguistic turn in philosophy to bear on the social sciences (Rosenau, 1992).

Like ethnomethodology, poststructuralist thought, in general, turns the focus of social analysis from the signified (taken for granted objective reality) to the signifier, that is, to the social construction of reality through the forms, or "politics" of representation itself. As opposed to various types of empiricist analysis, including "official" Marxism, which attempted to isolate a terminal set of events or factors that initiate a sequence of effects or symptoms, Foucault's poststructuralist perspective was anti-naturalist in its rejection of the ontological priority of material over symbolic phenomenon. Within this interpretive perspective, Foucault turned the prison trope inside out, into a series of representational mirrors that reflect back on each other. The social-legal-political realities of modern society are as much created by as the creators of the prison: ". . . if the penitentiary, in so far as it went well beyond mere detention, was able not only to establish itself, but to entrap the whole of penal justice and to imprison the judges themselves, it was because it was able to introduce criminal justice into relations of knowledge that have since become its infinite labyrinth" (p. 249).

Virtually all of Foucault's "genealogies" were concerned with some aspect of the transition to modernity, and Discipline and Punish interpreted the transition from feudal-monarchical society to the liberal-democratic capitalistic state in terms of the mechanisms of official social control developed and enforced by the state. The classical sociological themes concerning the "problem of modernity" were therefore more directly engaged by Foucault than they were in the organizational studies of the 1950s and 1960s discussed above. But while Durkheim was the classical sociologist who exerted the most influence over these American studies, Marx was central to Foucault's analysis of punishment and the new "relations of knowledge" that emerged with the prison as the primary means of punitive control. In his (neo) Marxist moments of analysis, Foucault understood punishment as a "complex social function" with social repercussions that went far beyond its "repressive effects" (p. 23). The form that punishment takes is linked to a way of understanding the world and the relations between people within the social orders associated with distinct historical periods. The historical form of punishment therefore participates in positive constructions of knowledge; for example, a major line of argument in Discipline and Punish is that the existence of the prison was necessary for the creation of the category of the delinquent as a separate "object" of both scientific investigation and social intervention.

Correspondingly, Foucault argued that punishment is also a "political

tactic" employed by the "dominant class" to enforce a way of understanding the world that maintains the systems of power that support its interests: "Delinquency, controlled illegality, is an agent for the illegality of the dominant groups. . . . Delinquency, solidified by a penal system centered upon prison, thus represents a diversion of illegality for the illicit circuits of profit and power of the dominant class" (p. 279). Although his diagnosis included some generic elements of a Marxist analysis, Foucault, as mentioned, rejected a straightforward Marxist solution to his diagnosis of the power dynamics of punishment and the prison. His appropriation of Nietzsche's more Pyrrhonic view on the "will to power" that motivates any group's critique of the already-haves prevented him from embracing the "epistemological priority" of the nonownership class in Western capitalist societies.

Discipline and Punish concludes with a vision of the "disciplinary society" ushered in by the historical ascendance of the prison, expanding its "normalizing" control over ever larger segments of the population through a carceral network manned by an array of specialists dedicated to its maintenance, including criminal justice, human service, and educational professionals who are provided with an intellectual *raison d'être* by criminologists, sociologists, and psychologists. Although he did not employ the term, Foucault's work initiated a reconceptualization of social control in American sociology that was central to a variety of constructionist social-historical studies of criminal justice, human service and health care

agencies produced in the 1980s and early 1990s. The authors of these studies shared Foucault's suspicion of both the theoretical reductions of orthodox Marxist social theory and the ideological dimensions of liberal, reformist organization theory and policy studies which did not challenge the hierarchies of power that maintain various organizations and their methods of control.⁸

Foucault read a logic into history which runs counter to our common sense notions about crime and punishment that developed within the modern penal system's "relations of knowledge." Foucault's genealogical analyses refocus our attention on the way in which unequal relations of power are "inscribed" on our everyday assumptions about who should be "disciplined" and why – assumptions that have direct and crushing consequences for people caught up in the ever expanding "carceral network" of a society that continually engages in jeremiads about the "free will" of the incarcerated from all its bully pulpits. For Foucault, however, the intentional subject is a construct of modernity's configurations of "power-knowledge":

Perhaps, too, we should abandon a whole tradition that allows us to imagine that knowledge can exist only where the power relations are suspended and that knowledge can develop only outside its injunctions, its demands and interests. . . . We should admit rather that power produces knowledge . . . ; and that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. . . . In short, it is not the activity of the subject of knowledge that produces a corpus of knowledge, useful or resistant to

power, but power-knowledge, the processes and struggles that traverse it and of which it is made up, that determine the forms and possible domains of knowledge (pp. 27-28).

While it is beyond the scope of the arguments I develop here to further elaborate on Foucault's theoretical perspective, the central point for this discussion is that Foucault's analysis presupposed (or "constructed") an ideal reader who is sympathetic to the critique of the power-knowledge of the dominant class perspective in the late 20th century, a reader who identifies him- or herself with the prisoner/student/worker who is disciplined by the state's technologies of power. Yet within Foucault's own terms, his appeal to the ideal reader cannot be a moral one – that term is certainly discredited in the Foucault-Nietzsche representation of the "truth" conditions of knowledge. For Foucault, power – a concept that functions problematically as explanans rather than explanandum in his analysis – is a kind of *deus ex machina* of social change that determines the historical forms of the material and symbolic representations of control. The institutions of social control actually construct their own "objects" (e.g. delinquents), which post-Enlightenment societies, serving the interests of the political-economic elite, represent as individual "subjects" who are "responsible" for their own deviant behavior.

At least in Foucault's version of it, poststructuralist social constructionism seems not to have overcome sociological determinism, but rather to have reinforced the prisoner's iron cage. MacIntyre's critique of

Goffman's sociology discussed above is therefore more appropriately leveled against Foucault's genealogies. Foucault's and the larger social constructionist or poststructuralist critique of the ideological aspect of liberal historians' claim to disinterested knowledge has undeniable validity. All knowledge is to some extent (a much debated extent) local knowledge, the representations of (only) one tribe's depictions of reality. But Foucaultian analysis can ignore the epistemic presuppositions of its (our) own tribe only at the risk of the self-refutation that is inherent in a potent combination of epistemological and moral relativism, one which denies that there are any grounds on which appeals to fact or appeals to a moral point of view can be made independent of a (more salient) "power-knowledge" construct. In short, by denying that the active, intentional subject is both an agent of, as well as a "construct" of history, Foucault also undercuts the grounds for his own appeal to readers to engage in critical reflection on his alternative interpretations of history and sympathetic recognition of the perspective of dominated groups in the social order, such as prisoners.

The Justice Structure of the Prison

Finally, Lawrence Kohlberg's, Peter Scharf's and Joseph Hickey's (1972) study, "The justice structure of the prison -- a theory and an intervention," provides a striking contrast to the sociological and socio-historical approaches to the prison described above. As one of Lawrence Kohlberg's lesser known

research projects, this study does not fit into the sociological genre of the prison study, nor does it directly continue the genre's focus on the mechanisms of formal and informal social control, although it certainly had implications for both. It is, however, significant for my study because it illustrates an approach to the relationship between organizational environments and, in the terms of Kohlberg's cognitive developmental psychology, the explicitly moral orientations of the organization's members.

Influenced by Piaget's empirical studies of the development of moral judgment in children, Lawrence Kohlberg postulated a six stage theory to moral development which was based on assumptions about morality and justice developed within the rationalist tradition in moral and political philosophy, most directly from John Rawls' A Theory of Justice. Kohlberg was one of the first social scientists to challenge directly both psychological and sociological theories that were premised on a relativistic view of the ontogenesis of morality. Like cognitivists in other disciplines, Kohlberg was critical of strictly environmental or sociological explanations of human behavior because in his view the structures of human mind contribute to world-making, at least as much as the features of the social and natural world contribute to our conceptualizations of it. He argued in general that his research demonstrated that universal moral concepts and categories exist and that all people develop within an invariant sequence of cognitive stages in which they employ the moral concepts appropriate to their current stage of

reasoning.⁹

Because he believed that moral precepts or "facts" could not be reduced to, or were not caused by, other more primary psychological or social phenomena, Kohlberg was highly critical of ethical naturalism, a view which, as discussed in Chapter Three, predominates in the social sciences. In "The justice structure of the prison" Kohlberg, et al. acknowledged that moral suasion had always been a part of correctional practice, but this practice, they argued, was moralistic: ". . . moral reform was conceived of in terms of promoting a bag of virtues of honesty, self-control, respect, obedience, inculcated through sermonizing and punishment and reward" (p. 12). Based on the failures of these early approaches and the influence of social-scientific assumptions, contemporary theories of rehabilitation promoted sociological (structural reform) or psychological (individual treatment) objectives, which purported to offer "morally neutral" definitions of correctional goals. Regardless of the ostensible moral neutrality of the theories that guide the programs, however, ". . . [M]orality enters by the backdoor", because "both inmates and staff continue to maintain moral definitions and evaluations of what is going on" (p. 13). Kohlberg, et al., on the contrary, acknowledged the moral aspect of the rehabilitation process, but framed their analysis and recommended approach on Kohlberg's theory of moral development.

Kohlberg and his research colleagues did not deny that environmental factors were important for analyzing behavior, nor did they ignore the

influence of conventional, context specific codes of conduct on practical problem-solving: "Practical moral judgment is not simply a product of a fixed property of the individual, his or her moral competence, but is a product of the interaction between his or her competence and the moral features of the situation, ..." (Higgins, et al., in Kurtines, 1984, p. 80). The "moral features of a situation" were defined as "the moral atmosphere" of group, culture, or organization, that is, the ways in which given social arrangements, practices, and symbolic representations supported different stages of moral development.

In "The justice structure of the prison," Kohlberg, et al. illustrated this two way interaction between environment and individual in the context of a boys' prison reformatory. The reformatory, they argued, supported stages of moral reasoning that were lower than the stages of which many of the inmates were capable. This conclusion was demonstrated by the finding that inmates scored higher on stages of moral reasoning when tested on the basis of "classical" dilemmas, which posed moral conflicts in the abstract, than when tested on the basis of "practical" dilemmas, which posed moral conflicts based on real-life situations typically encountered in the reformatory.

The discrepancy between inmates' actual and potential moral reasoning capabilities was based on another of the study's findings, that the "justice structure" of the prison itself was operating with the equivalent of a combination of a stage 2 "instrumental exchange orientation" and a stage 4

"structured norm agreement" orientation. (See endnote for a summary of the stages.) The features of the instrumental exchange orientation (otherwise known as the "big house gangster" or "turnkey" system) were that powerful inmates and staff (guards) negotiated various exchanges (e.g. "you scratch my back, I'll scratch yours") to further their own interests, without regard to the needs and cooperation of their fellow inmates or guards, or to the organization as a whole. Furthermore, "the social structure of the institution placed inmates into judgment-action binds. Where an inmate might be made aware of Stage 3 or 4 modes of reasoning, the exploitative inmate peer culture encouraged behavior consistent with more primitive reasoning (often Stage 2)" (p. 7). As a result, the inmates tended to respond to each other as potential enemies and did not develop the kind of group norms or inmate code that would modify their behavior in the service of intragroup solidarity and stability (i.e. a stage 3 orientation).

In terms of staff behavior, the existing "house" rules were often carried out in an inflexible manner (stage 4), such as penalties for inmate infractions that were determined "by the book," according to the proscribed acts, but without regard to specific circumstances that might influence an appropriate degree of punishment. Some rewards that were meant to provide incentives for good behavior were doled out in a similar bureaucratic manner, while other rewards were used manipulatively by staff in the stage 2 type manner as exchanges with inmate elites. As a result, inmates generally perceived staff as

operating with either a stage 1 "coercive power orientation," that is, as exercising power arbitrarily with no fixed rules or principles, or a stage 2 "instrumental exchange orientation."

As interpreted by Kohlberg, et al., therefore, the inmates' experience of organizational realities (the "moral atmosphere") mitigated their ability and willingness to assume higher stages of moral reasoning to solve practical problems that occurred within the prison. In conclusion, "[i]t was surmised that the prison justice process operating as a distant, alien authority tended to lead towards the inmate's perception of the institution as punitive and unjust. This obviously had implications for the inmate's development of moral reasoning; the inmate is given no basis for developing an understanding of the moral basis for law and society" (p. 7).

The findings from the reformatory study prompted the researchers to develop a set of goals for a "new correctional community" which would provide a "justice structure" that would operate minimally at the level of most inmates' moral maturity (stage 3) as well as provide social situations in which the mode of conflict resolution -- a "democratic constitutional process" -- would stimulate higher stages. The "intervention" (referred to in the title of the article) was conducted in a new setting, a minimum security prison for women. The early results of the program reported in the article were favorable in terms of the recidivism rate of participating inmates, which is the standard evaluation criterion for rehabilitative success.

I will not readdress here the criticisms that have been made of Kohlberg's moral psychology. Suffice it to say that as a psychologist Kohlberg was not directly concerned with the sociological issues of the development, maintenance, and transformation of social order, so he did not bring to bear a theory of social action that would address the questions begged by this particular study, namely, how and why different "moral atmospheres" or "justice structures" come into being in the first place. The prison studies discussed above address just such questions. As is obvious, I agree with Kohlberg's and his colleagues' contention that previous social scientific studies of inmate conflict in prisons either excised the moral dimension of communicative interaction from their explanatory frameworks or included the moral dimension without any explicit conceptualization of what is entailed in this dimension to guide their analysis.

For the purposes of this review, the significance of Kohlberg, et als.' study is that their inclusion of the moral dimension of communicative (social) interaction led them at least to envision positive changes in the organizational environment, changes which could be brought about and maintained through cooperative efforts by both staff and inmates, rather than by "moral" or physical coercion imposed by staff. Given what we know about the larger historical, political, and legal contexts in which prison reforms have been carried out, however,¹⁰ Kohlberg, et als.' recipe for change seems over optimistic, to say the least, especially in maximum security and large

urban jail and prison environments. Nevertheless, the fact that there are many factors that might impede the hopeful scenario offered by Kohlberg, et al.'s analysis does not mitigate its significance as an alternative depiction of the possibilities for social interaction and change within a correctional environment.

Significance of the Representation of the Prison

Researchers employing a model of social interaction based only on normative analysis were unable to entertain the possibility of morally engaged communicative interaction in the prison setting because the normative model disallowed the possibility of intentional action from a moral point of view that could be used to challenge the norms of group subcultures. Goffman's and Wieder's diagnosis of the prison's "problem of social order" also precluded the possibility of cooperative change, even though they both attempted to reintroduce the intentional actor to the social stage. For Goffman, the "moral careers" of inmates involved a "loosening" of their pre-institutional morality, which situated them into the "cracks" of asylum identity. Wieder's inmates and staff, on the other hand, did manage to collectively, but not cooperatively, accomplish the subversion and ultimately the demise of their own program. Since Wieder's analytic assumptions precluded any articulation of the relationship between social and institutional conditions and the ongoing interactional accomplishment of the social (local) order by its members, he did not raise or attempt to answer

evaluative questions about organizational change. Foucault's analysis of the prison was historical rather than organizational, but his appraisal of the prison's significance for modern society made clear that he believed it would survive (and thrive) in its present form as long as the "relations of knowledge and power" persist that sustain the larger disciplinary society.

Each of these studies depicts the social order of the prison within a framework of organizing assumptions about the genesis, maintenance, and transformation of conflicts between and within the inmate and staff groups. Each depiction of the prison's social order "tells the code" in terms of defining the possibilities and the limitations of the kind of social interaction that transpires within it, which, if we return to the prison's tropic significance as a microcosm, suggests what our expectations might be for transformations within the larger society. Employing a term borrowed from philosopher Hilary Putnam, we might therefore conclude that prison studies present us with a "moral image of the world." As Putnam wrote, "A moral image . . . is not a declaration that this or not is a virtue, or that this or that is what one ought to do; it is rather a picture of how our virtues and ideals hang together with one another and of what they have to do with the position we are in" (Putnam, 1987, p. 51). In other words, a moral image of the world entails its author's most basic assumptions about what it is to be human, what humans can achieve or not achieve as individuals and as collectivities by virtue of their capacities and characteristics, and, consequently, what humans can aspire to and hope for.

1. For example, James B. Jacobs concluded his well known study of a maximum security prison (Stateville, 1977) with the admonition: "What if the attempt to synthesize reform and control in the maximum security prison fails? What if the prison reverts to arbitrary and capricious management in a situation marked by brutality, favoritism, and staff apathy? The danger is that, in that event, the larger effort to reform our bureaucracies and basic institutions will have been dealt a mortal blow. The failure to institutionalize prison reform could reinforce more general cynicism about the capacity of our society to reform itself" (p. 211).
2. See Sykes recent retrospective comments, "The structural-functional perspective on imprisonment." Pp. 77 - 84 in Punishment and Social Control, T.G. Blomberg and Stanley Cohen, editors. NY: Aldine De Gruyter (1995).
3. The only book length, ethnographic study of an urban jail – Irwin, 1985 – employs many of the categories of Goffman's dramaturgical analysis of total institutions.
4. See also Anthony Giddens' (1987) discussion of and disagreement with this kind of interpretation of Goffman's writings (pp. 109 - 139).
5. For the most famous example of the many studies that explored the concept of role engulfment in the prison context, see Philip G. Zimbardo, et al., c. 1971. Referred to as the "Stanford University Prison Experiment," Zimbardo conducted a laboratory simulation of a prison using students randomly assigned to roles as inmates and guards. Although the study has often been criticized on methodological grounds, it provided rather shocking support for the role engulfment hypothesis in totalistic environments.
6. See for example James Bohman's (1993) discussion (pp. 80-82).
7. For Wieder's (1974) description of the procedures by which a researcher/analyst can determine the "definite sense" of an occasioned rule use, see pages 206 - 207.
8. For a very good example, see Jonathan Simon, 1993. Simon discusses Foucault and other influences on his interpretive framework, and uses such Foucaultian categories as "genealogy" to describe his approach and "technologies of power" to describe his method and focus.
9. In sequential order, from lowest to highest, Kohlberg's stages were: "Stage 1, the punishment and obedience orientation; Stage 2, the instrumental exchange orientation; Stage 3, the interpersonal concordance or "good boy-nice girl" orientation [Kohlberg and others later termed this

"conventional" moral reasoning]; Stage 4, the 'law and order' orientation; Stage 5, the social contract legalistic orientation; and Stage 6, the universal ethical principle orientation" (Kohlberg, et al. 1972, p. 3).

10. For overviews see DiIulio, 1990; Zimring and Hawkins, 1991; and Jacobs, 1980.

Chapter 7. Background on the Location of the Study

The purpose of this chapter is to provide a description of the environment in which the participants of my study lived and worked. Chapter Six described the different theoretical perspectives and empirical foci of the major social scientific studies of the prison, but the location for the empirical research conducted for this study differed from those discussed in an important respect. My research was conducted in a large urban jail system, rather than in a prison or prison system. Because they share the primary purpose of incarcerating criminal offenders, prisons and jails have many of the same organizational characteristics and, consequently, share many of the same problems described by prison researchers. But jails have some significant and unique characteristics related to their special functions within the criminal justice system, especially the major one of detaining criminal defendants whose case dispositions are pending (Zupan 1991). The following discussion describes some of the most basic characteristics of contemporary U.S. jails and large, urban jail systems, with more detailed information on the New York City Department of Correction where the research was conducted. Quotes from the transcribed interviews with some of the participants in this study are provided to illustrate several of the characteristics discussed. In my experience as both an employee and a researcher the opinions expressed by these participants seems fairly typical, at

least during the period of the late 1980s and early 1990s.¹

With respect to average daily prisoner population, Los Angeles administers the largest jail system in the United States. The Los Angeles DOC's average daily inmate population was 19,725 in 1994, but with a 18,091 prisoners, New York City was not far behind (Bureau of Justice Statistics April 1995). More than half of New York City's inmates -- 13,201 out of 21,449 -- were detainees in 1993 (Mayor's Management Report 1993). Often referred to as "the largest penal colony in the U.S.," New York City operates more facilities than Los Angeles, administering at any given time approximately sixteen jails, seventeen court detention facilities, and three secure hospital wards for detention and sentenced inmates on Rikers Island and in the five municipal boroughs² (Mayor's Management Report).

Large municipal or county jail systems such as those in New York City and Los Angeles are complex organizations with many of the management issues of other big government bureaucracies. They employ a very large custodial staff of unionized, civil service correction officers and non-custodial support staff, as well as a sizable number of professionals in a variety of fields including accounting, law, medicine, human services, information systems, and social science. In 1992, the NYC DOC employed 11,820 uniformed staff and 2,034 civilians, and had an operating budget of \$770 million, almost twice that of the entire City University of New York system, which includes twenty-two institutions (Mayor's Management Report).

Historically, large jails and jail systems have been considered the most difficult organizations to administer in the U.S. correctional system. Today, however, that judgment may be even more apt. For a variety of reasons that are discussed below many researchers and correctional professionals describe American jails as "in crisis" (Mays and Thompson, 1991). Jail systems are operating in a politically charged environment, with the public seeming unsympathetic to any management "reforms," other than greater prisoner deprivation. which correctional administrators know is not conducive to good order either in jails or prisons. Unlike most private and many public sector organizations, jail administrators have little control over the size or allocation of their budgets, much less the size and characteristics of their "clientele." And, as a result of two decades of jail reform litigation, they have little control over the major policies that affect what, when, and how services are offered to this clientele (Feeley and Hanson, 1990). At least in part because, as public policy pundits have noted, "the poor have no PACs in Washington," the state of our nations' jails has never been a subject politicians of any persuasion have been eager to address.

One of the major reasons that they are considered onerous places to administer is that jails have a much more transient inmate population than prisons. In the New York City DOC, jail inmates who are detained because they could not make bail or because bail was denied have an average length of stay of only about fifty days (Mayor's Management Report). Detention

inmates are notoriously hard to manage because, first, unlike sentenced inmates, they are not legally required to work and therefore spend a great deal of idle time with each other. Only 37.3% of New York City's detention inmates participated in any programs offered by the DOC in 1993, although they comprised 63.3% of the total inmate population (NYC DOC IIS 12/16/93). Second, detention inmates' legal status prevents correctional staff from using dismissal from a good job or loss of "good time" applied towards a reduced sentence as a sanction for bad behavior (Citizens Budget Commission, January 1993, p. 11).

But jails also serve other carceral purposes besides detention. They house inmates sentenced to short terms of incarceration (generally one year or less); they readmit parole, probation, and bail-bond violators and absconders; they hold long term sentenced inmates for transfer to state prisons; they hold federal, juvenile, and mentally-ill inmates for transfer to appropriate facilities; and they may serve as over-flow locations for inmates from state and federal jurisdictions which have exceeded their housing capacity³ (Bureau of Justice Statistics, April 1995). With the exception of a relatively small number of elite white collar criminals who go straight from home on bail to a federal or state prison, virtually every person convicted to a term of incarceration has spent some time in a local jail.

On any given day in the past decade, American jails may hold close to half a million people (Bureau of Justice Statistics, April 1995). The total

number of inmates passing through these jails annually, however, exceeds nine million (Zupan, p. 2). In New York City alone, this number is more than 100,000 people each year⁴ (Mayor's Management Report). For staff in large systems like NYC, the sheer volume of admissions and releases creates a staggering amount of paper work. Moreover, the different legal statuses of prisoners combined with their high turnover rate translates into a logistical nightmare. Each legal status accords prisoners a different set of legal rights, which are accompanied by corresponding criteria for the type and degrees of service and treatment that must be provided by the Department. For inmates, on the other hand, the constant turnover of people who usually sleep several feet apart from each other and with whom confined spaces must be shared for long periods of time means, to put it politely, maintaining constant vigilance over one's physical and proprietary integrity. As one inmate interviewed for this study commented,

Now you know that you can't let your guard down. You know? Your guard must be up at all times, because you don't know what this guy here got on his mind or what he thinking of. But once you like, uh, you know who's – you know it's time, you show 'em that you ain't soft. You gone go all out. You ain't got no problems. But you must have that image. . . .

Overwhelmingly, the local counties and municipalities that administer jails and jail systems do not support the fact of their inherent complexity with either generous operating budgets or expertly trained and skilled staff. There are obvious reasons for this, to which I have already alluded. Not too

arguably, jails have the distinction of being one of the most disdained social institutions in the history of Western democracies. They have been called "human dumping grounds" (Zupan) and the "ultimate ghetto" (Mays and Thompson, p. 3, citing Goldfarb, 1975) for society's "rabble" (Irwin 1985), places that demoralize and degrade their inhabitants and serve to aggravate whatever problematic tendencies brought them there in the first place.

Nevertheless, it is important to note that, contrary to the pervasive public perception that jails and prisons are filled with society's most violent, heinous criminals and more minor offenders "get off scott-free," the primary role of jails in our society is probably not to incapacitate dangerous men and women. John Irwin's (1985) "rabble thesis" – that jails, in particular, provide a form of social control for socially offensive, but not necessarily seriously threatening persons – is increasingly born out by research on this issue (Jackson, 1991, pp. 24 - 30) and by national and New York City statistics. According to the Bureau of Justice Statistics (April, 1995), "Between 1983 and 1989, the percentage of jail inmates incarcerated for violent offenses decreased from 30.7% to 22.5% and for property offenses from 38.6% to 30.0%, but increased for public-order offenses, from 20.6% to 22.8%⁵ (p. 14). During this same period, the total number of jail inmates increased 106%, and at midyear in 1994 "local jails . . . housed about a third of all persons incarcerated in the U.S." (p. 1). If the seriousness of the crime with which an inmate is charged is reflected in the amount of bail set by the judge at the initial arraignment, then

the majority of New York City's detention inmates are "rabble" and not violent predators, since, according to a 1991 report by the Correctional Association of New York, fully three-quarters of them are unable to post a bail of less than \$2,500 and more than two fifths cannot post bail for less than \$550" (report cited by Citizens Budget Committee, p. 10).

One of the major factors influencing the growth in the nation's jail population was the increasing arrest and incarceration of drug law violators, such that, by 1989, "nearly 1 of every 4 [prisoners] were in jail for drug offenses," up from about one of every ten in 1983 (Bureau of Justice Statistics April, 1995, p. 14). Research conducted by both independent scholars and federal researchers has demonstrated that drug laws and drug law enforcement have disproportionately impacted disadvantaged inner city minorities (Tonry 1995, p. 81 - 123; U.S. Sentencing Commission 1991).⁶ This trend is dramatically reflected in New York City, where "the typical inmate is a drug-using, minority adult male with little education or income; . . . and as many as 70% read below a sixth grade level" (Citizens Budget Committee, p. 10). On any given day in 1993, felony drug offenses accounted for more than 30% of the top charges for which NYC DOC inmates were detained or sentenced, with robbery accounting for the next highest proportion at only about 14% of the total top charges (NYC DOC IIS, 12/16/93). Surveys of the City's inmate population conducted in recent years have found that as many as 75% of all inmates are drug abusers⁷ (Citizens Budget Commission, p. 17).

The low social status of jail inmates and the negative public perception of jails contribute to the difficulty in recruiting qualified, motivated correctional officers. In short, corrections is not the law enforcement career of choice for most people. In New York City, some of the men and women who are recruited as entry-level correction officers have taken and the Police Department examination and received a score that put them way down on "the list," which means a potentially long wait that may not finally result in a job. Unlike their lower paid counterparts in many other jurisdictions, New York City recruits are offered a starting salary that, with benefits, pays upwards of \$35,000 a year, has unlimited sick leave, and does not require any prior skills or more than a high school diploma. As in the Police Department, the union for New York City correction officers (COBA -- Correctional Officers Benevolent Association) succeeded in prohibiting lateral entry of uniformed personnel, so that skilled personnel from other jurisdictions with demonstrated abilities in areas such as security, administration, or programs, cannot be hired to fill critical positions. Short of a felony conviction, it is an extremely difficult, time-consuming, and expensive task to fire any unionized NYC DOC staff.

These "perks" in NYC provide significant incentives for career correctional personnel, but the job takes its toll for many anyway. Pervasive abuse of the union-backed unlimited sick leave policy, which has long been a costly problem for the DOC, can be interpreted without too much controversy

as an expression of low job morale and cynicism towards the organization.⁸

The attitudinal problems in NYC are not atypical, however, and most research demonstrates that correction officers are a disaffected group with high levels of job disaffection and stress (Zupan. p. 49 - 56). In the NYC DOC, the early mortality rate of career correction officers who move up the ladder to management is a common concern. A quick trip around Rikers Island reveals that four out of ten jails are named for wardens who died either shortly before retirement or shortly thereafter, and there are many more examples of Deputy Wardens and others who met the same fate. A civilian manager with responsibilities related to these issues discussed the issue of absence rates and their causes with a great deal of ambivalence:

["CM" is civilian manager; "I" is interviewer]

CM: So we're always [into] the finger pointing. The next level is, "I'm a schmuck. Look at what Joe's getting away with. Why don't I take my days?" And you even have that among high ranking uniform managers, who, by the way, have the highest absence rate for any job group in the department.

I: Really?

CM: Yeh. They were up to 63 days. Now they're down to 30.

I: Is that per person per year?

CM: Yeh. We had a couple of wardens like go out and not tell anyone what was wrong with them and then stay out for a couple of years, and there's no sick leave rule or regulation for a warden or deputy warden.

I: They're managers.

CM: Right. They're managers.

I: They just keep collecting pay?

CM: Uh huh. Right. We have two wardens right now on sick leave for more than nine months. We have almost six deputy wardens with significantly long term sick leave right now.

I: I had never heard that. How do you think these people justify this to themselves?

CM: The wardens and stuff?

I: Yes, and the lower level too.

CM: Well, on the managerial level, I really think it's, "I've been a schmuck all these years," . . . With a few exceptions, like they really are sick, but somebody has to manage and set limits. . . .

Another cause of stress and the omnipresent sense of "crisis" in the NYC DOC is the fact that the Department's civilian executive management staff are all political appointees, whose tenure is inversely connected to the amount of publicity given to the department by the local media. (There is virtually no such thing as "good news" reported on the DOC.) Few NYC DOC commissioners have been successful in this regard, and none since 1977 have lasted beyond one mayoral term of four years. Between 1977 and 1995, eleven commissioners served under four mayors, an average of less than two years of service per commissioner. Since new commissioners, like mayors and governors and presidents, always fire the key figures in the previous administration and bring in their own "point men" (and women), the DOC has been engaged quite literally in reinventing its policy wheel again and again, as in some Sysiphsian nightmare (to mix metaphors). On this issue a

civilian manager observed:

The . . . thing is, we're very political. So a lot of the things we respond to are shortsighted, political, at-the-moment, and often political where it's not even something that the Mayor's concerned about so much, but we just want to keep ourselves out of the paper. The union gets a lot of stuff from us, just by complaining, because we don't want to have them go to the paper with something. . . . We've had discussions even recently like we should be . . . [taking a certain kind of action]. Well, we have to wait until after the election. Well, why? The law says we can do this. We've gone through four years of court battles. We went through an arbitration. They recently attempted to overturn, and we won that again in court. Why do we have to wait more? Well, we don't want to go, you know, just before the election. Those kinds of things repetitively happen. And in that kind of environment, it's real easy for whatever is the current whim of somebody to supersede something that's more important. And then you take a unit such as this one, which is what an agency needs but it's not popular, it makes it real easy not to have anybody own it. And nobody wants to hold onto it for very long. Thus, I've had nine bosses in three years, and I'm on my fourth boss this calendar year.

Like the American correctional system as a whole, jail organizations are characterized by goal ambiguity and goal conflict. Because they serve a variety of purposes in a politically uncertain environment, however, jails tend to be even more affected by this problem than prisons, with offender rehabilitation, the most ostensibly humanitarian correctional goal, way down on the list. In NYC, organizational goal ambiguity is exacerbated by the steady erosion of uniformed custodial staff's decision-making power into the hands of non-uniformed, civilian DOC employees, who rarely have prior correctional experience, and oversight personnel who supervise the Department's compliance with court-ordered reforms.⁹

In general, the historical shift of decision making power to civilians

has translated into increasingly perfunctory, alienating job routines for uniformed staff. New rules and guidelines that cover virtually every aspect of jail facility operations and concomitant employees practices are issued on an almost daily basis, but the rationale for these rules are rarely communicated, or communicated well, or understood and agreed to, by uniformed custodial staff.¹⁰ As a result, their compliance with these guidelines is often tentative at best, with unorganized resistance as more often than not the norm. Because employee non-performance will inevitably show up in somebody's report as non-compliance, the (civilian management) decision makers who work "downtown" in the department's headquarters are invariably further roused to intervene and continue the cycle of what may seem to outsiders like a shell game of responsibility. A thirty year veteran uniformed correction officer working at the highest level of non-managerial supervision reflected on his experience of the ethical aspects of responsibility and accountability in the NYC DOC:

["C.O." is correction officer; six ellipses indicates a break in transcribed conversation]

C.O. : Lying, that's part of the job. You gotta lie. You won't survive if you don't lie. You have to -- you *have* to -- lie. If you told the truth all the time on this job you'd get indicted.

... ..

I: Well, why is there --

C.O.: Even when you go do a righteous use of force --

I: But why, *why* is there an organization that forces people to lie every day? Why is there --

C.O.: That's just the way it is, cause they don't have to do the job. The people who question you don't have to do what you do. They have no idea the frustration and the stress you're under. Constantly. And they want everything done by the books, by the numbers because that's what the federal courts want. And that's what the Board of Correction wants, and that's what Legal Aid wants. And that's what pasta fazul [sic] wants and everyone else.

I: Don't they know?

C.O.: They should know.

I: But they still do it anyway.

C.O.: Yup. Absolutely. They hold us to a very high standard.

I: How does that make you feel though in terms of the, you know, going back to the goals of the organization, I mean you're in an organization that forces you to lie all the time. . . .

C.O.: The whole system is corrupt. Most of it. [laughs] It really is, it's a very corrupt system that we're forced to work in.

Not surprisingly, jail facilities are often in poor condition, with numerous environmental and building code violations, a fact which is aggravated by the pervasive overcrowding problem of the past twenty years (Zupan). For reasons already mentioned, local governments do not often initiate or approve capital expenditures for jail expansion and renovation unless prisoner litigation on these issues has already been successful and is ongoing, as was and is the case in New York City (Charles, et al. 1992; Prisoners' Rights Project, 1994). The combination of poor (inexpensive) building design and maintenance results in conditions that exacerbate tensions for everyone, inmates and employees alike. For example, when

adequate sound absorption materials are lacking housing areas, especially dormitories, are suffused with the constant din of clanking metal gates, the “squawking” of correction officers’ walkie talkies, toilets flushing, TVs echoing against concrete walls, and angry, excited voices (Zupan, p. 35 - 44).

When overcrowding is added as an environmental factor, the conditions of confinement for inmates and working conditions for employees can be truly atrocious. The term overcrowding is used when a jail or prison facility exceeds its rated capacity, which is technically defined as “the maximum number of beds or inmates allocated by State or local ratings officials to each jail facility” (Bureau of Justice Statistics April 1995, p. 6). This definition is somewhat deceptive, however, because different jurisdictions have imposed significantly different standards for the minimum number of square feet allotted per prisoner in housing areas and in common (“day”) rooms. The difference in the quality of living conditions may be quite significant between a facility with a fifty square feet per prisoner minimum and one with seventy-five square feet.¹¹ But conditions will certainly be much worse in a facility with the fifty square foot minimum when its rated capacity is exceeded. One NYC DOC facility, for example, was operating at 135% of its rated capacity in 1987. In practice, this meant that inmates were allotted about 34.6 square feet in dormitory housing and 6.5 square feet in the day rooms (Fisher v. Koehler 1988, p. 1541. Because of the tremendous growth in jail and prison inmate populations during the 1980s and early

1990s, overcrowding has been cited again and again by correctional administrators as one of their most pressing problems, which is reflected in the fact that overcrowding was a major basis of Eighth Amendment prisoner litigation during this period (Zupan, pp. 44 - 47; Smolla 1984).

As mentioned, correctional administrators can rarely predict, much less control, the factors that influence fluctuations in their inmate populations. Nowhere has this been more true than in New York City, where percentages have sometimes spiked by more than 17% between one year and the next, as they did between 1986 and 1987 (NYC DOC IIS), or by the 23% change within the three years of 1989 and 1992 (Citizens Budget Commission, p. 12). Overcrowding and population fluctuations have been highly problematic for the NYC DOC, since New York City lost a series of constitutional challenges to the conditions of confinement, including overcrowding, brought by prisoners at various DOC facilities from the early 1970s through the mid-1980s (Storey ,1990; Prisoners' Rights Project, 1994). Based on a series of consent judgments that the City entered into as a result of this litigation, the Department has been under court order not to exceed a sixty square foot limit per adult male in dormitory housing (the predominate mode of housing throughout the system) without the written consent of one of the oversight agencies that supervises its compliance (Fisher v. Koehler).

In practice, the constant pressure of the NYC DOC's rising and fluctuating inmate population has meant that both civilian and custodial staff

at all levels have been continually preoccupied with some aspect of compliance, from the architectural challenge of constructing more “up to code” housing quickly (or shutting it down), to documenting and reporting on which housing areas in the sixteen facilities were going into or out of compliance, to actually moving inmates around.

Under such conditions, maintaining inmate services and an adequate inmate classification system in which inmates are housed according to their past histories of misbehavior and predatory violence – both of which correctional administrators and researchers cite as essential to the maintenance of a safe and secure environment – is almost impossible (Zupan, p. 61).¹² A uniformed staff described his experience with overcrowding as:

C.O.: *Terrible*. It's one of the worst things that could happen to a jail is overcrowding.

I: Ok.

C.O.: They fight over the phone. They fight over – they fight over *everything* when its overcrowded. A *phone call* -- a ten cent dime phone call can cause a serious stabbing or a homicide.

I: Why is that?

C.O.: Because, there's there's, when you go past that certain point, you can't provide the services for them any more. It's just, it gets crazy. Everything is backed up, you know. They fight over everything.

I: And are there more, and so, concurrently there's more uses of force?

C.O.: Yes.

I: As well.

C.O.: Yes, there's more "officers on inmate," "inmate on officer," "inmate on inmate," more tension, everything is *crazy*. That's the way it was, like when I said earlier, back in the middle 80s, it was terrible. . . .

As one possible consequence of overcrowding and some of the factors discussed here¹³, violence between inmates and between inmates and custodial staff historically has been and continues to be a pervasive reality in jails. What counts as "violence," or "too much violence" is of course somewhat subjective. Prisoner litigation alleging violations of the Eighth Amendment's "cruel and unusual" clause on the basis of inmates' lack of protection from violence has only been partially successful as a result, in part, of the courts' unwillingness to assign quantitative limits to what counts as unconstitutional levels of violence. Nonetheless, in New York City, violence was the focus of a major "conditions of confinement" suit brought by DOC inmates during the 1980s, when as the uniformed staff quoted above suggested, overcrowding was a rapidly escalating problem. Writing his decision on appeal of an earlier ruling in favor of the plaintiffs, U.S. District Court Judge Morris E. Lasker found that,

Systematic deficiencies in the operation of CIFM [Correctional Institution for Men], most significantly, overcrowding, over reliance on open dormitory housing, lack of adequate classification, inadequate staffing and supervision, and inadequate systems for controlling, investigating and disciplining mis- use of force, have led to a world where inmates suffer physical abuse, both by other inmates and by staff, in a chillingly routine and random fashion (*Fisher v. Koehler*, p. 1521).

Since Judge Lasker's Fisher decision in 1988, the New York City Legal Aid Society's Prisoners' Rights Unit has launched two more suits on behalf of DOC inmates that allege physical abuse by staff¹⁴ (Prisoners' Rights Project, 1994). Staff misuse of force certainly denigrates the integrity of the Department and the legitimacy of its general mission to represent and uphold the rule of law. But on a daily basis, in terms of the sheer number of incidents, NYC inmates have always been much more at risk from each other than from custodial staff. For a variety of complex reasons that cannot be discussed in this brief treatment of these issues, however, staff may be ethically (and legally) complicit in inmate-on-inmate violence because of their failure to protect inmates from each other:

Inmate: I don't know. I still couldn't understand it. I never seen -- I've seen fights happen in jail, but I've never seen an officer go pull, go try to help the inmates pull another inmate from --

I: Is that right?

Inmate: Yeh, I've never seen that.

I: In all the time? And you've seen a fair amount of fights?

Inmate: Yeh. I've seen them fight. But I've never seen another officer try to help an inmate try to separate them from fighting. I've never seen that.

No new legal challenges that concern inmate on inmate violence have been initiated since Fisher, but there is no reason to believe that, overall, inmate violence has been substantially reduced. This is because virtually all of the conditions described in this chapter and in Judge Lasker's decision

quoted above still prevail in some form, or at least reappear in various facilities from time to time, depending on the current members of the DOC administration's capabilities and interests.

The last important aspect of the jail organization's environment that bears further mention has been referred to throughout this chapter: the omnipresence of oversight and prisoner' rights organizations' influence on local DOC's policies and practices that resulted from the tremendous amount of prisoner litigation throughout the 1970s and 1980s. In 1992, the federal government reported that more than one quarter of the 503 jurisdictions in the U.S. with the largest jail populations were under court order to reduce population or improve conditions of confinement (Bureau of Justice Statistics August, 1993). The February 1994 "New York City Prisoners' Rights Docket Summary" included seven cases resolved by consent judgment and consolidated for enforcement by the Court and ten other cases which had been filed or which were pending (Prisoners' Rights Project, 1994). Besides the issues of overcrowding, use of force, and inmate violence already mentioned, these cases focus on inadequate medical care, unsanitary conditions in food delivery and housing areas, fire safety violations and inadequate fire safety plans, problems related to visitor and attorney access to inmates on Rikers Island, inadequate living conditions and mental health care in the City's prison psychiatric wards, and the provision of maternity and nursing services to pregnant women inmates (Prisoners' Rights Project 1994).

The historical consequence for New York City of the consolidated consent judgments was the establishment of a new, independent oversight body, the Office of Compliance Consultants (OCC) to supervise the Department's compliance with the specified reforms. In practice, depending on how you define and count them, the NYC DOC now has as many as five independent organizations with oversight functions that involve direct or indirect supervision or some form of review of its policies and practices. These include the NYC Board of Correction, the New York State Commission on Corrections, the OCC, the Correctional Association of New York, and the Prisoners' Rights Unit of the NYC Legal Aid Society (acting on behalf of the plaintiffs in the consent judgments). Thus, not only has the scope and power of uniformed custodial staff's decision making been eroded over the years, but executive management, as well, cannot function without making their peace in some fashion with staff from these oversight agencies. When "input" from the union (COBA) and the City's own organizations, such as the Office of Management and Budget (OMB), is thrown into this mix, the potential for permanent responsibility gridlock is very high. Here is the example of a civilian executive manager, freshly recruited from the private sector, discussing his own introduction to this issue: (Ellipses indicate deleted phrases that might identify the speaker.)

. . . . I'm reminded of one of the first meetings I went to in the Department where we had some silly environmental regulation that some lawyers thought ought to be applied to – they thought zoning ought to apply to Rikers Island, where zoning had never been applied

before and to which no good purpose could be found to do so. And there was a lawsuit for that purpose and a bunch of Twinkie-munching, Snapple-sipping lawyers – if I'm pejorative in my terms, you must understand why – gathered from the law department into a small conference room one day. I'd been here about a month. And they said, well, you know, we've got this lawsuit and the law-suit says we have to go do all these things. So let's just write up a consent order and we'll do it. I'm sitting there quietly, the new boy on the block, and I listen to the sound of give up and give in mixed up with the slurps from the Snapples. And I said, . . . where I come from, we learned how to say no. You know? You've just got to be able to say that. And if you're right, be able to defend it. And they sort of struggled themselves to sit up straight, and they said, oh, well, nobody ever suggested we do that. And I said, well, goddammit, it's going to cost us too much money and it's going to turn the control of Rikers Island over to the City Planning Commission for no good end and purpose. And I said, why should we have public debates about the quality of life on Rikers Island among those who have no stake in that quality of life in front of the City Planning Commission? And they said, oh, I guess that's a good question. So I suggested, why don't ya . . . get back to the books and figure out how to write an answer to this brief which tells the judge that we don't think that this is such a good idea after all. And they said, oh, well, . . . if you say so, I'll guess we'll do that. And they all walked out the door to do that, and I said to one of my colleagues, How in the hell . . . [is it] that this kind of thing takes place? And it turns out, dammit, . . . that that happens more often than not around here.

There is much that can be said and which has been written by correctional researchers on the impact of litigation on the operation and conditions of the nation's jails and prisons. Many of these researchers are skeptical about whether, overall, this impact has been effective, although many, including the author of the one article published on the NYC DOC (Storey, 1990), cautiously argue that conditions would have been much worse without court-ordered intervention (Jacobs, 1980; DiIulio, 1987; Feeley and Hanson, 1990; Champion, 1991). In general, researchers' skepticism about

positive outcomes is derived not so much from doubts about the validity of the issues raised in the litigation, as from the documented inability of many jurisdictions to effectively implement the court-ordered reforms (Feeley and Hanson, 1990).

As already indicated, the problem of implementation has dogged the NYC DOC. In order to convey the prevailing mood of dissatisfaction, it is worth quoting at some length the Prisoners' Rights Unit's own summary of these issues:

Despite the age of the consent judgments, their enforcement has remained the single most time consuming "case" for the Project attorneys because of repeated motions by the City to be relieved from limitations on jail overcrowding and because of the City's persistent failure to achieve compliance with many of the requirements of the judgments.

Because of the long record of noncompliance with the consent judgments, the Project has sought and obtained a series of stronger enforcement measures. Project attorneys along with OCC now participate, pursuant to court order, in reviewing operating plans for all new jail space in order to ensure adequate planning for compliance. . . . Early in 1992, the city Department of Investigation uncovered a pattern of violations of the relevant orders that had been covered up by fraudulent record-keeping. . . .

Also in 1990, based on continuing failures of compliance, the court directed the Office of Compliance Consultants, in cooperation with the parties, to begin preparing "work plans" containing firm deadlines for each necessary step towards compliance. When completed, work plans are adopted as orders of the court.

In 1991, work plans were adopted in the areas of classification, handling of inmate property, and food services. However, the City quickly fell severely out of compliance both with the work plans and with the court's prior instruction that it must be notified promptly of such failures (Prisoners' Rights Project, pp. 3 - 4).

And the litany continues. In practice, the "work plans" are the means by which the court and oversight bodies "micro-manage" the NYC

Department of Correction. Commenting on this role and on the organizational culture he encounters in the Department, a twelve year veteran attorney working on compliance for one of the oversight agencies remarked,

We use another analogy that I love. We say it's like cockroaches in the kitchen at night. And we come in and we shine a flashlight on one corner and they scurry on. But we know they're there in the darkness and we shine a light over there, and so it's constantly chasing them. Why? I think there are several reasons why. It first starts out that you have a Downtown [administrative headquarters] . . . that is not well-informed at all about what is going on in the field. They really don't know a lot of times the real practices. And I think, affirmatively somewhat, don't want to know because the problems are substantial and what it would take to change them is so difficult. So I think you have, you tend to have a small, although they wouldn't necessarily be, but a small civilian group that comes in as administrators and they're very removed. Civilians versus the uniforms is such a strong dichotomy in correction, in the New York City system. And that the uniform staff looks with great skepticism, in my view, on the non-uniform staff, and they're basically looked as not partners but rather a pain in the ass, and we're going to try to block them off, misinform them, not do what they have to say. So that you have an ineffectual central office who is not well-informed. . . .

The above passage and others from the interviews excerpted in this chapter strongly suggest the normative explanation for organizational conflict discussed in the previous chapter, which have so influenced the study of prison organizations. Each participant interviewed seems to express opinions strongly influenced by subcultural norms of his or her group, developed, presumably, in response to the dynamic of their different roles and statuses in relation to the exigencies of organizational imperatives and institutional context. But as I have asserted and will attempt to demonstrate

in the following chapters, this approach describes one aspect of social interaction, but it cannot provide an adequate description of the substance of intergroup conflict, nor can it provide an adequate explanation of the interactional responses to conflict that result in the apparent breakdown of concerted, Weberian-type value rational action on the part of the organization's members.

Natural and social scientists often attempt to construct or induce artificially extreme conditions in a laboratory setting in order to observe animals or humans pushed to their limits, on the assumption that these observations will illuminate their subjects' "normal" capacities that are less obvious under ordinary circumstances. These kinds of studies can trace their lineage to literary investigations of the same terrain, such as Daniel Defoe's Robinson Crusoe or Joseph Conrad's Heart of Darkness. As this chapter may suggest, my research explores a similar theme in the natural setting of the urban jail organization, a contemporary example of the moral perils of organizing survival in a socially isolated island of outcasts.

1. The sources of my information for this chapter include the references cited as well as my own experience working for the New York City Department of Correction (1988 - 1990).
2. The number of facilities operated may fluctuate according to the ratio of the prisoner population to the rated capacity of the facilities (with temporary facilities being opened and shut accordingly), and may also depend on which facilities are counted as "jails." The Bureau of Justice Statistics Bulletin (April 1995) specified 15 jails for the NYC DOC; the Citizens Budget Commission (January 1993) specified 18 jails, 17 detention centers, and 3 hospital wards.
3. Some jurisdictions, including New York City, give the DOC custodial responsibilities over the cells in court buildings which hold defendants who have been formally arrested and charged, but who have not yet had their initial arraignment before a judge. In NYC these are called the "court pens." Some other jurisdictions give custodial responsibility to the courts.
4. Total admissions to NYC DOC in 1992 were 111,045 (Mayor's Management Report, 1993), down from a high of 125,720 in 1990 (Citizens Budget Commission, 1993). As reported in the New York Times (Faison, 1994), this number subsequently rose again due to the new mayor's (Rudolph Giuliani) policy of cracking down on public order offenders.
5. Public order offenses are often defined by local laws (county and municipal) and therefore reflect changing perceptions about "offensive" behavior, such as public drunkenness, loitering, panhandling, etc.
6. Between 1984 and 1992, the rate of Black jail inmates per 100,000 residents increased from 339 to 619, while the rate for whites increased from 68 to 109 (Bureau of Justice Statistics, August 1993, p. 10).
7. It should be acknowledged that the term "drug abuse" is often applied subjectively, without explanation as to what might constitute a distinction between drug "use" and drug "abuse." Any acknowledged drug use by a minority inner city person with a criminal record might be interpreted as drug "abuse" by human service workers or correctional personnel. To their credit, the authors of an "Inmate Demographic Survey" conducted in-house by the NYC DOC in 1989 made this distinction. They reported that, "Approximately 58 percent of the inmates claimed to have had some problem with drugs or alcohol in the past. Fifty three percent of the men and 72.6 percent of the women claimed to have used drugs at least once a day before their arrest, and 31.4 percent claim to have a current drug problem " (NYC DOC 11/15/1989).

8. The number of days absent per month for uniformed employees of the NYC DOC in 1993 fluctuated between a low of 15.20 days to a high of 20.39 days., with an average of 18.58 (NYC DOC Health Management Division 1993). In contrast, the NYC Police Department's average absence rate was about 10 days (Citizens Budget Commission 1993, p. 16). Absenteeism has been a major factor in DOC's extremely high overtime costs (p. 14). In 1993 a New York City correction officer worked, on average, only 206 days per year (p. 13).

98. For various reasons, New York City has been much more successful at "civilianization" of the DOC than, by comparison, the NYPD (Citizens Budget Committee, 1990). The employment of non-professional civilians for administrative support or technical positions is preferred because civilians are less expensive. My point, however, relates not to the number of civilian staff versus their uniformed counterparts, but to the actual decision making power vested in a relatively small number of professional staff employed by the DOC and by the oversight agencies discussed below.

10. On one occasion I observed the dissemination of a new, Department-wide "use of force directive" to correction officers in a large jail on Rikers Island. The new directive, which detailed required (i.e. legal) practices for responding to physical and/or violent behavior between inmates or between inmates and staff, was issued in response to recent, successful prisoner litigation and had important implications for correction officers' performance evaluations and legal liability. The directive was handed out, without comment, by the Warden's assistants on pay day with the officers' pay checks. Many officers took one look at the directive and dropped it into the trash can along with their pay check envelopes. This is anecdotal information, but it illustrates my point here. For years correctional scholars such as Zupan (1991, p. 54) and many others have made the same general point about correctional employees in prisons and jails.

11. The courts have made rulings that allow a range of 40 to 60 square feet per prisoner, but the many advisory bodies that have made recommendations on this issue have promoted much higher standards. The American Correctional Association's Manual of Correctional Standards recommends 75 square feet per inmate (Smolla 1984, p. 414 - 415).

12. An inadequate classification system at one Rikers Island facility was a major focus of Fisher v. Koehler. The Department's rationale (or lack of rationale) at that time for this inadequacy was not overcrowding per se. (Lack of an adequate number of cells for inmates with violent histories was cited by the defendants, but this was a somewhat different argument). Nevertheless,

even a very good classification system can be followed in terms of appropriate housing assignments for inmates only if a specified surplus vacancy rate in each housing area is maintained to allow for unforeseen fluctuations in the numbers of inmates who are classified to live in those housing areas.

13. Establishing direct, causal associations between various factors in the jail environment and inmate violence has been a bone of contention between conservative correctional scholars like John DiIulio and others, who accept a direct or at least indirect association between environmental conditions and behavior. DiIulio rejects what he considers to be a form of sociological determinism and argues that the human factor -- correctional management -- is the primary determinant of the orderliness of jails and prisons (DiIulio 1990). Nevertheless, my assertion that violence is a pervasive reality in large jail systems like those in Los Angeles and New York City is non-controversial.

14. Sheppard v. Phoenix, 91 Civ. 4148 (S.D.N.Y.), which addresses practices at the James A. Thomas Center and Jackson v. Freckleton, CV-85-2384 (E.D.N.Y.), which concerns the Brooklyn House of Detention.

Chapter 8. Methodology and Method

In this chapter I discuss the methodology and methods employed in the empirical component to my study. Throughout, I assume David Silverman's (1993) distinction between methodology, as "a general approach to studying research topics" and method, as "a specific research technique" (p. 1). As discussed below, the purpose of my study is not to test hypotheses about the organizational members' beliefs or values, nor to provide a comprehensive ethnographic account of organizational life in New York City's Department of Correction. I have therefore chosen not to include a description of the research process.

The empirical research for my study was conducted in order to explore and illustrate the theoretical arguments I develop in the first six chapters. As stated in the "Introduction," my goal is to demonstrate the significance of developing a new, or at least "reconstructed" approach to the sociology of morals. I believe that a well-developed and theoretically sound sociological approach to the study of morality can add new insight and depth to our understanding of the sources and contexts of social and interpersonal conflict, harmony, and change. The purpose of the empirical component of this study, therefore, is to suggest what kind of insights this approach might make available. Consequent to this purpose, I hope that my analysis will provide some insights into (a) how members describe the salient social facts of the NYC DOC, and (b) how their specifically moral accountings of inter- and

intra-group conflict contribute to the construction, maintenance and/or disruption of the perceived social order of the organization. But, to reiterate, I consider these interpretations as tentative illustrations of the concepts and arguments developed to advance a new approach to the sociology of morality. In other words, this study is a prolegomenon to future research.

I do, however, believe that the set of assumptions and terminological definitions that comprise a theoretical framework imply a related set of assumptions about which methodological approaches are appropriate for research programs that are informed by the framework (Bohman, 1991). Social scientific methodologies do not consist of a set of neutral “tools” (the methods of collecting information or data and the techniques used to analyze this information) to be picked up and discarded according to the dictates of specific problems or topics defined by the researcher. Instead, methodological approaches and their related techniques are themselves historically and socially situated expressions and practices of particular groups that reflect, minimally, their assumptions about the epistemic standards requisite for the production of “knowledge” and their ontological assumptions about the social reality which is to be investigated (Taylor, 1971). In this sense methodologies, like theories, are infused with value. They entail what we can know and how we can know it.

In Chapters Three through Five, I argued that a normative or structural-functional approach to the study of morality, which would treat

moral norms as internalized “causes” of social action, would, in Garfinkel’s terms, “confuse topic with resource.” By ignoring social actors’ cognitive-imaginative appropriation of moral norms to interpret, account for, and challenge the “social facts” of specific conditions and events, the normative approach assumes that moral norms explain, at least in part, behavioral outcomes; but these same outcomes are then referenced to infer the existence of the moral norms. The solution to this interpretive logjam, I believe, lies in a methodological approach to morality as practical, context related, reasoning, and a theoretical approach to social facts as social actors’ symbolic reifications of their intersubjective communicative praxis.

Although they may make meta-theoretical assumptions about the sources of moral understandings that are at odds with the normative approach, contemporary moral psychologists have often employed research methods that can do little more than highlight the normative categories engaged by members of designated groups or cultures to respond to artificially constructed situations. Typically, researchers in this field use survey questionnaires or structured interviews along with statistical analytic techniques to ascertain the incidence and frequency of an a priori (determined by the researchers) set of moral norms or framework of moral reasoning.

For example, the authors of a well-done and instructive study that compared Brazilian and American adult’s and children’s appraisals of certain stories in terms of whether these stories were judged to present moral matters

or matters of social convention found that Brazilians were inclined to draw moral conclusions from more different kinds of stories than Americans. (Haidt, Koller, and Dias 1993) The Brazilians tended to moralize (agree that such behavior was “wrong” and should be prohibited everywhere) about stories that involved people engaging in offensive, but non-harmful activities, while the Americans tended to think that offensive behavior that was not harmful (without a victim) was a matter of personal preference or cultural custom. In general, the authors concluded that cognitive developmental moral psychology should de-emphasize the role of harm in moral appraisal (because this emphasis represents a cultural bias) and focus on the “interaction of affect and culture” and its relation to moral judgment. (p. 626) These conclusions are suggestive, but such anthropological-psychological generalizations are not very helpful in explaining how and why people from the same group or groups negotiated different outcomes to similar situations, and what the salient factors, moral or non-moral, might actually be in their practical, context-dependent deliberations. In other words, studies that rely on traditional empiricist research methods do not help us to understand morality in action.

As I contend above in Chapter Five, “documentary reportage,” the goal of which is “to catch the work of fact production in flight,” (Garfinkel, op. cit.) is an appropriate methodological rubric for a sociological approach to the study of morality in action. I add the important caveat, however, that the

broader organizational-institutional frameworks that provide the goals and values that lend legitimacy to social actors' justificatory narratives of their exigent situations must be taken into account by the researcher.¹

The two chapters of this study devoted to analysis of my interviews with members of the NYC DOC employ different, albeit historically related, qualitative methods. In the first, Chapter Nine, I draw upon the methodological tradition of symbolic or "interpretive interactionism" (Denzin 1989) to identify and explicate members' understanding of the features of the organizational environment that affect their practical-moral reasoning within the specific decision-making contexts of their daily lives. As Denzin (1989) maintains, "the question[s] that is framed must be a *how*, and not a *why*, question. . . . [I]nterpretive studies examine how problematic turning point experiences are organized, perceived , constructed, and given meaning by interacting individuals." (p. 49) Accordingly, I have organized Chapters Nine and Ten around specific "how" questions, which I attempt to answer in the analysis that follows. These questions are based on an overall assessment of the twenty-four interviews that led me to conclude that the "problematic turning point experiences" of DOC members revolve around the threat to their personal-moral integrity made inescapable by ongoing "legitimation crises" (Habermas) of authority and power within DOC.

Answering the questions I pose in Chapter Nine is accomplished through "multi-voiced, descriptive realism" (Denzin). Since my primary

concern is with how members employ mundane morality to reason about and negotiate inter- and intra-group conflict, I select and juxtapose excerpts from the transcribed interviews that best illustrate how members from each of the four groups perceive, contest, and reconcile the significant social action of members from their own and other groups. I do not assume, contrary to normative sociology, that members simply “represent” the views of the formally designated group to which they belong. Instead, my objective is to discover what, if any, normative, group-based expectations members actually designate, and the extent to which they identify with or reject, on the basis of mundane morality or otherwise, these expectations. Denzin (1989) provides a succinct description of this approach:

In descriptive realism, the writer attempts to allow the world being interpreted to speak for itself. Here the writer employs the strategy of using multiple voices to speak from his or her text. . . . Descriptive realism is dialogic and polyphonic. It tells the native’s stories in his or her own words. It allows interpretation to emerge from the stories that have been told. It reveals the conflictual, contradictory nature of lived experience and suggests that no single story or interpretation will fully capture the problematic events that have been studied (p. 136).

In Chapter Nine, therefore, the reader is asked to study my selection of

members' accounts of their experiences and then to consider the summary I provide of these experiences and my interpretation of their significance in terms of the broader concerns raised by this study.

The method I employ in Chapter Ten is best described under the rubric of "discourse analysis." This chapter attempts a much more detailed exegesis and analysis of one member's conversation with me in order to pursue the specific objective of identifying and analyzing the characteristics of mundane morality "at work." I chose one member's account, or what I term "narrative of moral reckoning," because I thought that this narrative offered a particularly rich basis for illustrating *both* the approach I am recommending for the sociological study of morals and my interpretation of the perceived "social fact" features of inter- and intra-group conflict within the NYC DOC that influence members' ongoing practical-moral reasoning.

Silverman (1993) describes discourse analysis as "a heterogeneous range of social science research based on an analysis of recorded talk" (p. 120). This range includes the analytical techniques and categories developed by ethnomethodologists practicing "conversation analysis" (Heritage, 1984; Boden; Silverman), by sociolinguists like Gumpertz (1981), who focus on the social contexts rather than the cognitive requirements or bases of interpersonal communication, and by Erving Goffman (1981) in some of his later work.

Research traditions based on discourse analysis share several important

assumptions about the relationship of language to social reality. First, as implied throughout in Chapter Five, language, both written and spoken, is not conceived as a medium which reflects or references a pre-given, ontologically prior set of non-linguistic material and conceptual entities ("reality"). Rather, language is conceptualized as constituting, at least in part, the objects it signifies.

Concomitantly, social interaction is characterized by "talk," meaning that language is the primary (although not exclusive) means through which social actors communicate their proximate goals and their understandings of the justifications, ramifications, and permutations of these goals. In Boden's (1993) terms, talk and social interaction "structure" organizations. By using structure, one of sociology's most significant sociological concepts, as a verb rather than as a noun, Boden specifies one of ethnomethodology's central empirical propositions, that human agency and the recurrent, institutionalized features of organizations are not mutually discrete causal operations, but together constitute a "mutually elaborated" process (pp. 11 - 15). This does not imply that the researcher cannot make analytically significant distinctions between the features of an organization and the interaction that proceeds relative to these features. But contrary to normative or structural-functional approaches, the deep relationship between the two will be given implicit, if not explicit, emphasis. In sum, Boden's and other ethnomethodologists' observations on the relationship between language and

social reality are consistent with mainstream, twentieth century language theory originally developed by such diverse theorists as Ferdinand de Saussure, Ludwig Wittgenstein, and J. L. Austin.

Following Austin (1962/1975), a second, related assumption of discourse analysis is that talk is conceptualized as both descriptive and performative (Silverman, p. 120). Talk *describes* social actors' conditions and situations, as in, for example, the exclamation, "I spilled spaghetti sauce on my dress!" Nevertheless, with their talk, social actors are also *performing* actions in relation to each other. For example, depending on context, the action of the dress wearer might be (1) to provide an explanation to her companions, by way of inference, of why she is leaping up from the table and going to the kitchen sink; or (2) to accuse a table companion, by way of inference, of some kind of unwarranted distraction from careful eating techniques. The performative dimension of talk conceptualized by Austin is analogous to Garfinkel's notion of social actors making their actions "accountable." In sum, talk *itself* provides valid and valuable samples of situated social action. For many researchers who work with these assumptions, therefore, the primary unit of analysis is small group or "micro-interaction."

Since researchers cannot analyze talk as it takes place in "real time," the most common technique is to record and transcribe selected samples of talk that occur naturally, in the course of everyday events. Although it would

have been greatly preferable, the circumstances of my research made the recording of naturally occurring conversations between members of the organization impossible. Consequently, for the purposes of this study, I treat the interviews between members and myself as "quasi" natural conversations. In the long run, this is not a satisfactory strategy for several reasons: (a) because interviews are not typical "organization talk," but always special cases with their own set of tacit assumptions made by the conversationalists about their appropriate roles and responsibilities (e.g. that the interview is "about" the person being "interviewed," so the interviewer should not "hog" the conversational floor); and (b) because I could not hope to achieve the same level of background knowledge necessary to provide the appropriate contextualization cues equally with all four groups. For example, I had the least background knowledge about being "an inmate," and the most about being "a civilian professional employee."

Mindful of these limitations, I nevertheless strove to achieve the most natural possible conversation in each interview. That is, I tried to create a tacit understanding with each person interviewed that he or she could take for granted my background knowledge of his or her situation within the organization, and presume that I could sympathize, if not empathize, with his or her point of view. My objective was to eliminate, as much as possible, the possibility that the member would present a "public relations" version of their experiences instead of simply revealing him- or herself in the course of

our conversation. Hence I judged the success of each interview on the basis of my perception of my partner's expressed or implicit comfort level, and their willingness to challenge or "correct" any of my responses that didn't accord with their own insights and judgments. I wanted each interview to become a conversation between "members," with as much as possible tacit background knowledge implicit in our give and take.

In Chapter Eight, I made a certain common sense assumption about group membership categories, namely, that there are "natural" groups based on members' roles and statuses within the organization. How the individuals interviewed perceived their own and others' membership assignments and statuses is a separate, empirical matter, however, which I pursue in Chapter Nine. Discussing the work of ethnomethodologist Harvey Sacks, David Silverman notes:

Many kinds of activities are commonsensically associated with certain membership categories. So, by identifying a person's activity . . . we provide for what their social identity is likely to be Moreover, we can establish negative moral assessments of people by describing their behavior in terms of performing or avoiding activities inappropriate to their social identity. . . . Social life, unlike foreign films, does not come with subtitles attached. Consequently, how we define an activity is morally constitutive of it. So if, like other sociologists, Sacks is talking about norms, unlike them (and members) he is not treating norms as descriptions of the causes of action. Instead, he is concerned with how 'viewers use norms to provide some of the orderliness, and proper orderliness, of the activities they observe' (p. 82).

Since in this study I am preeminently concerned with the way in which members employ moral understandings in their accounts of the social reality of the correctional organization and their activities within it, the

ethnomethodological attention to “membership categorization devices” (MCD) is significant for my interpretations. Therefore, as mentioned earlier, although I initially assigned the people I interviewed to membership categories, I do not take for granted their own categorizations.

Finally, a third important assumption shared by many discourse analysts is that issues of objectivity and related concerns about the reliability and validity of interpretations are not irrelevant, even though the theoretical traditions to which these analysts subscribe have historically provided sustained critiques of the way in which empiricist and positivist research traditions conceptualize the relationship between language and social reality (Silverman 1993). Silverman discusses a number of techniques qualitative researchers have developed to address the reliability and validity (in redefined senses of these terms) of their interpretations of empirical “data.” Since the purpose of this study is to establish a framework for the sociological study of morality, I do not employ many or most of the techniques that would be desirable in a more extended empirical study. But some attention to these issues is warranted.

The use of coding conventions is the primary technique developed by conversation and sociolinguistic analysts to address the reliability of their interpretations. These researchers have demonstrated that talk has its own principles of organization (i.e. “structural features”) that enable social actors to make sense of each new communicative encounter. Without these sense-

making devices, which, analogous to Garfinkel's "rules of preferred play," are extra-linguistic conventions that guide verbal interaction, miscommunication would be a much more pervasive possibility than it typically is in everyday interaction. Examples of these organizing principles include the system of conversational turn taking and its variations identified and analyzed by ethnomethodologists (Sacks, Schegloff, and Jefferson, 1974), and the "prosodic conventions," discussed by Gumperz (1981). Coding conventions are used to reveal the internal structure of talk through detailed categorization of individual conversational "slices," such as, for example, symbols used to signify non-linguistic verbal actions (such as short to long pauses between words or sentences), prosodic conventions (such as intonation and stress emphases in pitch or loudness), speed of utterance, and overlapping of speakers' utterances (Heritage, 1984; Gumperz, 1981).

My analysis for this study is not so finely tuned, so I do not employ coding conventions. Rather, a primary focus is on what Gumperz terms "contextualization cues."

A basic assumption is that . . . channeling of interpretation is effected by conversational implicatures based on conventional co-occurrence expectations between content and surface style. That is, constellations of surface features of message form are the means by which speakers signal and listeners interpret what the activity is, how semantic content is to be understood and how each sentence relates to what precedes or follows. These features are referred to as *contextualization cues*. For the most part they are habitually used and perceived but rarely consciously noted and almost never talked about directly. Therefore they must be studied in process and in context rather than in the abstract (p. 131).

One of the principal, overriding claims made in the preceding chapters (especially Chapter Four) is that mundane morality works inferentially because it is part of, in Schutz's term, the "attitude of daily life." It is, in other words, constitutive of the world as we know it. Thus, for example, when social actors are engaged in the business of practically reasoning about a certain state of affairs, asking them to articulate the moral principles, standards or "norms" that guide their reasoning constitutes a Garfinklian "breach." I tried this kind of breach with several of the people I interviewed simply to test this hypothesis, and my conversation partners responded accordingly, with wry or sarcastic comments.

("M" is the organization member; "I" is the interviewer. "M" has been describing at length his/her own and others' responses to challenges to their personal integrity on the job.)

M: . . . I mean, the guy is stupid. He really is dumb. He writes a 26 page audit that says nothing. He gets a 36 page audit response back from and doesn't know what to say. Because the guy doesn't know how to do his homework. He doesn't know how to do an audit correctly. He doesn't know how to make allies and build responses. What he's doing in attacking us is self serving. If he makes us look bad, he looks good. What goal is there in life to doing that?

I: Okay. Just to probe that a little further, what is the underling value? If that's true that if something is merely self serving and doesn't seem to address some larger goal, what's the value in that?

M: I'm missing the question. You mean if something isn't self serving, why do it?

I: No. I'm accepting that to act in an un-self serving way, as you've defined it, is good, but I'm still wondering, *why?*

M: I have to go home and read Plato tonight and then I can answer that question correctly.

I: You can answer it.

M: Hmmm?

("M" proceeds to provide an articulate answer, again within the terms and context of his/her work experience.)

The request for explanation is perceived by this member as a demand for an inappropriate kind of accountability – one which is abstract and disengaged. The point, therefore, of this kind of analysis, which I attempt to demonstrate in Chapter Ten, is to search for and describe patterns of contextualization cues in a members' "talk" which differentiate or signify moral categories. But in order to achieve this, the analyst must have in reserve a set of attributes or characteristics of moral discourse that will provide a heuristic frame of reference. These have been discussed in Chapter Five. The extent to which these attributes or characteristics are exhibited is a major concern because, if they are not, then their salience to the work of analyzing mundane morality in action is called into question. Negative results, however, would provide a means of determining the validity of the research, because the basic analytical categories would be disconfirmed. As Silverman notes, confirmation or disconfirmation of the analysts' heuristic categories conforms to the Popperian thesis that *falsification* rather than *verification* is a more appropriate model for the production of social scientific knowledge (p. 155).

Future research of the kind I am proposing should give greater consideration to issues of reliability and validity. For example, appropriate coding conventions could be employed or developed to address reliability concerns about the interpretation of transcribed talk. Second, analyses of the same transcribed conversation could be provided by multiple analysts, thus providing inter-rater reliability checks. Third, "respondent validation," a technique used to assess validity by providing people who participated in the research with a report or summary of the researcher's interpretations, might be appropriate if the researcher drew broad conclusions about the relationship between an organizations' practices and members' moral deliberations about those practices (Silverman, pp. 159-160).

1. The history of ethnomethodological research that applies Garfinkel's "documentary method" is rich with studies of organizations, from Egon Bittner's (1967a; 1967b) early studies of the everyday organization of police work and A.V. Cicourel's (1968) study of juvenile justice, to Douglas Maynard's (1985) analysis of plea bargaining and Deidre Boden's (1993) full-length treatment of the relationship of talk and social structure in organizational contexts.

Chapter 9

The Department – Moral Failings

Throughout Part I, I argued that mundane morality – at work in everyday, practical moral reasoning about concrete situations and normative justifications for social action – operates within social actors' ongoing production or "accountings" of the organizational social facts. In epistemological terms, this implies that "moral facts" or moral discourses are supervenient on "social facts" or non-moral assessments (Railton, 1996, pp. 65 - 66). The moral rule "don't harm" and the inmate/correction officer code rule, "don't rat" are both universally recognized in the folk theory (Johnson, 1993) of Americans who work or live in jails and prisons. Yet, as I will attempt to demonstrate in Chapter Ten, members' accountings of organizational social facts influence how and when various rules are instantiated, and the justificatory accounts that they give for the rules' application or non-application.

This chapter is devoted to providing "thick description" (Geertz, 1983; Denzin, 1989) of members' accountings of basic organizational social facts, with specific emphasis on their interpretations of the organization's moral atmosphere.¹ By moral atmosphere I mean the way in which the organization is perceived to promote or deny members' fundamental moral ideals and values, for example, fairness in the distribution of resources or rewards and punishments, respect for individuals' personal dignity and

integrity, and support for caring concern for the welfare of others.

Another related objective of this chapter is to provide a “multi-voiced contextual interpretation” (Denzin, p. 118) of the organizational environment for the purpose of explicating whether members’ group affiliation influences their accountings, and on this basis, their instantiation of and justificatory accounts of specific moral-normative rules. This is significant because, as discussed in Chapter Six, sociological research on prison organizations has tended to employ normative sociology’s premise that group membership dictates a set of significant beliefs, values, and rules that in turn influences the individual’s decision-making and justificatory explanations of his or her actions. The normative approach to social action is compatible with the “organizational culture” perspective assumed by many past and contemporary researchers of criminal justice organizations (Fine, 1984). My own perspective is closer to Wieder’s and other ethnomethodologists’ more processual view that social order is “negotiated.” In the actual analysis of organizational conflict, however, these interpretive orientations need not be understood as mutually exclusive.

I part company with both orientations in my explicit claim that researchers should recognize and take into account that a significant feature of the cultural-linguistic practices of Western societies is the distinction between moral rules and norms and norms that are specific to some groups’ customs or habitual preferences. What philosophers and cognitive

developmental psychologists have identified as the characteristics of “moral reasoning,” I have re-defined as the “contextualization cues” of moral discourse. As the basis of mundane morality, moral norms are non-conventional; they provide the opportunity for members’ critical reflection on and dissent from normative standards and rules imposed by the group or organization. Of course, as this study demonstrates, mundane morality does not necessarily serve members in the broader resolution of intractable or “structured” conflicts. Contrary to much popular rhetoric, morality has never provided a road to salvation.

I have organized the material in Chapters Nine and Ten around several broad interpretive questions, which are distilled from the interview protocol and represent my assessment of the most pervasive topics of conversation in all of the twenty-four interviews I conducted. The guiding question explored in Chapter Nine concerns the issue raised above about the transmission of group specific norms and draws on the “membership categorization device’ (MCD) analysis discussed in Chapter Eight. Instead of making the apriori assumption that individuals somehow “represent” their group membership categories (i.e. “civilian managers” “inmates” etc.) I strive for descriptive realism, also described in the last chapter. To achieve this, I let members speak for themselves, excerpting at length from the transcribed interviews.

How do members understand and evaluate their own and other groups' positions and performance within the Department?

Organizational power in the Department is typically diffused along class and racial lines. Members of the group I am calling "Civilian Managers" were all "white," from solidly middle class backgrounds and had post-graduate, professional degrees. I interviewed six individuals from this group, three men and three women. Five out of the six could be described as "middle management"; one was an executive. Four had little direct experience in the DOC facilities, with virtually no contact with inmates. All six, however, were involved in developing and implementing policies that directly affected uniformed custodial employees and inmates.

The second group of persons I interviewed worked for two of the Department's oversight agencies, the Prisoners' Rights Unit of the New York Legal Aid Society (LAS) and the New York City Board of Corrections (BOC). Of the five "Oversight Agency Representatives" I interviewed, three were "white" men from middle-class backgrounds with graduate law degrees. A fourth person was a college-educated African-American man from a working-middle class background, and the fifth individual was an African-American woman from a working class background who had earned an Associate's Degree. All of those interviewed had responsibilities that brought them into day-to-day contact with DOC employees and inmates and immersed them in the practices and policies of the Department. Three out the five people I interviewed are represented here.

The one primary difference between these members and others was that their own employer was not the DOC. Consequently, these members did not describe conflicts with other members of their group or within their own organization. This does not mean that they did not have such conflicts. In general, however, they expressed a good deal more satisfaction with their work. Their descriptions of their experiences with the Department and its conflicts were more idealized, revolving around how and to what extent they were able to impact the organization and influence it to conform its internal social arrangements and practices to the "objective" standards imposed by the courts. Nevertheless, these members were strongly personally identified with the moral legitimacy of the standards, and so, like their DOC counterparts, their expressed sense of self identity and meaningful purpose were not detached from organizational reality, but rather constituted within it.

I interviewed eight people from this group, three women and five men. Two of the women -- both Captains -- were Afro-Caribbeans; one, a manager, was "white." Three of the men -- a manager², a Captain, and an Assistant Deputy Warden -- were "white," of Irish and Eastern European descent. The other two men were "black," one an African-American, the other an Afro-Caribbean. All of these individuals came from working class or lower middle class backgrounds. Only three, the managers, had earned college degrees while working full-time for the Department.

I interviewed five DOC inmates, all of whom were detainees. Since the

primary objective of the interviews was to discuss their institutional experience, I did not ask inmates about their criminal records or the charges that were pending against them. I also thought that questioning in this area might diminish whatever trust I could build with them, or divert the conversation for too long. Hence, for the most part, I do not have detailed accounts of the specific circumstances that brought them to the DOC. From information they volunteered, however, I learned that all of them were charged with drug-related offenses and had at least one or more – and in several cases numerous – prior periods of incarceration. The inmates ranged in age from nineteen to thirty-seven; three were African-American, two Hispanic. They all came from inner city, impoverished backgrounds.

Not too surprisingly, members of all groups did consistently construct categories of “otherness” to describe the actions and character of other groups. As discussed in Chapter Eight, ethnomethodologists have suggested that the response to a person’s activities in terms of whether that person was acting in ways appropriate to his or her social identity is a typical means by which members’ attempt to establish a version of the “natural” social order. Yet, despite, the apparent rigid stratification of organizational power and authority along the social categories of race and class, members’ “exegetical narratives” (Wieder) of inter- and intra-group conflict in the Department did not prominently feature designations of race and class. This point will be discussed and explained below in the analysis that follows members’

excerpted accounts.

DOC members' characterization of other groups' concerted social action was often of predictable and outrageous folly. Not all members commented on the follies of all other groups however, because, for example, inmates and civilian managers simply don't come into contact with each other very much. Nevertheless, both the form and the content of these protests was quite consistent. By form I mean that members continually steered our conversation toward a recitation of these follies and often provided stories that "revealed" the outrageous conduct in question. Nor was there much variation in terms of the content of members' descriptive characterizations of the conduct or attitudes in question.

A sample of members' comments on other groups is provided below. In this section, I have not grouped the responses together according to the speaker's group and the group towards whom his or her protest is directed. Instead, I have distributed the responses somewhat arbitrarily because I believe that the cumulative effect of reading these excerpts best demonstrates the typicality of the protests.

[M: Member; I: Interviewer; a line of six ellipses indicates that transcribed conversation has been edited out; one or two ellipses inside parentheses (.) indicates that the transcriber could not identify a word or words. Bracketed words are editorial insertions to explain the meaning of a term or terms.

Numbers indicate new material transcribed from a different interview.]

1. Uniformed Staff on Oversight Agency Representatives

M: I really felt that the oversights had a good role to play. They were certainly beneficial to the Department. That in fact there were a lot of folks that had very backward and archaic ideas about jail and what needed to be done and what should be done and all. I didn't want to work in a jail like that. I didn't want to become part of that kind of a system. So I thought, this is good. However, I am experiencing it in the sense that I'm seeing the oversight agencies do not work together and they don't seem to want to work together. They each have their separate agendas and their intent is to pursue those agendas regardless of the impact on other areas. Case in point, we know razor blades are coming in through the visits, so we were advised by Downtown [DOC administrative headquarters] to lock the visitor bathrooms on the contact visit floor because the visitors can pass through our security system by in fact holding razor blades internally.

... ..

... And I have people [Oversight Reps.] who are actually, want to dismiss that and say, oh, no, no. You've got to give them access to bathrooms. For the hour that they're on the visit floor, you have to give them access to bathrooms.

I: Legal Aid?

M: Legal Aid.

I: Now let me get this straight. Legal Aid is saying, no restrictions. They're basically saying you have to do business as usual regardless of the fact you have clear evidence that the razor blades are coming in from the visits.

M: We have clear evidence that the razor blades are coming in, and the inmates that we've segregated and questioned, they just say, "visits, visits." They all point to it.

I: That's pretty strong evidence.

M: Yeh.

I: What does Legal Aid say? Have you ever had a conversation with them in which you --

M: I haven't had a conversation with them on this particular issue.

I: What do you think they would say?

M: I think it would simply be, put more staff up there. Put more staff on the visit floor to watch. Put more staff up there to search the inmates when they come through.

I: What if you don't have more staff?

M: That's not their problem. And when it comes to Catholic Services and Protestant Services where we get a lot of inmates, and they say we have to let all of the inmates go to these services, which means you have to bring in the Bing ["punitive segregation," a special housing area for inmates who are being punished for rule infractions], let the Bing go to the services too. The guys here are the guys who slashed these guys. So if these guys want to retaliate, I'm bringing them in to one big room where these guys can come up here and say -- click. And I can have a problem there. But Legal Aid says, no, they have to be allowed to go, so you have to provide enough security. But what's enough security, truthfully? I'm running services where I have 200 inmates. Should I put 200 officers in there too to make sure of this? You know, that's a little ridiculous. For what purpose? Please don't try to tell me that this is a meaningful thing.

I: So now how's the Board of Correction a different player in this?

M: The Board Of Correction is more accommodating to us. They will, in these particular incidents that I'm talking about here, they appear to be much more modest in their requirements as far as looking to the alternatives. Try this. Try this. Try that. But they're also kind of very flippant, and that is with a conversation with them in which they say simply, well, we didn't tell you to do that. As far as we're concerned, you can do this. You can keep an inmate out of religious service because there's a problem. You can do this: keep an inmate out of the law library. As if -- we're not the bad guys. And I don't mean to say beg us -- but what you say doesn't matter. In every case, I am forced to go to the highest or the most liberal, if you will, standard, and that's the one that I have to apply when it comes to this.

I: You, as in?

M: The Department. The Department must. While the Board Of Correction may say that inmates in the Bing can be serviced in the housing areas by the (.) Coordinator going to them and asking them what they want, the consent judge [federal judge who monitors DOC's

compliance with its consent decrees] says that that's not acceptable and they have to go to the law library. So what the Board says is meaningless, because this one [judge's opinion] supersedes it. So in that case, it's like, come on. In 1993, why do I have to deal with a consent judgment and minimum standards? Why haven't we married these two things? I mean, look at New York State. You've got the City. You've got the Federal. You've got the State. The State comes in, too, every once in a while. And everyone's got different standards, as if -- and then it becomes, it's our turf here. We have to do this. We have to say what's the best for the inmate population. It's very, very silly. I thought it was silly before, but that was before people got as involved as they've become. They've grown. It hasn't gotten better. . . .

2. Oversight Representative on Uniformed Staff

M: . . . With respect to our litigation, in a sense everything we do stems from the failure of the Department Of Correction to do, or its personnel, to do their job. In a sense, there's very little of our litigation that presents the proposition that the Department Of Correction has a rule and that rule is unconstitutional. The vast majority of our litigation would not arise if the Department Of Correction followed its own internal rules and regulations. To take the most obvious example, the Department of Correction has rules and regulations that tell its staff not to beat up the inmates. Yet one of the major sources of litigation in this office against the Department Of Correction has been officers beating up inmates.

3. Uniformed Staff on Inmates

M: The only thing that helps you is your earlier years -- if you had fight,s a lotta fights when you grew up, then you got no problem with these inmates. Cause they know it. They see it on you. They can sense it, you know. If you didn't, they know you're full of crap, and they'll blow you away.

I: That's a psychological --

M: yeah. That's -- they know. They can look in your eyes and tell right away.

I: Right

M: This guy's full of shit, you know, or this guy's, nah, or this fuckin bum he came from where I came from, or something similar, so I'm going to go around him. I don't need a, you know, I'll find somebody else to mess with, you know.

I: So inmates don't fight with people who are basically more powerful with they are?

M: That's exactly right. Or people they know are not afraid of them.

I: Right

M: You don't even have to be more powerful, as long as they know you're not afraid to roll on the floor with them. And exchange punches and kicks until help comes -- they ain't going to mess with ya. Nine out of ten times, when you answer an alarm, the officer's standing there with a fat lip.

I: Uh huh

M: And the confrontation's over. That's the guys they pick on.

I: Yeah

M: The guy, now the guy could have kept fighting.

I: The weaker --

M: Yeah. He coulda kept fighting.

I: Is that true, in your opinion, of the way inmates relate to each other?

M: Sure. Absolutely. The strong survive.

I: Uh huh

M: The gorillas, the bullies. They run everything. Ninety five percent of the inmates don't want any trouble.

I: And yet, they're still subject to the bullies?

M: Yup. Yeah, more so than the officer. They gotta stay there twenty-four hours a day with these bullies. While they get shaken down for cigarettes, they steal their food, they take their clothes, happens all the

time. They take their telephone call.

I: And this is still a small number of inmates we're talking about?

M: Very small number -- five percent -- let me put it at that. I think that's a safe -- five percent of the inmates --

... ..

... In fact, I'll tell you the truth, I've had a lotta nice conversations with inmates. And a lotta inmates I remember. Very, very, they stick out in my mind to this day. I was with them many years and they were intelligent, articulate, a lot of them in their own little way -- street smart. And I enjoyed their conversation. And if I met 'em in the street -- I'm not supposed to -- but I would go over and talk to them.

... And I'd probably buy them a drink, because some of them I found to be really interesting people. And some, just like I found on ... Avenue, are shitheads. You know, just like when I was growing up, there were gorillas.

4. Inmate on Uniformed Staff

M: Exactly. Respect. See I respect any officer that's in here, because I know their job. This is their job. This is their bread-and-butter. I respect that. You know? As long as they give me respect, I'm gonna give them respect. You give disrespect, you get disrespect back. You know what I'm saying? But they got to realize that we still convicts. We still locked up and serving time.

I: Right.

M: You understand? You're going to change your uniform and you're going home. You understand?

I: Yeh.

M: You understand, see? Because I've seen the police get their ass cracked too. I seen them roll up on the police and knock them clean out. You know what I'm saying? I've seen it all. For respect.

I: You're talking about inmates beating up on staff members?

... ..

M: Yeh, you know that. You know they're gonna do that. It ain't gonna be one -- it ain't gonna be fair. They gotta move in groups. You know what I'm saying? It's just like the goon squad. You know what I'm saying? When they come, they coming in a group. You know

what I'm saying?

I: Would this be a general expectation of yours that with an inmate beating an officer there would be retaliation?

M: Yeh. See, that's why I don't try to get too familiar, because the same way that you think is okay with you, when it's time to go down, if they coworkers, they gonna crack your ass. The same way we could be real close and you be my friend, but when it's time for the heat to come down, you'll gets me now.

I: So, you're gonna stick together, regardless if it's right or wrong.

M: Exactly. That's right. That's right. That's how it is. That's right. Cause now, when I work now, I see the officers and they –

I: But it sounds like you're saying the inmates are going to do that too.

M: But listen. But listen. But listen. I seen, I seen, I seen the officers where I work – right? – I seen them takes the (.). . . work to the kitchen where I work, right? I've seen them take food for their own picnics. I've seen them eat all the stuff we eat. And they ain't supposed to do that. Understand?

I: You mean they're stealing?

M: Exactly. But they're grouped, you understand? You watch my back; I'll watch your back. You know what I'm saying?

I: Right.

M: Well, they can't – whenever a brass come, getting the call that so-and-so's going away, and now we know that spread. Understand? And now we got to act like we doing something. But it's a game. It's actually like a game.

I: Do you think that – from what you've said, it sounds like you think you should be able to hold the officers to a standard of fairness. But you just can't do that.

M: Exactly. You can't do it, because it's no way, I don't feel. You know, cause they swear to everybody; they vows. And then when they get into it, it's just like an inmate coming to jail. Once you get into it and you – like you're mingling, now you know how everything is going.

So you know you got to be with it.

5. Civilian Manager on Uniformed Staff

M: The executive with – the unit with the wardens and the deputy wardens. The intentions are all real. What I'm saying on the side here, it's not all – but the ultimate goal orientation [of civilian executives] is fairly short-lived and it's very short-term, for the moment of what's needed and what's viewed by the Mayor's Office as what's needed. And they're [uniformed staff] never going to trust this. And I don't – in a way, I can understand why not, unfortunately. Though I think they've made too much of that. More cooperation would make their lives happier, could make everybody happy. I still believe that that could happen. I don't know how. That to me is still a goal, is something that I'm not cynical enough to say it would never happen. I see there are touches of it, but when I see the resistance go up in terms of full cooperation, especially when the movement or power or what's needed –

I: The resistance on the part of the uniform?

M: Yeh.

I: What about the trust the other way?

M: The trust from down here with that?

I: Yeh.

M: I think there's a desire to want to trust, but I don't think the uniform side gives you enough to even say, "trust me." You know what I'm saying. . . .

. . . .

. . . There are some incompetent, stupid people there. But there's also some very good innate intelligence that's there spread out. The thing that gets me – and I guess I've known a fair number of the uniform there in all different – I'm looking at the wardens and the deputy wardens. The main problem is more of their view. I think they've got a role, a self esteem of themselves. I think there are some very smart people who are heading up, but what limits them is their belief in themselves that they are [not] smart enough to do what they're doing. And when they come across somebody that might have degrees up the wazoo, they get intimidated. And yet, they shouldn't, at all. This is when they put up the wall or they did a little sabotage before they could

even open themselves up to see where they're on par. They don't. And there are people down here who might be comfortable with their degrees or where they came from, but when it comes to the basic intelligence you're dealing with, then a different kind of intelligence and not a book-learned intelligence, they're incompetent.

6. Uniformed Staff on Oversight Agency Representatives

M: Well, I would think, if I was running the ship – this is my own personality – I don't want the Board Of Correction, who has maybe a special agency that they have for six weeks [contracted consulting firm], tell me, oh, you've got to let everybody who's a unicorn go to unicorn school. You know what I mean? I'm just making something up.

I: Yes.

M: They all get their little special agendas and then – oh! – all of a sudden – I remember! I'm here twenty-nine years. I've been a manager in this department for at least ten years, eleven years. Nobody cared about fire alarm systems in the jail. I mean, we have fires occasionally. Nobody's ever been burnt or anything like that. But now, all of a sudden, somebody read about a jail fire in some other state. Now it's costing the City \$25,000 a week because the Board Of Correction wants fire watches on every tour. You understand? In fact, it's almost to me as they don't even have the goddamned creativity to come up with something yourself. You have to read it some place and bring it here.

I: So the systems they come up with are arbitrary?

M: They do come up. There's no rationale for them coming up. They come up arbitrarily. Somebody's sitting home and reads a book and found out, in 1947, five hundred inmates were killed in a fire because of asphyxiation. And, oh! Let's check the fire alarm system on Rikers Island! Well, the fire alarm systems never worked even when they were put in brand new because some DGS [Department of General Services] guy took a bribe, you know. But now I'm responsible for a \$1.7 million budget. So they give me thirty-five extra posts to run on –

7. Oversight Agency Representative on Uniformed Staff

M: . . . I know that Commissioner . . . [name] made the observation that it appeared that the Department Of Correction had been recruiting in the local McDonald's. And I think that many of us who work with

the Department Of Correction's staff have had a similar impression. That many of the people who are recruited by the Department Of Correction don't seem very much different from the inmates. That is an observation that is often heard from corrections professionals from the outside who tour the jails and observe both the inmates and the staff in their daily activities.

8. Civilian Manager on Uniformed Staff

M: Ummm, at the beginning, my perceptions were that the civilian staff were looked down upon and held in contempt by the uniform staff and vice versa. The uniform staff feeling that the civilians were passing through, lapping up, gobbling up all this money, and then leaving them with a Rube Goldberg contraption of a mess to deal with. And then the next one would come in and give them another Rube Goldberg contraption of a mess, and that they would talk about something on the surface but really didn't understand the Department. And I think the civilians felt frustrated with what they perceived to be the stupidity and the intransigence of the uniform staff.

9. Uniformed Staff on Oversight Agency Representatives

I: Right. Right, I understand what you're saying -- I'm not, I'm, I'm going to the point you made about we have to lie every day on this job -- because why?

M: Because if you don't you'll get in trouble.

I: Well, why is there --

M: Even when you go do a righteous use of force --

I: But why, *why* is there an organization that forces people to lie every day? Why is there --

M: That's just the way it is, cause they don't have to do the job. The people who question you don't have to do what you do. They have no idea the frustration and the stress you're under. Constantly. And they want everything done by the books, by the numbers because that's what the federal courts want. And that's what the Board of Correction wants, and that's what Legal Aid wants. And that's what pasta fazul [sic] wants and everyone else.

I: Don't they know?

M: They should know.

I: But they still do it anyway?

M: Yup. Absolutely. They hold us to a very high standard.

I: How does that make you feel though in terms of the, you know, going back to the goals of the organization, I mean you're in an organization that forces you to lie all the time -- you know you were put in a very *uncomfortable* position, testifying in court --

M: The whole system is corrupt. Most of it. It really is, it's a very corrupt system that we're forced to work in.

10. Oversight Agency Representative on Uniformed Staff

M: . . . The question is who is promoted and why? It tends to be, my sense is it's a very political thing, not politics, party politics, but institutional politics. Who you know. Who's your rabbi? Who's not? Who's helping you along? Cliques that kind of come up and become empowered, and when they lose somebody else gets in. A tremendous amount, from what I understand, of back-stabbing, that sort of stuff. But, you know, doing a good job doesn't seem to have a lot to do with how people move within the Department. And yet on the uniform side -- I talked about the civilian side and its failures. That's mainly -- don't know what's going on; don't have any controls. On the uniform side, to me that most defines it is because of its long evolution up from Correctional Officer up to higher, they develop these loyalties, and it's basically: cover your ass; cover your friends. There is, you know, you protect people. You don't blow the whistle. You don't say what's wrong. You don't make waves. And you help your friends, and that's what it's about. So that people when they're in these other positions, they're not really into, you know that's really change the status quo and really get a system that's going to work.

11. Uniformed Staff on Civilian Managers

M: See, I don't know what the rationalization is. All I can tell you is that the Commissioner and the people that [he] has selected from the uniform staff -- and this isn't giving them a dig -- they're amateurs. [He's] an amateur. [He's] a nice [man]. But everybody says -- when [he] fucks up things -- oh, [he's] a politician. They don't say, [he's] a

commissioner. They say, [he's] a politician.

I: Okay. Do you want to expand on that?

M: Well, the idea is that [he's] going to try to do the politically correct thing. [He's] never going to take the -- this is what we have to do. [He's] going to -- what is City Hall going to say about me? What is . . . going to say about me? What is the New York Times going to say about me?

I: As opposed to that which makes the most sense?

M: The most sense. [He] takes, [he's] adroit at political decision making and a complete failure at rational decision making.

.....

I: So it sounds like they just didn't think.

M: No, they didn't think. [He] doesn't have the kind of people around [him]. Well, listen, [he's] going to always take the political --

.....

M: We take people who can't make bail or for some reason the judge doesn't want to let out back into the community, and we take care of them. We take custody of them. And we make sure his behavior within the facility is that of a citizen. Okay. Now can we take care of the inmates? Yes, we can. We feed them. We give them a bed. We give them their medical attention. In fact, we probably give them more than they'd ever get even if they lived in the community. Custody, we do. We keep them on Rikers Island. We keep them in a facility. Can we control them? No, we can't control them. Because we've had different commissioners with different types of ideas, and those commissioners appoint people with the same ideas that the commissioner has. So you get commissioners that say, consent decrees are good because we get money. Which is true, because without the consent decrees, the Mayor's not going to say, "Oh, I worry about those poor inmates on Rikers Island."

12. Civilian Manager on Uniformed Staff

M: . . . I think they're [uniformed staff] jealous of people who have the wherewithal to choose different kinds of careers, who went to college, in many cases, who are able to be what their abilities led them to be. And I think the only thing that motivates them is the ability to get out quickly and the money, and the --

I: You mean to get out as in retire, the pension.

M: Right, retire. And the secondary gain is the money. And if that's comp time, then it's comp time. If it's, you know, more time off, it's more time off. If it's better benefits, it's better benefits. I think it is, that those are the motivations.

I: So you're saying they don't care about the content of the world that they –

M: That is correct. Most of them do not.

I: Yeh.

M: Not all of them. But most of them do not care. It is something to be gotten through, to be one day closer to half of what they're currently getting for the rest of their life.

I: Hmmm. Uh, so even the fact that they are paid very, very well in general for their level, for people of their level of education and skill, you're saying there's an underlying psychological resentment there.
M: That's what I think. Absolutely. They're embarrassed at doing this. I think, you know, when I talk to them, you try to show them the respect, uh, uh, the respect I have for being able to exist in that environment. I think I tend to distort what they do, because I tend to professionalize it in a way that they don't even see. And, I mean, one woman told me that when she first came into this department – and she's wonderful; she's tremendous – she had to – she was the housing officer in the women's house where . . . [name of an infamous left wing political "terrorist"], the old Weather Woman, was.

I: Oh, right, yes.

M: And every day, they would have to peel [her] off the bars to take her to court. And here she [the Correction Officer] was, this young twenty-two year old, in the Women's House, going in there with a mattress to protect herself along with four other women officers, and they would have to pull this woman off the bars, kicking and screaming and biting and shouting, to take her to court. And I said, "Just to think that you did this – you know, you'd have your coffee and then you'd go and pull . . . off the bars. I mean, nobody in this world has to do that kind of thing. . . . And they'll nod; she nodded, and she's one of the better people. But it's like, "Well, I don't, you know, well, big deal, you know, uh huh, right, uh huh." It's like, "one of the things I did in

order to get that paycheck," and it's like, "okay." But there was like no sense of, "Gee, I'm tremendously prideful about the fact that we got the woman to court on time."

I: Right.

... ..

M: I don't know. I guess the substance of what they do doesn't link to them, doesn't adhere to them, doesn't link to their imagination in any way as a viable, legitimate life choice. It's what they had to do, what they were thrown in, and, by golly, that money, thank god for that money, because, God, can you imagine having to do this for less money?

I: Right. Yeah. Okay. So it sounds like there's an ambivalence there on your part too.

M: I want them to be more excited about their professional — you know, they blab about professionalism, professionalism. I don't even know what that means.

I: Right.

M: It's a meaningless word that they thrown in to tell the outside world they're professionals to kind of make themselves feel better.

... ..

... I think that has to do with how they got the job and the fact that they didn't choose it. They sort of ended up here. And, not only did they end up in some thing that they didn't choose, but look at the things that they have to deal with. They don't have to deal with nice pieces of paper or little school kids with neat hair. But they have to deal with what they would consider as the dregs of humanity.

13. Inmate on Oversight Agency Representatives

I: Okay. . . . You have a lawyer, right? Do you feel like you have any recourse, not just you but anyone else, might have, with Legal Aid or supposedly the higher-ups in this organization?

M: Yeh, I feel like my lawyer, the lawyer I had on my case, he's telling me all this bullshit, you know, but it was good. It was good what he was telling me, but his reactions wasn't.

I: His reactions?

M: Yeh, he's telling me all this old good shit, like they can't charge you for this, they can't do this to you, they can't do that. . . . And when we go to a trial, they do all that stuff. But he's telling what they can't do, but they do it anyway. I like felt like that was just a scheme too. He was with – the D.A., the lawyer and the judge, they're down together. You know what I'm saying? Like let's see who's gone get the conviction. Well, I guess they take turns. You know what I'm saying. Okay, D.A., you can convict this one. But the next one, you know, I got to get my prize to let the next one go if my case ain't that bad. You know what I'm saying?

I: I see.

M: I think they be plotting in this shit.

I: So who's on your side –

M: I don't know.

I: – in all of this?

M: In all of this, I feel like the Lord is on your side.

I: Okay.

M: See, when I see that judge sitting on the chamber, "In God We Trust," and I agrees with that thing up there. And I look at this lawyer, and I say, why did they put "In God we trust" up there? You know what I'm saying? See, over every courtroom in the judge's chamber, it's always right there, "In God We Trust." So I've been wondering that to myself. Can I really trust this God, cause he's a crook too. See that's how I look at it. Cause every case that's dealing with drugs, I feel like they a crook. Cause they know that where we get the drugs from. In my mind, there's not a doubt – you know what I'm saying? – a shadow of a doubt that they don't know where these drugs coming from. Now the politics is giving us these drugs. And I know that for a fact. And they know it too. You understand what I'm saying?

I: Yeh.

M: But they's so powerful that you can't touch 'em. You understand? That's for they powerful. Now how can you say that you're going to serve me for this here. I didn't bring any drugs in this country.

.

... How can you tell me I'm an addict? I didn't bring drugs for me to turn to be an addict. You understand? This is the way the pattern is set up to be done. You understand? See, that's why I couldn't justify why they going to have "In God We Trust" up there. You know, I never, I don't see -- I know more crooked lawyers, cops, D.A.s and judges in New York State as in (.). They crooks. They's the crooks; I'm not a crook. I know this. This is for real now. I know they crooks. I'm not a crook because I didn't set this up like this. You know what I'm saying?

14. Civilian Manager on Uniformed Staff

M: We have a Chief of The Chief . . . is a uniformed person. He came up through the ranks. He has been in the Department something less than twenty years. Is sort of, I guess, a mid-fortyish fellow, and newly at his position. He was formerly a warden, . . . And . . . he was transferred out to his present position as Chief of. . . . He has no particular background -- he has no background as a lawyer. He has no background in . . . reporting, other than having been a relatively short-time employee, I'm told --

... ..

... Well, But now he's the so-called Chief of. . . . And what does this really mean? Essentially it means that he's responsible for That's a short job description. Maybe shorter than he might like. But necessarily that's a short job description. One might put it if one were so inclined to say it in this way that he's sort of a superclerk.

I: Yeh, I was going to say, it's an ideal situation, isn't it, to have a large title and a little job

M: Yes. Yes. Well, that very neatly captures the essence of it. So what he's done is he's managed to convince the agency's managers that this is a very critical thing. So he's gone out and he's recruited a very large contingent of other officers to work for him, in titles such as Captain, Assistant Deputy Warden and what have you, all of whom have some basic skills at driving computers, which are helpful to do this, and so it's sort of a big clerk-of-the-works office over here. Now understand that this clerk-of-the-works office is entirely composed of people who have no technical skills in building construction or engineering or architecture, or in some of the other technical areas that are the subject of their work. . . such as . . .

... . It's a log in, log out and write reports division. So that's essentially it. But the Department has in its management wisdom confused the clerks with the managers. And so it now asks the clerks,

by whatever title they happen to be hiding under, to render great opinions upon . . . plans of great import to the Department which have significant impact in litigation pending before the federal courts and in fines that might be levied upon the Department. And so we have now a people, who on the record have scant qualifications to be anything except the record keepers, being asked for and freely giving important opinions of matters about which they are totally unqualified to render those opinions.

I: Am I correct in thinking that the technical expertise --

M: It would be like asking a guy who read a medical book, maybe read a medical text book, to diagnose whether or not you have a brain tumor.

Members' propensity to describe and explain organizational problems through negative characterizations of "them" does not take us very deep into this story, however, and we would be remiss to leave it there. With the exception of the Oversight Agency Representatives discussed above, DOC members' moralizing discourse about "others" was aimed not only at the "them" of other groups, but, much more pervasively -- and perhaps even more forcefully -- at the "us" of "my" group. Whatever identification group members had with each other, based on their tribulations in the face of the self-promotions and dissembling on the part of other groups, seemed to be a pretty thin veneer across a much deeper pit of chagrin at and distrust of their ostensible peers. In this section I have grouped the responses together in order to highlight the patterns of protest.

Civilian Managers on Civilian Managers

1. M: And I realized that after a while -- I don't know when it happened

but I realized that that kind of friction was not going to do me any good if I decided to sort of get on board with the civilians. And I certainly couldn't get on board with the uniform because I'm not. So it perhaps emphasized the service orientation to me, and I began to . . . I kind of took my ego out of the job a little bit. And I found that tremendously useful. It didn't matter to me if I won or lost a battle or if somebody, some other manager got something that I didn't get, because I felt that I was doing this professional job and that the ends -- I tried to do X, but if I didn't do X, it wasn't because I didn't try, and there were other factors that impeded me. So it didn't make me lazy or cynical, I don't think, but it helped me on a day-to-day basis, and I didn't align myself with anyone. However, the service orientation meant I tried to deal with everyone in a professional, helpful kind of way, whether I liked them, whether I didn't like them, whether I thought they were smart, whether I thought they were stupid. And there was a kind of leveling in how I would deal with everyone, and everyone was dealt with in the same way. And I'm really quite proud of that.

. . . And it's tremendously helpful. It takes energy, but I don't go home anymore absolutely exhausted and angry at intransigence or stupidity or arrogance or any of it. It's all business.

. . . And I don't think the other civilians act that way. And I'm not trying to say this just to pat myself on the back. But they get involved in, "It's going to be my way." And, "I'm here for the Commissioner, and I'm going to show those uniform people that it's going to have to be done because I did it this way in two other agencies. And they're so stupid. And I've got to make sure I come out on top." And they play turf games. And I just -- that stuff is unimportant. . . .

2. M: But we won't take action against this individual, and the reason why people think we won't is because he worked for [name], and we all know who [name] is, the cousin of the mayor. So there are a lot of people waiting to see what's going to happen on November 2nd to see if this person's going to get canned. And so I think because of the political stuff we get very sensitive to that, and because we're so sensitive to that, also leave ourselves open for the criticisms of the [name], you know, the associations and the contract stuff. . . I don't know if you're aware of the fact that we did have a couple of high-ranking [civilian] members of the Department arrested in the last year. And they just arrested another high level person. But the [title] was just arrested for taking kick backs on contracts. . . And that's made everybody very contract-conscious. And, I guess, the whole methodology here is, don't mess around with anything. Don't be

creative. Respond when you have to, and do what you have to do.

3. M: Yes, actually it has. I think if you look at the facts. . . . But if you look around, what you see is a group of commissioners and correctional managers who for the most part have had, number one, no prior corrections experience, and number two, no corrections experience someplace else and maybe limited formal training in their immediate area of responsibility. Now that's -- if you were a Silicone Valley up-and-coming software development company or a manufacturing firm of any size and reputation -- if you were, for example, Apple Computers in (.), California, would you run your railroad that way? I doubt it.

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. . . I think because many people, unfortunately, who work here would rather involve conflicts since they have no personal stake in the outcome. You know, there's a great way to describe people by defining them in terms of stakeholders. If I'm a repo man and I repossess your neighbors car, you really don't care. Okay? But if I come and I repo your car, you care a lot, because you have a stake in the asset that is your car. Okay?

. . . And that gives you a sense of what the word stakeholder means. A lot of people in this Department don't view themselves as stakeholders. They figure, as long as their paycheck shows up every two weeks without interruption and nobody hassles them as they sort of muddle their way through the day, that it's been a good day. Have a nice day. That's what that really means to them. It doesn't necessarily mean that they understood the charge and the mission of their agency and the particular piece of it to which they've been assigned to perform some functionary role. That they understand the role itself and that they seek to discharge with the proper amount of diligence and that in doing so they have to exercise judgement, and sometimes that judgment requires a little brains and a little guts.

Uniformed Staff on Uniformed Staff

1. M: Cause, that like, I have reached a certain level in this Department. I hadda take . . . tests to get to it, and I'm very satisfied with my stock in life and I've chosen not to go any further.

I: Yeah --

M: I've been offered a promotion many, many times and I've turned it down --

... ..

... The first time I was offered the promotion was cause I knew the right people. And, ah, now, we, ah, through some of my effort, we have devised another system for promotions --

I: You were offered the promotion regardless of how you might do on the test ?

M: Yeah, [laughs] it didn't --

I: [laughs] Right.

M: They just go, "yeah, he's a good guy, he's one of the good 'ole boys, let's make him," you know.

I: Okay.

M: And I turned it down at least a half dozen times. And I still turn it down, I don't *want* it. And, ah, cause the system is corrupt. Because I've seen too many people in this Department through broadbanding reach the top that never should have got there.

I: Yeah

M: They're just totally incapable. They never worked, they don't know what the job is about, they had easy jobs, details, away from inmates, their whole career, now they're wardens and they don't have the slightest, they don't have a *clue*, as to what's going on. And that's the person who's reading your use of force. On Monday morning. And that I resent, deeply resent it. That *dope*, doesn't have the slightest idea of what happened and why it happened.

I: Yeah

M: I resent that.

I: So, are you saying that one of the ways you deal with this is to refuse, is to stay where you are and to fight where you are?

M: Yes, I stayed as a [rank].

I: You refuse to join management?

M: Right, exactly.

I: It's a matter of conscience for you?

M: Yes, yes.

I: If you join management, would I be misconstruing what you're saying -- if you join management -- that you would then be *complicit*, a part of that corruption --

M: I am part of it. I cover up a lot of the stuff myself.

I: Okay.

M: I'm part of it right now.

I: Okay. Um, in terms of --

M: I'd more corrupt if I was one of them --

I: Okay.

M: At least I'm taking a chance when I'm covering up, I'm on the scene, I'm trying to do the right thing.

I: So you participate in the corruption because everyone participates in the corruption ?

M: Right, and you need the corruption to survive. Like I say --

2. M: The attitude that I'm complaining about is the attitude that I see with ineffective [uniform rank]. I see people who -- the worst ones are the ones who run and complain about the fact that -- you know, it's like you're taking my toys away. You want me to -- this is the only fun we had. Or this is how we controlled this jail, through fear. You don't control the jail through making sure that the services are provided. You don't control the jail through making sure that the place is kept clean. I mean, the place is filthy. The jail is still filthy. I mean, a year later and we're still trying to get these folks -- they're more concerned about where they're going to be able to use force as opposed to -- I went down to the housing area yesterday. There's no telephone. Why not? I put in work orders. Now I can't find a work order. I can't find this. I mean, this kind of thing. What's happening here? We're getting so involved in our stabbings and slashings that we're not doing the basic

corrections stuff here, and the people in this facility who don't do it are the ones who are, you know, just consistently the ones I believe who complain the most.

... ..

... It's uncivilized. Basically, and I think what happens is you lose somebody with no controls on force. And you're creating a monster. You don't just come and use force in here. You don't just beat up people here. You go home and you beat up people. Somebody does something to you on the street and you beat them up. I think it's -- and one of the things that concerns me the most is, these inmates in here are not being put away forever. In a lot of cases, some of these guys will be back out on the street within six months to a year. And they live here in the City. And it's just like with children. You treat them like that. You don't treat them just. You don't let them understand that there is a justice in this world, that for every this, ying and yang kind of thing. That it kind of just befall you just randomly. I'll just grab you out of the pack and beat you up and things like that. Or you do this and I'll do this kind of thing. That you're just fostering a kind of atmosphere of random violence that will continue unabated for years to come. So I think basically it's illegal and it's immoral. And I cannot support a system that allows it to happen.

3. M: ... But what I've seen is more of an attitude of -- to get over, meaning, take advantage of the system, than I did when I came on this job The -- it was rare -- the -- the people that were considered deadbeats and didn't do the job, you could name them on one hand when I came on this job. You can't do that any more--

I: Um, hm--

M: There are -- the -- the numbers are -- too many of officers that, any way they can to not have to come to work, not have to do anything when they get to work, is increased tenfold, to say the least. That's not to say that every officer that comes on is that way, because we have some very good officers too. But the -- the lack of a -- a very strong, um, work ethic, I think -- and that's instilled either by your family or -- I think -- or military, if some -- I don't have any military background, but I can s -- I can almost tell the officers when they walk in, if they have a military background --

I: Um, hm --

... ..

M: When I'm dealing with them. I -- I'm not gonna get myself sick over it. Deal with it professionally, and -- and -- but I would think

that's probably the thing that irks me the most, knowing that people are home collecting the same pay I am. And they're home.

I: Right.

M: And I'm at work.

I: What are they -- I mean, how do . . .

M: How do they rationalize--

I: Yeah. Yeah--

M: It's -- it's the same, you know, it's the old insurance scam. You know, it's -- a big company's paying for it, it's not your money, it's anything you can do to get over is okay. As long as I'm not physically hurting you, if I'm taking money out of your pocket--

4. M: We're negotiating with Legal Aid Society or the Office Of Compliance Consultants. And I look at them as probably being more detrimental to the inmates than the correctional staff. The unfortunate part of it is that they don't know.

I: Detrimental in -- okay, maybe you should just expand on that a bit.

M: Okay. Detrimental in the sense that they want all the rights and privileges for the inmate population, but they forget that they're dealing with a population who will cut you, who will steal from you, who will rape you, etc., etc. And the force contact visits down our throats. We know drugs come through the contact visits. We know that razor blades do. We can't stop it. We don't have the staffing. We don't have the technology. But every time you try to go to them and say, well, listen, we shouldn't be letting them hug and kiss during contact visits -- "It's a violation of their constitutional rights." Which we know it isn't. But the politicians in New York City would never stop it. But in the meantime, when you see a kid whose face has been cut 16 times for a multitude of 10,000 stitches and these are the kind of life scars he's going to walk through life with, nobody cares about him. It was just the issue.

I: So you're saying that he got those scars as a result of the policies that were brought in by the oversight agencies which are, in fact, not protecting him?

M: Yes. They're not protecting the inmate population. And when you bring these things up, it's like, "quantify it." Quantify it. Which is, there's nothing wrong with asking that kind of question. However, you're dealing with a staff, you're dealing with a work force that does not have the ability to do that kind of quantifying. It does not know how to set up, you know -- if you catch so many people on an infraction, that would be good, but half the time we can't even catch people because they're so good at it. I have a staff that's probably overworked. Probably.

I: The staff?

M: The staff in the visits that are overworked or very apathetic. They don't care.

I: Yeh.

M: You know, that's another problem that we have, the recruitment problem. We're taking it from a group that doesn't look at themselves as professional. They'll say they're professional, but they probably don't even know what the word professional means. And they look at their job in a very apathetic way. So they don't care if razor blades come in. I mean, if they catch somebody, great. But the razor blade goes from the back of the ear of the visitor, who gives it to the inmate, who sticks it to the vaseline some place on his body to hold, and then goes into the bathroom and puts it in his rectum. You know?

Inmates on Inmates

1. M: Yeh. Yeh. With the food. The food that they give here, they [inmates belonging to the "house gang"] serve everybody the food. And whatever's left, they take it for them. You see, like, in the morning, they give you one little box of cereal and one container of milk. So sometimes everybody don't wake up to come eat. So there'll be some leftover. So the one who served the food, they want to have the box for them.

I: So people take the food that's there, and the guy that didn't wake up --

M: Yeh, he won't eat.

I: He doesn't get anything to eat?

M: So the next (.) comes and that's his (.).

I: So people have actually stolen this food?

M: No, not stolen. But you got to wake up to eat.

I: Right.

M: But I'm saying those who wake up and to – they should give them – extra food, they should give it to them.

I: Okay. Uh, those who wake up to eat should get extra food?

M: Extra food. If there's extra food left. Why throw it away? All these people want to eat.

I: Oh, I see.

M: So what it is, if it's something good – if they give chicken, they would give you one piece, and the tough guys, the ones who run the house, they would take two piece, three piece, four piece or whatever, five piece.

I: Oh, so it's sort of like the first, whoever is the toughest can take the most --

M: The most, yes.

I: Rather than dividing it equally.

M: Equally to give to everybody.

I: Right.

M: They don't care about nobody else. It's just, it's you, and if you get along with somebody, you get along with them.

I: You mean --

M: If there's only six people in the house --

I: Yeh?

M: Only five will get around good, because the other ones don't care if you eat or you don't eat. They don't care if you use the phone or if you don't use the phone. They don't care if you want to watch a movie.

They don't care what you want to watch.

I: Right.

M: It's what the house guys want. The ones that run the house. Whatever they want to do or how to do it.

I: So is that what you call the house gang?

M: Yeh.

I: So basically that's true of the staff. The staff doesn't intervene?

M: No. They don't do nothing. They just sit down and relax.

.....

I: Why is it you don't? It seems there's a lot of advantages to joining the house gang and –

M: Yeh, I couldn't do that.

I: Why couldn't you do that?

M: Because I don't think it's fair to them. I can't do it because I wasn't raised that way.

I: Yeh. Okay.

M: I was raised with a higher standard. I never had – I never got into fights on the streets and stuff like that. . . .

....

... Yeh. Yeh. That's how it is. Cause before, when people use to have problems, I used to see them. They used to go and fight with hands or with sticks or something. Now they get guns and they shoot.

I: Right.

M: Cause they settle it with guns now.

I: Well, that's even more unfair, it seems, because when you shoot someone, you don't even have like a fair fight. You know?

M: A fair fight. Yeh.

I: So –

M: In the street, if you get attacked, you can get away from that.

I: Right.

M: If you have a problem with somebody here, you have to go to sleep by them. And you don't know when you go to sleep, if they will get a knife while you're sleeping.

I: Yeh. Yeh.

M: And then you won't know. You die in your sleep. At least on the street, you know who's going to come after you. So you can run and hide from them. Over here, you can't hide. Where are you going to hide?

2. M: At first, now, when I first went -- I ain't gone lie -- I always been with this macho image, but at first I was a little afraid. But I succeeded in minding my own business. That's the one thing. That's the first rule that you learns in jail. I don't care what you see that goes on. If it ain't involving you, you mind your business.

I: Why is that?

M: That's a rule. That's a rule in jail.

I: Okay. Why is it a rule? What function does it serve for people in jail?

M: It's still like they says, he might be a snitch. He might tell on -- you might see me. I might be stabbing this guy up here, and you gonna tell on me and then the whole jail will know who snitched because sometimes the officers will tell you. But you know, so and so, if they all right with you, then so and so wouldn't snitch, right?

I: Why is it bad to snitch?

M: It's bad because you can get murdered. You can get murdered. You see, everybody's against a snitch. A snitch is like, uh, like a person that I can't really explain. Like they say in the old term, real people do real things. Fake people do fake things. You understand? See? And a snitch is a fake. He ain't one of us.

... ..

M: Yeh, it's mainly -- it ain't like a gang like, you know, like a gang gang. It's like you could say, for instance, a gang that -- you know, what

ever we do is among us, but we gone keep the rest of them in check. We're not gone let them violate what we got, you understand, and what we doing. We not going to let them do that. See, I'm in the house gang now.

I: Okay.

M: All right?

I: Yeh.

... ..

M: See, see, a person, say like a leader of the guys, say, he would feel you out. He'd know if you were. He'd know, see – one thing about, I can see – I can tell if a guy comes through my door and I know he's soft. You know what I'm saying?

I: Yeh.

M: I can see that in him, because he might get the feel of things, but you can tell.

I: What does that mean, being soft?

M: You're like a little girl. You know what I'm saying? You can tell the ones that's tough and the ones that ain't.

I: And tough being? Is tough good?

M: Yeh. Tough is good. It's good because it's going to keep them away from you.

I: Okay.

M: See, it ain't nobody who going to try you. You know what I'm saying? Because they feel like you intimidate them. You know what I'm saying?

I: Okay. So being tough is the ability to keep people away –

M: Away. Right.

... ..

M: They want to take what they want. Understand? See, and they feel like if a person is soft, the can take control. Like if he go to the store, I can take his stuff. Whatever I want from him, I can do it, because he ain't going to do nothing. You know, a real man, he have to stand his

ground. If it's time to me to go all out for mines, I'm going all out for mines. I don't care what's the cause is, if it's causing me, I feel better going all out for mine rather than letting somebody take something from me. You know what I'm saying?

I: Okay.

M: Cause I feel like I couldn't live with myself. I rather for us to just go for it. See?

I: Yeh, yeh.

M: That's how I am, you know. Cause I'm not afraid. I'm not afraid. You see, I'm not scared to die, because I know all of us is going to die one day. You know, that's -- so I'm not afraid, you know. So if it's time for me to go out, I'm going to go all out for mines. I got to.

I: So, but you're not a bully?

M: No.

I: A bully -- like there's a way to describe it. First, there are guys that are soft. Guys that are -- guys who are tough and stand up for themselves?

M: Right. Right.

I: And then there's guys that are bullies.

M: Right. Right. That's how it is. That's how the patterning is. The patterning is basically like that. See, I ain't got to take nothing from nobody. They ain't got nothing more than me.

I: Right.

M: That's the way I like at it. So if I'm going to take something, I'm going to take it from the people who got it all. Them the ones I got to get. Right? I'm like Robin Hood. I'm going to rob from the rich to give the poor.

I: Okay.

M: That's mainly how it is, you know. I can't see myself taking something from this guy and he ain't got nothing. He need everything

he got.

I: So are you describing for me a sense of justice for being in jail?

M: Right. That's what it is. It's respect, and the guys, they know the rules. You see, it's a lot of things. To a vet it's like, you've been in and out of the system. So you know what time it is already. See, like me. I'm a vet. I've been in and out. I know what time it is. Whenever I go somewhere, I have to lay my rules down, too. I'm not one of these guys who you think can just come in here. You know what I'm saying? If they piss me off, I'll scream on the house. I don't care who running what. You know what I'm saying? This is me. If it's time to go, we gone go.

I: Right.

M: This is how it is. You know what I'm saying? I didn't just start doing this.

I: So when you come into a new situation, and like the leader is going to check you out and stuff --

M: Yeh, they always --

I: They check you out. And you're going to let them know that you're not going to be messed with. And because you do that, it sounds like you then become part of the gang. You could become part of the authority.

M: See, they gonna try me now. Don't get me wrong. They gonna see where you hard.

I: Why are they going to do that?

M: I don't know. I don't really --

I: Do you do that to people?

M: No, no. I don't. No. I don't. I only gonna mess with you when you violate me.

I: Okay.

These excerpts illustrate the interactional process by which members account for and produce the “social facts” of the Department through typifications of what we might call the “moral failures” of others. By referencing typical moral failures, members are able to explain past and predict future conduct, both within and between official groups. Thus, a summary of members’ assertions on the question of their own and other group’s organizational performance yields the following “facts.” It is important to keep in mind that this summary cross references “facts” about which almost all members agree, not simply views about the deficiencies of members of *other* groups.

Uniform staff are predictably oriented towards “non-professional” objectives such as making as much money for as little as possible work; they are not competent at rational decision-making; they violate moral rules without understanding or caring that they have done so; they are loyal to each other in so far as loyalty serves to protect the individual’s interest in preserving whatever institutional perquisites are available; and (consequently) they have low self-esteem. In terms of their social backgrounds, uniform staff are very close to inmates.

Oversight representatives are predictably oriented towards enforcing the rules that they have imposed regardless of the consequences of the rules’ application in specific contexts. This is a kind of de-contextualized “principlism,” oriented towards winning disputes in terms of the “rightness”

of the rule, rather than towards genuine rationality that demonstrates caring concern for people. Now that they are an integral part of DOC's "dysfunctional family" (as the LAS attorney quoted in Chapter Seven put it), they probably help defeat the most fundamental purpose -- the safeguarding of inmate welfare -- to which they are dedicated.

Both uniformed and civilian staff operate a patronage-type system of promotions, the only real difference lying in their frames of reference (career civil service "old boys" versus City Hall cronyism). Civilian managers are "political animals" oriented toward their own careers instead of the content of their work, which leads to non-rational, "gutless" and potentially harmful decisions. They continually engage in petty power struggles and will not take a principled stand on anything that matters. Like uniformed staff, whatever loyalty civilians muster toward each other is a matter of self-interested expediency. And about the "business of correction," they are clueless.

Oversight representatives, uniform staff, and civilian managers, all of them, apparently, are really "like" the inmates; they simply pursue self-preservation with the more sophisticated resources congruent with the social and organizational allocations of power. Nevertheless, inmates -- as one uniformed staff remarked, "there but for the grace of God go I" -- probably need to be under some kind of supervision (although virtually everyone agrees that it need not, indeed probably should not, be the kind that is provided), because, after all, they might kill each other over breakfast.

As should be obvious, members' tales of moral failure are premised on some powerful, unstated assumptions about the values and ideals that *ought* to motivate social action within and between groups in the organization. These values and ideals are in a sense the flip side of the coin; we can "fail" only when we have some notion of what constitutes "success." Hence, if we "flip" the above summary of members' accounts of moral failure, the following values and ideals emerge.

(1) Social cooperation is good. We should be acting on the basis of "rational" organizational goals about which we can all in principle agree.

(2) The long-term, social good is more important than short-term individual goods. Communal (organizational-social) goals that serve collective ends (the organizational-social good) should be the basis of social action, not individual self-interest (including individual self-interest pursued through group-specific interests).

(3) Consistency is good. Social action that is justified with reference to organizationally-defined goals should be and would be consistent action (and therefore predictable), if people acted according to these shared, stated goals, rather than according to unstated self-interested objectives.

(4) Personal integrity is good (it promotes confidence and self-esteem). Integrity means that the *personal* values and principles that guide action are connected to, rather than separated from, the *socially-organizationally* defined values and principles that guide action. Integrity is based on one's

ability to take a stand on the basis of principles rather than on the basis of self-interest. Principled action is "rational" and/or "professional" action that is based on standards of fairness (desert) and/or respect for individuals. If possible, therefore, principled action should *serve* social-organizational goals. (An exception is that inmates "must" act to preserve their physical well-being, but even so aggression against others is justified only on the basis of self-defense.)

5) Merit is an ideal norm for the distribution of rewards related to employment (hiring and promotions).

(6) Reciprocity (equal shares for all) is an ideal norm for the distribution of basic human resources, e.g., food.

Now let's return to the question of the significance of the (predictable) class and race stratification of group membership. What should we make of the demographic distribution of power? Members' accountings, I believe, suggest that these are not the compelling "facts" of organizational experience. I do not mean to imply that members are not attentive to perceived class- and race-based advantages and disadvantages, since they are after all also members of the larger society of the United States. Notwithstanding these cautions, neither intra- nor inter- group conflicts were explained through the interpretive lens of race, although several members from each group except inmates mentioned race as an "aggravating factor" in the Department's

problems. But none of the members interviewed demonstrated any propensity to interpret "moral failings" through, in Wieder's term, the exegetical narratives of class and/or race relations. Popularized sociological conventions might tempt the interpretation of civilian managers' and oversight representatives' characterizations of the "incompetence" of uniformed staff as a class-based typification. As I previously argued, however, derogations of the members of one's own group were even more emphasized and forceful, suggesting that the analyst's interpretation of the interactionally salient social facts should lie elsewhere.

Members' accountings do, I believe, portray a "Hobbesian-type" universe. In Chapter Six, I discussed Gresham Sykes' appropriation and interpretation of the "Hobbesian problem of order" to describe the "two poles" of inmate social action. The first pole, unmitigated, self-interested rational action or "war of all against all," was explained as the individual inmate's doomed attempt to regain his lost control in an ever-threatening environment. The second pole, concerted group action based in normative consensus expressed as the inmate code, better served individuals' need for protection from each other but ran the risk of constructing and reinforcing dangerously impenetrable symbolic boundaries between "us" and the "hacks" or correction officers. Other prison scholars reinforced Sykes' analysis and described the second pole as manifest in correction officer subcultures. The implication of the two poles metaphor as a model of social action in the

prison, I argued, was a theoretically predicted universal and unresolvable normative dissensus between differentially situated groups, or, in Donald Clemmer's original dystopic vision, the "American culture's" social fracas of multiple groups pursuing incompatible social goals.

Sykes' appropriation of the "Hobbesian" metaphor of social action, however, followed the conventional twentieth century interpretation of Hobbes' thought, discussed in Chapter Three. This was that in an all out "war of all against all" most or many individuals will not survive. Only through investing one's identity with the common goals and destiny of the group can one hope to escape the less than salutary prospects of the weak. But, somewhat paradoxically, the group may subsume the individual's own pursuits, requiring apparently "irrational" self-sacrifice to preserve customary and normatively-defined ends.

Hobbes, it will be recalled, did not actually see it this way. He believed that individuals are "moral" irrespective of their "contract" with a State (secular sovereign). Without a State, however, the normative force of morality cannot be presupposed by social actors. Consequently, reasonable suspicion by one party that the other party may be pursuing self-advantage through breach of moral expectation (the tacit promise of contract or covenant) may justifiably invoke the natural right of self-preservation in the one being deceived, thus voiding any assumption of social cooperation. In sum, the role of a secular sovereign is to defend reciprocal social relations, to

ensure the normative force of morality. Most importantly, however, since morality commands our assent (“*in foro eterno*”), the “just man’s” will is framed by “justice” with or without the secular sovereign. (Hobbes 1651/1996) In other words, the moral person’s objectives are informed by moral concerns, regardless of the presence or absence of an enforcement authority.

The New York City Department of Correction is an organization without a “Leviathan.” At any given time, of course, a formal hierarchy of authority and power exists; it can be “read off” the Table of Organization, which summarizes the distribution, content, and scope of decision-making authority within the agency. But this is indeed a mere formality. What is lacking is any legitimacy for this formal authority. The distinction between the presence of authority and its recognized legitimacy is an important one for understanding the operation of mundane morality in negotiating social facts, as Jurgen Habermas (1984) has argued in his discussion of the significance of regulative ideals (discussed above in Chapter Four).

Arguing against sociology’s received interpretation of Max Weber’s conceptualization of legitimacy, which equates a people’s *belief* in an authority’s legitimacy with legitimacy itself, David Beetham (1991) proposes that, “A given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs” (p. 11). This is because beliefs in support of or against an authority can be reported (as in an opinion poll) within ideological or popular frames of reference that

have little to do with the actual standards, principles, and values that the same people might wish the authority to uphold in practice. Hence,

Contributing to legitimacy . . . are . . . a number of different factors operating at different levels. There is the legal validity of the acquisition of power; there is the justifiability of the rules governing a power relationship in terms of the beliefs and values current in the given society; there is the evidence of consent from actions expressive of it. . . . Together these criteria provide grounds, not for a "belief in legitimacy", but for those subject to power to support and cooperate with its holders; grounds, that is to say, not for belief, but for obligation (pp. 12-13).

Power can be said to be legitimate to the extent that:

- i) it conforms to established rules
- ii) the rules can be justified by reference to beliefs shared by both dominant and subordinate, and
- iii) there is evidence of consent by the subordinate to the particular power relation (pp. 16-17).

I believe that these conditions, to a greater or lesser degree, have been lacking in the Department for some time. It is beyond the scope of the present work to establish my assertion with more empirical evidence, but the "objective" conditions reported in Chapter Seven coupled with members' own descriptions should make a strong case in this direction. In further support, members' own descriptions of the organization's "mission," which they provided in response to a standard question I asked about this, were consistently critical and/or cynical. For example:

1. Oversight Agency Representative

M: I'm not a believer that the correctional system works very much. I don't think it does. I think -- I do believe certain people should be isolated, but I don't think the way they're isolated to the numbers and who we put away are appropriate. So I have a major disagreement philosophically on what we use the criminal justice for. And as I

alluded to earlier, we use it for a lot of things that really don't have much to do with crime at all. We don't deal with drug abuse, so we arrest them. We don't want to deal with mental illness, so we arrest them. And we don't want to deal with homelessness and poverty, so we make it easier to arrest those sort of people. Or we don't want to expend the funds or the services that they really need, which leaves them in a pretty desperate situation and they get arrested. Uh, once they're incarcerated obviously I believe that their being punished is their removal from society. It shouldn't impose all the conditions, the repressiveness that actually goes on in this area. So it's a very dehumanizing system. And I think a lot of things are done that are totally unnecessary for the nature of incarceration. But there's really -- there's somewhat of an animus by society and everyone else that, "Let's lock them up. I don't want to see them. Spend as little money as possible. Basically these are bad people and therefore whatever mistreatment they get is deserved." I think a lot of people in society, although they might not articulate that, have that sort of visceral reaction to what goes on.

2. Inmate

I: Right, right. OK. Um, well let me ask you sort of a general question about, um, this may sound like [laughs] too obvious a question, but what do think the purposes of the organization are? The institution?

M: [laughs]

I: [laughs] Why are you laughing?

M: Why I'm laughing is because, ah, it's, it's like, they say the system is about one thing -- but is not!

I: OK, tell me more about that --

M: My perception . . . of what the system is about, it's about money. About laundering people's lives in exchange for time and money.

.

I: OK, it's about money?

M: Right. OK, and how I believe that's it -- if you didn't have as many convictions or as many people coming to jail, you wouldn't have as many judges, you wouldn't have as many police officers, you wouldn't have as many corrections officers or corrections staff, meaning cooks or librarians, or G.O. members (. . .) . . . the state needs, I believe the

government needs, ah, more people to operate these things, so that they can continue to function, or to benefit, or in an organism, or to, to benefit the system, in order for profits to be made. Because if this system was obviously making no money, it wouldn't obviously exist. Because I don't think the government would let anything grow tremendously over the past years and not gain anything from it.

I: Hum --

M: Ok, financially, or either politically, I don't think they would let that happen. If this place was taking up too much money, or it was taking money from them?

I: Yeah

M: Then they would do something about it in a heartbeat. Meaning instantly.

I: Yeah.

M: If it wasn't then, then it obviously has to be making money.

I: So it's serving a function, but that function doesn't have much to do with you --

M: The function has an effect on me and others, because it takes us away from what we should be doing and [pause], I don't -- hey don't get me wrong -- if you're doing drugs and if you doing bad things to people out there and you purposefully doing these bad things, then you belong in here, and if you have no moral -- if you have no remorse, or no type of ah, ah, sympathy for what you're doing, then you belong in here, I believe not necessarily that people don't belong in jail, but belong in counsel, you belong in, ah, you belong in a therapeutic program, being counseled on how to find out what's wrong, or what you're deficiencies are.

I: Yeah.

M: Um, jail, [pause] what is it to lock a person up? And take so many years from him for nothing? That's not punishment. I think that's a form of, ah, retaliation. [pause] you know, and ah a person can only retaliate back if they be pushed up against a corner. And some of them go back out do the same thing because, including myself, I'm no different, because they haven't learned nothing -- you know -- and, ah,

it's a shame, it's a shame.

3. Uniformed Staff

M: So you -- you -- I think you're dealing with a mindset, and -- and our goal, to get back to the original question, I'm digressing a little bit, um, the goals of this department are not set by this department.

I: Oh.

M: No, they're not. We -- we may say things, but our goals are set by whoever becomes the Commissioner who does whatever the current trend or political climate is, and what ever's correct at the time --

I: Um--

M: That's the goals of the Department. For that month. Um, simplest way to show, I think. The jails were all -- every jail on Rikers Island is under max. Last year--

I: Under capacity?

M: Yeah, every one --

I: Um--

M: Every single one.

I: Um, yeah, that was not true last year --

M: Last year everyone was over.

I: Right.

M: What miracle cure, what miracle have we accomplished that, Jeez, we've been able to do this. We haven't, it's just that the criteria that they have set for the Police Department for arresting people has changed. So naturally our population changes in -- in numbers because they don't arrest as many people.

. . . Has crime really gone down, I don't think so. Have we done such a great job? Oh, we scared 'em, they don't wanna come to jail anymore. I don't think so either.

. . . So our goal is just a holding action, really.

. . . We don't warehouse 'em anymore, we're a daycare center. It -- it seems, it appears, especially with the Commissioner we have which -- and I mean this, probably the goal should be to move toward not having to have jails. At least for the vast majority of people.

.

. . . No matter what you do, whether you treat 'em good, or you treat 'em bad. When he gets out in the street, and the -- the chains are off, there's nothing to make 'em do right --

I: So what social purpose does it serve?

M: It -- it's -- it's a political answer. It's an answer to those that cry about crime, you know, we -- they show numbers of who we locked up. So people say alright, crimes are committed, these are the people who commit them, we take them off the street. But anyone involved in this -- especially in jail, more so, and the police too, we know it's just the rotation of the crops --

4. Civilian

M: Uh huh. Well, I think when I came my sense was that the people here were interested in rehabilitation.

. . . That's what was stated.

I: Stated to you by?

M: The higher-level, higher-ranking people at headquarters, you know, the programs people. Uh, the uniform people were kind of mum on the subject. They didn't have an opinion. It was simply, "I gather the day-to-day -- how do you go from here to there?" I realized over time that it wasn't rehabilitation that even [name of former Commissioner] was interested in; it was incarceration and making sure that there were no breaks to the skin of the incarcerated universe or the incarcerated body. And if things had to be kept nice on the inside to ensure that, then that was done in the most minimal way possible so that there were no breaks. Nothing would get out. And everything inside was our business.

I: Hmmm. As opposed to?

M: The public's right to know. The Board Of Correction were intrusive busy bodies; Legal Aid was yapping at our heels. And there was a sense of, "You don't know what it's like; get out. We will give you exactly what you want. We will not beat up people too badly. But if we have to, we will, and that's the price of doing business."

I: Hmmm.

M: So that's what I think the message became -- oh, not the message -- that's what I perceived over time. The message was never that. It was either no message,

... or, "Well, we're interested, you know, in programs or making sure there are chaplains around and good liaisoning right before they get released. And maybe we'll have a work-release program and maybe not. But the programmatic aspect kind of shrunk and what came to me was, nothing. There was no substitute for that except the coercive piece --

... the, "This is our business. It's our Department. You don't work here. I work here. And if I work here, I own it. Because this is a big junk pile, and you don't want to know anything about this. And if you don't want to know it and you don't want to have to deal with these people, then you let me be responsible. And I'm a human being, and I'll deal with things routinely in the right way. But if we have to beat a few heads up sometimes or break a few heads, well, that's just the price of doing business."

... ..

... So I think that's why their impact, the Commissioners' impact, is probably less than it might be, because of the lack of follow through and the lying and the simple refusal to do something. And I think a lot of them know that. The Commissioners know after a while what's happening, but they simply could not incorporate that into their daily mind sets or they would be absolutely infuriated and couldn't get through the day, because there's a tremendous amount of ego that goes with the job. You know, you take these jobs and you think you're the Commander-in-Chief and, yeh, you are but you're not. And I think what they end up doing is, they focus on a pet project or two and then pick people who they feel will implement the things that they really want done, sort of the expeditors, outside of the official process. . . [Illustrates his view with an example of a recent Commissioner's project] . . . But at the same time, he didn't want to take on the uniform guys because he was just another uniform guy himself, only better and smarter and more savvy. So he never could let them know he was

doing that, even though they knew that he was doing it. So there were these different folly, dual madnesses going on all the time.

.....

I: Right. Right. And you think that goes on with each new Commissioner in some way?

M: Absolutely.

Accordingly, we can see that, as members describe it, organizational authority in the Department is diffuse, ever changing, and, more often than not, contested in terms of its formally stated goals. Beetham's analysis of the conditions for legitimacy provides a significant framework for my contention that the grounds for members' normative obligation to the moral rules of social cooperation within the organization are lacking. As a result, *pace* Hobbes, members do not simply devolve into amoral or immoral egoists. Instead, because they are, by and large, "moral persons," they have "good reasons" (i.e. the lack of a legitimate authority to support and enforce moral norms of trust and reciprocity in social relations) to suspect that others might breach their expectations for cooperation. As Hobbes tells us, they will, therefore, "void the contract" and pursue their own self-preservation within the dictates of conscience. In other words, social actors who are otherwise completely competent mundane moral reasoners will break the formal rules of this organization in ad hoc fashion when they perceive that their own fundamental self-preservation is at stake, which is often, given the characteristics of the organizational environment.

The result is that social actors' creation, negotiation, and rejection on

“warranted grounds” of basic action-guiding norms and rules – both formal and informal, moral and non-moral – is highly contingent, constantly changing, and therefore virtually unpredictable unless one is intimately involved in the specific contexts and occasions of this process. And, as I hope this and the next chapter make obvious, this situation generates a very threatening, morally challenging environment for virtually all members.

Members are deeply suspicious about virtually everyone else’s motives for action, imputing the morally unacceptable objective of “self-interest” as the engine that drives the organizational miasma around them. Just as Durkheim’s expressive theory of punishment posited the community’s affirmation of its own standards in the sanctioning of “deviants,” we may understand, as I have suggested, members’ constant denunciation of self-interest as a tacit declaration of the value of social cooperation in the service of shared goals. But, again with a nod to Hobbes, we should not confuse self-interest with self-preservation. As I hope the next chapter will make clear, members’ accounts demonstrate how mundane morality reconciles the “right” to self-preservation with the moral imperatives of social cooperation and fairness; in other words, how members attempt to avoid both the Scylla of self-disavowal (membership termination) and the Charybdis of shattered personal-moral integrity on the shoals of self-interested, unprincipled action.

What I have sought to demonstrate in this chapter, however, is that members deeply rue the very “social facts” that they in effect sustain, because

they are locked in a continual struggle to maintain their personal-moral integrity -- to "frame justice" -- in an organization that does not, indeed cannot, support their struggle. The "moral failings" of others are so keenly felt by these members in large part because they, too, are continually on the precipice of failing.

1. Lawrence Kohlberg, et al. (1972) coined the term “moral atmosphere,” as discussed in Chapter Six. While I agree with the authors’ basic contention that an organization’s social arrangements, practices, and symbolic representations of reality are intimately related to its members’ moral decision-making, I am not investigating or providing support for their further claim that the “stage” of an organization’s moral atmosphere influences and promotes support for the stage at which members morally reason about their situations.
2. “Managers” in this group include Deputy Wardens, Wardens, Division Chiefs, and Chief. Although virtually all uniformed managers at the DOC have moved up through the ranks, a promotion to the first level of management (Deputy Warden) removes them from membership in their union, the Correction Officers’ Benevolent Association (COBA). I do not refer to the people I interviewed in this category by rank because there are so few of them that their anonymity could be compromised.

Chapter 10: The Department – A Narrative of Moral Reckoning

In Chapter Nine I discussed members' "moralizing discourse" about the "moral failures" of others. I did not, however, analyze this discourse in terms of explicating what was distinctly moral about it. Nevertheless, I have made the claim throughout this work that mundane morality has unique characteristics, and that it is employed as a kind of meta-discourse that enables social actors to reflect critically and dissent from the normative standards, rules, or values transmitted through organizational or group cultures. My objective in this chapter is to analyze transcribed conversation in terms of any implicit and explicit distinctions members make and to "catch the work of fact production in flight," (Garfinkel) specifically mundane morality's role in that process, as promised in Part I.

To accomplish this I turn to the third question under which I organized DOC members' discourse: "How do members account for the relationship between what they take to be the "social fact" features of the organization and their own and others perceived morally relevant social action? In my retrospective reading of the transcribed interviews, I found that members often employed similar thematic devices to respond to my questions. A thematic device, as I am defining the term, is a structured pattern of communicating and presenting a significant personal experience. The content of the experiences was of course different for each member, yet

communication of these experiences followed some identifiable patterns. While it was possible to identify an array of thematic devices employed by members in their conversations with me, I have chosen one – the “narrative of moral reckoning” – to explicate the conceptual issues addressed in this chapter. The Oxford English Dictionary (1964) gives several related meanings to the verb “to reckon” and the noun “reckoning”:

reckon: 1. . . . ascertain number of amount of, by counting or . . . calculation . . . count up, sum up character of. . . . 2. Include in computation, count in, place in class among, or with, or in, . . . as in (reckon) him wise, beyond redemption. 3. Conclude after calculation, be of the confident opinion. . . . 4. Make calculations, cast up account or sum, . . . , settle accounts with person. 5. Rely or count or base plans upon.

reckoning: 1. day of (reckoning), time when something must be atoned for or avenged; dead (reckoning) . . .

The categorization of “moral reckoning” represents my own interpretation of the relevant features of members’ accounts but, following realist and ethnomethodological assumptions, I think of this categorization as co-produced by myself and the individuals I interviewed for the study. Both members in their contingent, context-dependent practical reasoning and I in my exegetical analysis of their accounts are engaged in the process of calculating and summing up, concluding and settling accounts, and sometimes, in a deeper sense, symbolically atoning and avenging.

The fact that, without prompting on my part, members often replied to my requests for information in the form of narratives rather than with formal, causal explanations or analytical propositions about the relationship

between the organizational environment and their experiences provides support for Mark Johnson's (1993) assertion¹ that,

There exists an intimate connection between life stories and the structures of rationality. These stories are our most basic contact with rational explanation. The most fundamental questions I can frame about my identity and purpose are addressed through rational life stories. To live and tell such stories is to give particular answers to questions such as "What made me what I am?" "What must you know to know me?" "Why did I act as I did?" "What do I want?" and "What should I do?" *We learn the meaning of rational explanation first in the telling of our life stories.* For the most part, this is not done as a game, nor as an abstract rational or logical exercise, but rather in response to a pressing human need to know who we are, to decide how to act, to solve moral problems, and to explain ourselves to others. This is moral deliberation, moral evaluation, and moral exploration in its most basic sense. *Our moral reasoning is situated within our narrative understanding* (p. 179 - 180).

In retrospect, based on this view of the significance of narrative, I now understand why during the interviews it seemed that just before my conversation partner launched into one of these narratives, the intensity of our conversation dramatically increased and reached its denouement in the telling of the story or stories. And, when this occurred, I had the sense that the interview had been a "success," a sense that was often confirmed by my partners' parting comments that they had "enjoyed" the interview or had "learned something from it." Moreover, these experiences were not exclusive to members of any particular group or groups. Members with graduate educations were just as likely to relate significant experiences through first person narratives as were members with less than high school educations.

Because, as I have reiterated, the empirical component of my study is not intended as a comprehensive ethnographic account of organizational conflict in the NYC DOC, I have chosen to analyze one narrative that seems to offer a paradigmatic case of members' accounts of clashes between organizational social "facts," "moral facts," and conventional group norms. Choosing one narrative rather than, say, four (one for each group) also enables me to provide a longer, more in-depth analysis, which I believe better serves the larger goals of this project. In this narrative and in others that I am not exploring here, the member began to illustrate a point with a personal experience within the organization and, in response to my sometimes provocative questions or responses, we discovered how they "reckoned" with the clash by providing a "workable" description-interpretation of the event or events. I emphasize that we *discovered* the "how" and "what" of the events described, because as discussed in Chapter Eight I treat the transcribed interviews in a qualified sense as "naturally occurring organizational talk," rather than as a source of data about members' beliefs and attitudes (Silverman, p. 91).

In this chapter, unlike the last, excerpts from the longer transcribed interview I conducted with the member are interpolated with my commentary and analysis.

Jerry's Moral Reckoning -- Don't rat, Don't lie, Do no harm

Jerry (a pseudonym) was a twenty six year DOC employee in his early fifties. He was the head of a highly regarded special unit of correction officers and held an elected position in the union for officers of his supervisory rank. His Irish immigrant parents provided, according to Jerry, a good home in which hard work and religious faith were emphasized. He told several nostalgia-tinged stories about his childhood, all of which involved learning how to fight with his peers, both how to give and how to take a "beating." This theme was continued in the narrative that is explored below. Overall, Jerry expressed satisfaction with his life and with his career in the Department. I knew Jerry before our interview and had worked with him on a few projects. Our interview lasted approximately three hours.

Jerry's narrative concerns the application of rules that guide the "use of force." Since, like police officers, correction officers have the unique legal responsibility to use physical force (and "deadly force") when "necessary" to subdue or control their charges, interpretive disputes and moralizing discourse about the term "necessary" are a constant theme in correctional organizations. As discussed in Chapter Seven, the DOC has for many years operated with legal restrictions on when ("necessary" or "unnecessary") and to what degree ("appropriate" or "excessive") physical force may be used, but the institutional guidelines ("departmental directives") that describe how these restrictions must be applied by correction officers are in practice

constantly changing. These changes can occur because a new commissioner or executive staff person is dissatisfied with the existing directive (for reasons that may or may not be publicly articulated) or because an oversight agency challenges the directive's adequacy in describing and prescribing practices that promote legal use of force. In any case, although the "Use of Force Directive" incorporates and expresses formal law as interpreted by federal and state courts, its validity is often contested by any one or any combination of the four membership groups discussed here.

Ongoing disputes within the Department about the use of force directive create a situation that violates several of the criteria for the legitimacy of an institutionalized power relationship between super- and subordinate social actors outlined by Beetham (1991) and discussed above in Chapter Nine. Specifically, (a) the use of force rules are not clearly established among those most concerned with them; (b) there exists no consensus about these rules that is based on beliefs shared by both the dominant and subordinate parties; and (c) there is little or no "evidence of consent" by the "subordinate(s) to the particular power relation" (Beetham). In this case, we should think of the dominant parties (DOC civilian executives, oversight staff, and the courts) as those who have the power to make and change the rules, and the subordinate parties as both those who must obey and carry them out (uniformed custodial staff) and be subject to their application or misapplication (inmates).

Jerry's narrative provides a very good example of the way in which the problem of legitimacy affects how social actors establish normative exceptions for rule violations and the role of mundane morality in this process. It will become clear that Jerry does not feel obligated to obey the legal rules that govern use of force, but that this is not simply a consequence of his acceptance of group norms that provide ongoing justifications for alternative, informally sanctioned social action.

After we discussed his family background and his current responsibilities for the Department, I asked Jerry what he liked the best and the least about working with his uniformed colleagues. Instead of answering this question directly, he turned our discussion to the problems uniformed custodial officers face in use of force situations and expressed some ambivalence about both the causes of inmate aggression and the sometimes illegal measures custodial staff take in response to it. The following excerpt picks up after Jerry has offered some comments about these topics.

[The same transcription conventions employed in Chapter Nine apply.]

I: . . . OK. Now going to the issue about you know, um, the difficulties with the officers who would beat up the wrong guys. How did you deal with that, in terms, of --

M: Very poorly, not good at all.

I: Yeah. Why?

M: Because I did things I didn't want to do.

I: Like?

M: Ah -- [pause] you know, I probably should have put charges on more officers than I did. I've gone into federal court and, ah, put my hand on a Bible, raised my hand and swore to God to tell the truth and I've lied.

I: Uh huh

M: You know.

... ..

(Dialogue from a later point in interview is inserted here.)

M: Yeah, right it is. Um. [pause] I found it very distasteful lying under oath. I really did.

I: Ah, Okay.

M: In federal court?

I: Yeah.

M: I would never want to have to do that again.

I: Yeah, yeah, yeah.

M: I really wouldn't. I didn't like it at all. I was, I was in fear. I was actually in fear of swearing to God and then lying.

... ..

I: Was it the swearing to God? Or the lying?

M: Yeah, I think that had -- the swearing to God --

I: Not the lying?

M: -- on the Bible and all.

I: Not the lying so much?

M: Yeah. It was more the swearing on the Bible. That upset me a lot. No, we lie every day on this job.

I: Yeah.

M: Lying, that's part of the job. You gotta lie. You won't survive if you don't lie. You have to -- you *have* to -- lie. If you told the truth all the

time on this job you'd get indicted.

. . . I don't believe lying is bad.

. . . I don't believe it's bad all the time.

I: Yeah

M: I, I, some people, "oh, you gotta tell the truth." I don't think you have to tell the truth. I think sometimes you're better off -- it's more compassionate to lie, in certain, ah, even in your everyday living.

I: Why is that?

M: Just saves hurting somebody's feelings, ah, you know. I think sometimes lying is good.

.

. . . Well I was more or less, talking in terms of your everyday -- say you get invited someplace -

I: Yeah --

M: You just don't want to go cause you just don't particularly care for the people. So you lie, you say, I got something else to do that night, you know you don't hurt the person's feelings and say, I don't like you! That's why I'm not going! [laughs] You understand what I'm saying?

In these opening excerpts Jerry sets up what Bernard Gert (1988) has usefully described as the "morally relevant features of a violation of a moral rule." According to Gert, these features are:

- (1) What moral rule has been violated? [Presumably Gert means that the violator must be cognizant of the rule in order to deliberate about whether its violation is justified.]
- (2) A. What evils are being caused by the violation?
- B. What evils are being avoided?
- C. What evils are being prevented by the violation? (p. 142)

The moral rule in question is "don't lie." That Jerry distinguishes "morals"

from (conventional) group and organizational norms will become apparent below in a later part of the dialogue. Jerry's past moral rule violations of this kind ("should have put more officers on charges," i.e. covered up and/or lied about the wrongdoing) are accompanied by regret and resentment, which we might call the "moral emotions" that accompany the sense that "I should not have been put in a situation where I had to choose between two evils." The evils, as we will see below, are either the harm done to an officer who might be fired for his legal rule violation – which Jerry's moral rule violation prevents – or the sanctioning of morally reprehensible behavior of officers who are "bullies" – which was the evil Jerry "caused" by the violation. Jerry's continuing story unfolds how he learned how to avoid both these evils without violating what he takes to be moral rules and, consequently suffering the accompanying sense of self-violation that his expressed emotions imply.

The later violation of lying under oath in a federal court is carried out with a different set of emotions and illustrates several more distinctions that are important for Jerry's moral reckoning. In the court case he describes, Jerry is also protecting an officer who was charged with a legal rule violation. As described in more detail below, however, he believes that the officer in question was "righteous" – a term he employs throughout our conversation to cue moral judgments. Needless to say, Jerry does not believe that the Department's legal guidelines are always or necessarily congruent with moral rules; sometimes, as he has discovered, one must violate a law, even a law

that is in substance morally justified, in order to follow a moral rule. So although, as my probing revealed, Jerry believed that his perjury was warranted, he indicates that another rule, “do not take the Lord’s name in vain,” with deep roots that go beyond the scope of mundane morality, was not justifiably violated. (“I was actually in fear of swearing to God and then lying.”) Fear, the accompanying emotion to this violation, illustrates the possibility that the will of a higher (legitimate) authority has been defied, and Jerry, as we know, is a life-long devout Catholic.

A second distinction that Jerry goes on to explain is that sometimes one moral rule may trump another, such as the “white” or “social” lie which is justified by the desire to act “compassionately” in order to avoid causing someone unnecessary emotional pain (“I don’t like you! That’s why I’m not going!”) and to preserve social relationships. Many people would probably concur with Jerry’s last distinction. He is describing the conditions for a moral rule violation exception that is normative in the larger society. Quite a few people (including federal judges), however, would *not* concur with his decision to offer perjured testimony. Nevertheless, Jerry’s account is an example of how members’ ongoing production of the “social facts” of the Department influence instantiations of rules and rule exceptions. His ongoing narrative will clarify this point.

(Dialogue continued from line before inserted later material.)

I: And, and, um, for those people who have been protected when you did that --

M: Uh huh

I: Did you like those people? Or --

M: Most of 'em I don't, no.

I: And, and, so what motivates you to --

M: The Blue Shirt, you know, like when you're a kid you didn't want to give anybody up. It's the same thing. It's the same. I understand why they do it. Sometimes. And other times I don't.

I: Uh huh

M: You know, like *I* never hadda do it when I was an officer -- I never did it.

I: Yeah

M: The only inmates I ever hit needed it, or I was protecting myself or whatever the case may be. So.

I: Why do they do it, do you think?

M: Frustration, ah. A lot of 'em are frustrated because of the restraints they feel are put on them. Ah, there's a lot of stress in the jail. There's a lot of verbal abuse back and forth. Ah, I guess they just get caught up in it. And some are just evil. There's a certain amount of 'em that just shouldn't be on the job.

I: Uh huh

M: Masochist or whatever they are --

I: Sadists --

M: Sadists -- they shouldn't be here.

I: Um, do most of them have a conscience about what they've done, or --

M: Most of 'em think they're doing the right thing. Most really think that what they did was acceptable -- was righteous, and they hadda be right to do it.

I: And yet they have no problems with – they, they still feel that they're on the right side of the –

M: Absolutely [laughs]!

I: Shield! [laughs]

M: That's – I'm not talking about every use of force –

I: Yes, I understand.

M: A lot of them are good uses of force.

I: I know, yes.

M: But a lot of 'em that you come across, that you know – you read so many of them that you can pick it apart.

I: Yeah

M: You know, like, you know. You can sit down, you can tell where they're lying.

I: Yeah

M: It's the same shit all the time. I mean, get a new phrase for christ sake.

I: Right.

M: Here's a for instance. If you have an inmate in the mess hall. Now this is what really got to me one night. I flipped out. And he [officer] has two hundred inmates and there's three officers there. And don't try (.) an assault you. You [officer] pull him [inmate] out – he's disruptive. Now you take him up front. Now there's one inmate and six officers instead of one inmate and three officers with two hundred more inmates, you understand?

I: Yeah

M: Now that you've isolated him and taken him up front – why is it that every time that he gets to the rotunda, he [the inmate] assaults one of ya's? Why? Why didn't he do that in the mess hall where he had all those inmates to help him?

I: Oh, I see this is the way it's set up --

M: Yeah. When I said take him up front, I said next time one of you guys comes to me and tells me [pause] that [snickers] that inmate tried to assault you when you got up by that control room, I'm going to investigate it the right way. I'm telling you that right now. I hope everyone reads me. The next time that happens, don't tell me that an inmate in front of two hundred other inmates wouldn't hit ya, but now that you got him all alone and the six of ya's are surrounding him, he's gonna hit one a ya's. [pause] See they're (.). That was the last time it happened to me. It happened on other tours, but it stopped for me. I won't have it.

I: So it wasn't their conscience that stopped them --

M: They were afraid that I was gonna --

I: It was the threat of punishment --

M: Yeah. Would I have punished them? Probably not.

I: Yeah.

M: I just sold them a ticket, hoping it would stop. And it did.

... ..

M: See, I, if I, if the force used was unnecessary and excessive, I would look at the people that did it. Their past record. Is this general? Is this his usual -- does he (.)? Does he do this every night, every week, or is this an isolated incident? Yeah, they overreacted these guys, they didn't have to do this, but they never did it before. I'd write around it.

I: Okay, because -- ?

M: Without jeopardizing myself.

I: Okay. Because what good would be served by overriding it?

M: By not calling it exactly the way I see it?

I: Yeah.

M: Well, you could get fired for excessive force. Unnecessary force, you could lose your job.

I: So -- loyalty?

M: [*sotto voce*] Yes.

I: Okay. Um --

M: If there were people that did it consistently? I would point out the inconsistencies in the reports and verbal statements. And the medical documentation and everything else that goes into it, and I would recommend that it be further investigated by IAD [Internal Affairs Division]. I'd load the gun, I wouldn't pull the trigger.

In this section Jerry has elaborated on the kind of situations that led him to violate the moral prohibition against lying. First, he introduces by implication the putatively universal "don't rat" rule which, as mentioned earlier, numerous prison researchers have asserted is the "first commandment" of inmate and officer subcultures. Second, he equates this rule to children's prohibition against "tattling." At this point, for the purpose of our analysis, we must ask whether Jerry establishes "don't rat" as a moral rule. As discussed in Chapter Five, "don't rat" does seem to meet numerous criteria for this status that moral philosophers have identified: it is prescriptive of socially significant action; it is universalized in the sense that at least all members of one's group are subject to it; it is invested with strong emotion; it is justified with reference to the harmful consequences that may result from its violation; it seems to promote social cooperation and solidarity among the group; and its violation is likely to produce some form of explicit or informal sanctioning against the "offender" by other group members.

Regardless of these congruencies, however, I think Jerry is ambivalent about the rule's status, and that he does not clearly identify "don't rat" as a

moral rule. In the first place, he makes specific reference to the group “Blue Shirt” as the source of the rule. This is an important point because, as we shall see, he does not see moral rules as originating with his group.

Jerry next mentions the harmful consequence -- being fired -- that might result from “writing up” fellow officers who use unnecessary or excessive force, and that “loyalty” motivates him to break the law and not turn them in. The “don’t rat” rule promotes a personal, instrumental good that individual members of Jerry’s group share, namely, membership survival -- to escape punishment for violating the rules. The rule’s affirmative command, “be loyal,” promotes common sympathy for like-situated others. But there is an important caveat here. Although he explains his conduct through reference to its motivating force, Jerry apparently is not pleased with his demonstration of loyalty. He does not elevate loyalty to the status of a virtue and reference it to justify his conduct, as he did with his example of the “social lie” that prevents hurt feelings and preserves social harmony. Like the social lie, the “don’t rat” rule provides a normative exception to the moral rule “don’t lie.” Unlike a competently applied social lie, however, “don’t rat” does not serve a “higher” goal in a simple or straightforward way.

Instead, the additional mini-story of the officer who tells the uncredible tall tale about the lone inmate striking out at six correction officers illustrates Jerry’s preoccupation with the rule’s negative consequences --

protecting bullies and promoting “undeserved” harm to inmates. Analogous to his ambivalent feelings of loyalty, Jerry recognizes the officer-bullies’ conduct as, “under the circumstances,” *understandable* (“A lot of ‘em are frustrated . . . there’s a lot of stress . . . I guess they just get caught up in it. . .”), but he does not recognize their conduct as *justified*. (“The only inmates I ever hit needed it, or I was protecting myself It’s the same shit all the time. I mean get a new phrase for christ sake.”) Indeed, the story inspires the “I’d load the gun, I wouldn’t pull the trigger” metaphor, which mingles hostile aggression with ‘bated ambivalence.

As the following excerpt suggests, if “don’t rat,” was integral to mundane morality, Jerry might be understandably aggravated by the tension-laden context between officers and inmates in which these situations arose, but he would feel “righteous” when he invoked the rule to explain his own and others’ actions. The officer-bullies probably felt “righteous” with their beat up, according to Jerry, but they were wrong. The inmate did not *deserve* it. Jerry thus introduces the concept of desert as a “decision rule” (Garfinkel 1967) for violating the moral imperative or rule, “do no harm.”

I: Uh huh, Ok. Ok. Um, well, ah [pause] What about -- have you ever felt in these situations, pressure, in other words could there be pressure by fellow officers, your peers, about, could you, could you, if you felt that you had to, even if people like knew that you were loading the gun, have you ever experienced pressure from your fellow --

M: No.

I: No?

M: No. Nope. Because, see, people know exactly how I was. Always. I was consistent all the time.

I: Ah, okay.

M: And they would say, "[His rank and his name] -- if that [rank], if he went after them, they deserve it." That's the reputation I had. It took, it took many years to get that reputation. But it was well worth getting, because they didn't question anything I did.

I: Okay, well when you were just, what about *before* you had that reputation? Did you have problems?

M: I felt pressure when I first became Captain. On which way to go with certain things --

I: Yeah

M: But, ah, I always tried to cover up for the officers if I felt they tried to do the right thing,

I: Yeah

M: Even if I felt like they didn't follow the directive, which I think is -- I think the directive is *stupid* anyhow. The use of force directive is garbage. But I would try and protect them, I really would. Unless they were consistent violators . . . of the directive. Unless they were *bad* people, you know just liked beating people.

I: Right, right

M: You know, just liked beating people and hurting them. Then I wouldn't protect them,

I: So they --

M: I just wouldn't protect them when they were like that.

I: Yeah, so even though, even when you started out being a Captain and you had to do this, um, the fact that you did protect people and they *knew* it, meant that you weren't in great conflict with your peers.

M: No, I was well liked as a Captain. And they ah,

I: So –

M: In fact I think that they knew if there was an inmate that was really, tha – there was inmates – they would *wait* for me to come around.

I: Hmm.

M: Inmates that were giving them a hard time and they knew that I would take care of 'em for them. Not necessarily beat the inmate up but jump him out somehow. You know, guys that really needed it and everyone was avoiding and, they'd get word to me and, and they'd say, "wait 'til so and so comes around" and then ah, you know, I'd go down and talk to the inmate.

I: Yeah

M: Say, "you got a problem?" you know?

I: [laughs softly] Right –

M: You know, "No, [rank] I ain't got no problem." I says, "Well, that's not what I hear. . . ." I says, "I'm gonna be here for four nights I don't wanna hear a peep outta ya, not a peep."

I: Yeah, I can see it [laughs], I can see it !

M: Not a peep! Not one *fuckin* peep outta ya!

I: Yeah

M: Okay?

I: I would experience you as being fairly threatening, actually!

M: That's what I would tell 'em. And the officers like that, you know, and, hey, and uh, you know, I'd be right there if we hadda use force on 'em. I wouldn't call 'em on the phone and say, I'd be right there with 'em, not using force, but I'd be right there saying, "Okay, open the cell, you're not coming out? Open the cell up – come on out."

I: Hmm.

M: The guy would come right out. Right out, you know.

I: So, um. I guess what – you're telling me is that even though these situations were *hard* situations that you did not experience a great deal of conflict, you had in mind what you were going to do – you were pretty clear –

M: Yeah, my morals, I had morals, I had a certain set of rules in my head, what was right, what was wrong. And I lived by that, and the officers knew what it was.

I: And they, and they were *yours* –

M: Yes, they were my values that I got by being a little boy, or wherever, and that's how I lived by – I hated to see an inmate get beaten up, I really did, that really pissed me off. I had *no* problem waxing somebody that needed to be waxed. But if he didn't – I had a hard time with that, and they knew it.

I: Yeah

M: Don't buff nobody that don't – I'm telling ya, keep your hands in your pocket. But if ya got a problem, I'm here. And we'll do what we gotta do. I'll help ya –

I: Yeah

M: – but don't go beating up no fuckin' inmate cause he's five foot two or, you know, don't do it, not on me.

I: It sounds like you were effective.

M: It worked!

Here Jerry has articulated his own “two poles” through which mundane morality navigates to preserve integrity: the “garbage” use of force directive (law) and the “evilness” of unjustifiable infliction of pain (immorality). It's important to note that Jerry does not disagree with the use of force directive *in substance*, since it's primary objective is also to prevent wantonly dispensed punishment and suffering. But throughout our

conversation he suggested explanations as to why the directive was "stupid."

First, in his experience, the directive made impossible demands on officers to control in the heat of battle the way in which they fought and the amount of force they used.

M: Even though maybe you're supposed to grab in a body hold, that's what the directive says, but *I* say that you're a product of your environment and, and if someone pushes you, you're gonna try and dot his eye, I'm gonna hit him. As quickly as possible –

. . . the book's wrong.

I: Why?

M: Because if you're in a confrontational situation, unless, like, see the book says you hit em in the kidneys, you can't hit here, you can't hit em there, you can't hit em in the testicles . . . How can you take a rooky correction officer or *any* correction officer and say well, "how come you hit him in the kidneys, why didn't you hit him in the chest?" Or, "why didn't you hit him in the throat – couldn't you aim for the arm?" It's ridiculous. It's ridiculous to ask somebody to do that. Under assault. . . I never understand, you know the people that wrote it are, are total assholes and probably never had a fight in their life. I'm convinced of that. Anybody who ever had a fight couldn't write that way.

Consequently, the investigating authorities could interpret an inmate's physical injuries as improperly controlled force and could use this interpretation against an officer. In other words, the directive made procedural violations easy to "discover." Furthermore, the dominant authorities (DOC management, the Court, and Oversight Agencies) can use these violations for their own "political" purposes, without consideration for whether the officers' interpretations were "righteousness."

M: That's just the way it is, cause they don't have to do the job. The people who question you don't have to do what you do. They have no idea the frustration and the stress you're under. Constantly. And they want everything done by the books, by the numbers because that's what the federal courts want. And that's what the Board of Correction wants, and that's what Legal Aid wants. And that's what pasta fazul (sic) wants and everyone else.

I: Don't they know?

M: They should know.

I: But they still do it anyway.

M: Yup. Absolutely. They hold us to a very high standard.

... ..
The whole system is corrupt. . . . It really is, it's a very corrupt system that we're forced to work in.

Nevertheless, even officers who are trying to follow the rules because they recognize their underlying moral justification make mistakes because of the "stress," which Jerry again asserts is "understandable." In accounting for this problem, Jerry introduces another decision rule -- intentionality -- and further explicates the issue of loyalty and its relationship to "righteousness."

M: . . . If you can help somebody, if they had good intentions, and I always stress this, the intentions of the officers are what count. Did they have good intentions, or was this just a beat up -- a *thuggery*. You know, if it was a *thuggery*, you don't owe 'em that much. If they had good intentions -- what do I mean by good intentions? Ah, I dunno, they were trying to enforce one of the rules --

I: They thought they were doing right --

M: Yeah they thought they were doing the right thing. You'll know, or if it's a *thuggery*. If it's *thuggery*, then they're no better than the inmates. So you really don't owe them that much. So, you know, you really don't put your head on the block for anybody.

... ..

I: When you lied under oath, um can you tell me the nature of ah --

M: I lied about what I said I saw an officer do.

I: Oh, you were, you were protecting an officer?

M: Yeah, a good friend of mine.

I: Okay, so that there was an issue of loyalty? Was that --

M: Oh, yes, very much so --

I: the strongest, that was the motivation, was loyalty ?

M: There was no way that I could give this guy up. I couldn't, I'd go to jail first.

I: Yeah, yeah

M: That's how strong I felt about it. I couldn't, I just couldn't.

I: Okay.

M: No way, it'd be like giving my brother up.

I: Yeah

M: I know the guy twenty years. So I *lied*. I knew why he did it. I could understand why he did it, he was frustrated. It was a hot day. The inmate was belligerent.

I: Yeah

M: Inmate goaded him into it, almost.

I: But still, these, all these people [DOC management and oversight representatives] are paid good salaries to sit there to try and tear it apart?

M: Yeah. Yeah (sigh) and most of 'em don't know what they're doing. [pause] Not all of 'em -- no I shouldn't say most. A good percentage of 'em don't know what they're doing.

I: Yeah

M: They're not all --

I: Could they do it differently?

... ..

M: Yeah, [the authorities could/should judge] if they're [the correction officers] doing the right thing. I always go back to that, if they're doing the right thing. Or were they trying to do the right thing.

I: But there's also lying just because some -- you have to protect yourself --

M: Well, I also told you I didn't like lying when I knew the officers weren't doing the right thing --

I: Yes -- yes,

M: I resented that and I --

And I got rid of a lotta that on my tours.

Two decision rules, therefore, govern Jerry's judgments about whether specific applications of the use of force guidelines can be justified. One, desert, is derived from an assessment of the inmate's acts and the other, intention, is derived from an assessment of the officer's motivation. When desert is lacking and/or the intention is "wrong," the use of force is incorrect and cannot be considered "righteous," meaning morally justified. For Jerry, the directive supplies the authorities with a device for ignoring and obviating the moral decision-making that for him is a necessary and significant feature of his job. He expresses some pride in his ability to apply "correctly" the decision-rules of desert and intention, because his "good" peers -- whom he describes as generally well-intentioned, but weak in the face of actual challenge -- have affirmed his moral acuity.

The criteria for assessing desert is in most cases determined “objectively” by the “facts of the matter,” specifically in terms of the inmate’s aggression, which renders an officer’s use of force response self defense, a traditionally- and legally-recognized normative exception to the moral rule “don’t harm.” (In Hobbes’ terms, the exception is justified on the basis of the natural right to self-preservation.) The assessment of intentionality is not situation-specific, but Jerry implies that it is no less “objective.” Observation and interaction over a period of time leads Jerry to an evaluation of the officer’s character, which enables the assessment of his motivation in specific situations. If the officer’s intentions were “correct,” but he was “stressed out,” then his blameworthiness is mitigated. When these “facts” are present, loyalty to one’s peers, which Jerry earlier equates with compassion, may trump the moral rule, “don’t lie.”

Significantly, therefore, Jerry insists that the criteria for determining desert and intention cannot be arbitrary or subjective, such as, for example, the inmate’s height, his way of looking at you, your need to “ventilate,” or your sadistic desire to cause pain. Application of the normative rule exceptions demand, using his term, “consistency,” which implies the norm of fairness to “treat like cases alike.” Judgments about when to use force are moral judgments because they entail harm to others. We can infer that Jerry’s is making the normative claim that all members of the group who have authority to make such judgments should agree on the criteria or

criterion that will govern these judgments, which is advocating for impartiality as a standard for application of the decision-rule. The standard of impartiality is another “cue” for the operation of mundane morality; one which has been extensively explicated in the “folk theory” of Western moral philosophy (Johnson, 1993; Gert, 1988).

The two decision rules Jerry employs to describe and account for the outcome of interaction between custodial staff and inmates are drawn from common sense, everyday notions of “reasonableness” for assignments of responsibility and blame. The inferred rules – “exonerate from blame the officer who uses force on inmates who deserve it” and “exonerate from blame the officer who intended to follow a legal rule but was mistaken in a specific application” – are not of themselves moral norms; they are formulas for providing socially acceptable accounts of “causal orderings of agents and outcomes” (Garfinkel, 1967, p. 105). Garfinkel’s point that decision rules of this sort do not eliminate the ambiguity of “what really happened” is important to recognize in this regard. Neither the actions of the inmate nor the officer intrinsically signal or disclose any particular interpretation of events or application of the decision rules. Instead, Garfinkel’s claim seems apt:

. . . decision making in daily life . . . [has], as a critical feature, the decision maker’s task of *justifying a course of action*. The rules of decision-making in daily life, i. e. rules of decision making for more or less socially routinized and respected situations, may be much more preoccupied with the problem of assigning outcomes their legitimate history than with the question of deciding before the actual occasion of

choice the conditions under which one, among a set of alternate possible courses of action, will be elected (p. 114).

As discussed in Chapter Four, however, Garfinkel does not address the elements of social action that I am attempting to demonstrate here: that in their construction of “legitimate histories” social actors assign different statuses to different rules and provide different standards of “reasonableness” depending on how they account for and reckon moral-normative facts with the contingent features of the organizational-institutional environment.

As we can infer from Garfinkel’s analysis, the possibility always exists for disputes about a decision rule’s social validity. Throughout my interview with him, Jerry implied that use of force served not only to restrain inmates, but also to punish them for their aggression. (“I had no problem waxing somebody that needed to be waxed. But if he didn’t – I had a hard time with that . . .”) That Jerry affirmed the use of corporal punishment in general was reinforced by the fact that he mentioned using it with his children, although he expressed some ambivalence and regret about this that he attributed to growing older. Support for corporal punishment has been and still is widespread in American society, so Jerry’s affirmation, coupled with the decision rule of desert, does not violate many people’s standards of “reasonableness” (Greven, 1990).

Despite Jerry’s claims to reasonableness, however, an “outsider” to the Department of Correction might challenge the validity of Jerry’s (and his colleagues’) decision rule, asserting, for example, that the correction officer’s

role is to restrain, not to punish. "Desert" from this perspective is irrelevant; the decision rule should be discarded on instrumental grounds that it represents a confusion about the proper responsibilities of custodial employees.

Such a challenge need not address the deeper moral issue of corporal punishment. But the outsider could make a further claim and argue that physical punishment is never an appropriate response to wrongdoing. In this case, the claim is again not about desert per se, but about the moral justification for corporal punishment as a means of sanctioning those who have violated social or moral norms. In other words, as this argument might go, violators may "deserve" to be punished, but corporal punishment as a method of sanctioning is never justified.

Relative to Jerry's second decision rule, an outsider might argue that officers who misapply the use of force guidelines should be sanctioned regardless of their "good" intentions. This argument would apply a kind of strict liability standard to the conduct of custodial employees. Such a (very hypothetical) standard would serve as a decision rule for DOC managers and its purpose would be instrumental, to control disputes that arise because of the inherent ambiguity of assessments of "intention" and thereby promote procedural fairness by treating like cases alike.

These examples of how an outsider might disagree with Jerry's identification of two decision rules to account for his own and others'

compliance with or violation of legal guidelines illustrates an important point, which was discussed in conceptual and theoretical terms in Chapter Four. Members' practical-moral reasoning does not result in preordained "moral" results that the researcher-analyst could "predict" based on his or her own moral understandings. (To do so would certainly be an example of "confusing topic with resource.") Not only do the "facts of the matter" as members construct them need to be known, but, as I am attempting to demonstrate, the researcher must also identify and explicate the different types of rules invoked and the many levels of rule instantiation and justification related to specific events or situations in order to understand how members are "managing" conflict.

Needless to say, however, use of force policies or practices generally have not been disputed in the Department at the levels hypothesized above by either the dominant or subordinate parties in their ongoing inter- and intra-group struggles. (Although we might infer that behind LAS' alleged "principlism" is an argument of the first type against an improper interpretation of correctional staff's roles and custodial responsibilities.) Instead, as my discussion in Chapter Ten indicates, these struggles have largely been over who will assume the power to establish the "correct" interpretations of events, or, in other words, about establishing legitimate authority with normative clout. The "don't rat" rule, which is a de facto preemption by uniformed staff of the dominant authorities' power to assume

the interpretive role, has been a primary, albeit often tacit, target of these disputes.

Returning to the narrative, we can see that Jerry has reasoned beyond and in between the institution and his peer group in order to establish a "reputation." His reputation enables him to coexist with both other officers and inmates without having continually to sacrifice himself in the insuperable choice between complicit participation in a regime of despotic control or "snitching" on his peers for the sake of a "rule of law" that lacks legitimacy. Regardless of whether we agree with his implied affirmation of physical punishment as a deserved response to inmates' aggression, mundane morality provides Jerry with "good reasons" for both breaking institutional-legal rules and violating group norms. Hence, Jerry makes a clear demarcation between a prior set of moral standards that guide both his decision-making and his interpretation of specific events and the contingent, context-dependent standards imposed by the organization and his peers:

I: Yeah

M: It worked -- I thought it worked. I didn't get many unnecessary uses of forces after a while, you know.

I: So, um, I'm just kind of reiterating this -- you're, you're --

M: I was on when the first female officer got hit.

I: Ah, by an inmate?

M: First time --

I: By an inmate?

M: -- got assaulted. Yeah. Yeah.

I: What happened?

M: (softly) Yeah, you know, you got it.

I: Oh.

M: Inmate, you know, he was a very violent inmate and we were very violent with him.

I: Oh. So it wasn't that the female officer was doing anything wrong, or anything --

M: No, she just happened to be out in the hallway and she, he punched her in the back. Because he was engaged with somebody else at the time and she went over to break it up and the guy snuck her -- punched her in the kidney. [pause] And he got more put on him than he, than the normal -- you know -- because she was a woman.

I: Oh. What was the reason for the force in that case?

M: On him?

I: Yeah

M: Ah, he was mouthing off when we got there.

I: She was hurt?

M: She was hurt -- she was on the ground.

I: Yeah

M: So he got steam rolled, you know, bum's rush -- he was, he was really, you know, he got -- and he *fought!* And he paid for fighting, too. He paid *severely*, dearly -- got over a hundred stitches.

I: Whoa -- and what, what purpose did this serve?

M: Ah, everyone felt real good when it was over --

I: Oh --

M: They felt very satisfied --

I: Okay --

M: Cause that's our lady -- that's our --

I: Yeah.

M: -- you know, she's one of us and she's a lady, too,

I: Yeah.

M: So, you know -- everybody felt good, they felt very *righteous*. I know I did.

I: Yeah

M: I felt like I just went to Mass!

I: Ooo-kay [laughs]

M: That's how good I felt!

I: [muffled laugh] Okay, ah, um. Alright. Um. I'm going back to the point that, the *rules* that you brought were your own rules.

M: Yeah

I: They were not rules that you felt were forced on you by the organization, or by *other* people that you were working with -- you did not feel --

M: Initially, yeah, they tried to force a certain set of standards on ya, but I, as I went along,

I: Who's they?

M: They -- your peers.

I: Okay. And what were those standards?

M: Officers and when I was an officer, and captains when I was a captain --

I: Yeah --

M: The standards were -- I modified them. So I could live with them. I, I had to say to myself, "I can't do that, because that's wrong, I know it's wrong, but I can do this, cause it's righteous --

I: Okay--

M: K? Cause it's *necessary* in this setting.

I: Yeah

M: If we don't do it -- [pause] -- they'll be running the place completely. That's how I justified it in my mind. I tried to stay within those boundaries. That, that I could look in the mirror and say: morally what I did is correct.

I: Uh huh

M: Even though the Department says it's wrong, it's morally right. That *morally* --

I: Yeah --

M: -- what I did was the right thing.

I: Okay --

M: -- which is very important to me.

I: Yes, I hear that. Um, I'm trying to get at the nature of the standards -- a good description of the standards that your peers were imposing on you --

M: [spoken as litany] The standards are that no matter what you do you kick their ass, you beat the shit outta them, you put 'em in the hospital, you're always right. . . But you're *not* always right. There are limits, there are limits that *I* have for myself and for everybody workin' under me that we're going to live by tonight. And, and you know what my limits are. You're not going to stomp somebody, just because he wouldn't line up quickly for you or because he doesn't speak English and you thought he said something smart to ya. You're not going to do it. Not while I'm on -- you're *not* going to do that. On the other hand, if you have an inmate that's giving you a problem, there's

no person better to have on than me. And they knew that too.

I: Yeah

M: And they liked that. And I think they knew I was trying to be fair.

I: Yeah

M: The officers, the inmates, you know.

I: Would you say that your fellow officers -- that many of them, or most of them also brought strong independent standards?

M: Oh, absolutely, I wasn't the only one. I'm not the only, ah, pebble on the beach. A lot of 'em had the same values and when I got into a position to impose my values, they were happy because they had the same values.

I: Oh, Okay --

M: And they felt good about that. The same as a lot of Deps and Captains imposed the values that I had to me and says, "hey, that's great, I think the same way this guy does; that wasn't necessary, but this is."

I: So, where did the pressure of the standards, when I asked you about --

M: There's always, that, there's a group of people in the Department that'll always be here --

I: Yeah --

M: -- that feel like you can do anything you want. And the other guys go along with 'em.

I: Oh, Okay, some people are followers.

M: Yeah.

I: Yeah, Yeah. So, so it may not be very many people who are going to be the real -- you know, shitkickers --

M: Yeah, thank God, no you're right. Cause, the officers, there's only about 10% of them --

I: Yeah, Yeah.

M: But those ten percent are the loudest, the most aggressive,

I: Sort of like the inmates?

M: Right, exactly, it's the same thing, the same thing . . .

I: [laughs]

M: Same thing [laughs], exactly the same thing!

I: Yeah! [laughs]

M: [laughs] We're no better than they are -- it's the same shit!

The first part of this final excerpt of Jerry's reckoning describes what is known in correctional argot as a "demonstration beating," meaning that the treatment given to the inmate is meant to send a message to other inmates about symbolic boundaries they must not and cannot cross without severe repercussions. In this case, the inmate crossed a boundary that Jerry and his peers recognized as having profound implications: physical aggression against a "lady," a then new and presumably in itself disturbing element in the social order of the jail. In response to my questioning, Jerry asserts that the inmate's aggression was in defiance of a reasonable command from the female correction officer. The initial display of force against the inmate did not, therefore, in his account violate the decision rule of desert he established earlier. Nevertheless, he acknowledges, first through elliptical cueing ("Yeah,

you know. You got it.") and then directly, that the degree of force was "excessive" and, by implication, illegal. Once again, a moral emotion punctuates the story, but in this case it's the feeling of being "righteous like I just went to Mass!" In the OED's definitional sense, this was an "avenging" act on the part of custodial staff for an act that went beyond the everyday conflict between "hacks" and "cons" to transgression of the deeper, "universal" social-moral order, which designates the "places" of men and women. Hence it is not surprising that Jerry brings back the religious imagery of the "mass."

Needless to say, *I* did not share Jerry's implied (quasi) religious affirmation of a symbolic social-moral order that sets up these kinds of boundaries around women who are ostensibly equal partners with men in their performance of the same work-related responsibilities. The reason for my disagreement goes to the heart of the matter: these boundaries, however deeply felt by those who impose them, exceed the scope and authority of mundane morality and prevent everyone, but especially women officers and inmates, from negotiating commonsense "correct" and "incorrect" applications of moral norms to the "facts of the matter."

Probably in part due to my obvious discomfort, the conversation quickly returns to the realm of mundanity, however, and Jerry articulates the group norms (which were actually tacitly recognized by both of us throughout our conversation) which his own acute reasoning has enabled

him successfully to resist. And, lastly, we discover that in the social-moral order of Rikers Island jails, inmates and officers are really alike – “it’s the same shit!” There are “reasonable” people, happy to discover a leader like Jerry who can help them to “do the right thing” and there are bullies, who (thank God!) constitute only about ten percent of either group. Jerry’s “bully theory,” which was introduced by both custodial staff and inmates in almost all my interviews with them, provides an explanatory account of the ongoing problem of conduct that conforms neither to the dictates of group norms nor to the dictates of mundane morality. Nevertheless, in the final analysis, Jerry has reckoned with both poles of “corruption.” The Department may say his conduct was wrong, and the “ten percent” will attempt to make might mean right, but Jerry can “look in the mirror” and live with the person he sees there.

In concluding my analysis of this narrative, I would like to return to the problem of the status of the “don’t rat” rule, which is a primary integer in the calculations of Jerry’s moral reckoning. Clearly “don’t rat” is regulative, in Durkheim’s and Parsons’ sense, because it guides antecedently defined behavior (“snitching” to the authorities) towards normatively defined objectives (serving individual interests through mutual protection). Jerry acknowledges, as we have seen, the rule’s prescriptive force and its concomitant value to correction officers’ social relations. And yet, if “don’t rat” is a *moral* rule for correction officers and inmates, but not for (for

example) prisoners' rights attorneys, then these groups inhabit different moral universes; their *moral facts* are different and no degree of logical suasion, legal threat, or organizational restructuring will break the code's ongoing authority in the jails.

Jerry's narrative contradicts this interpretation, however. He does not treat "don't rat" as having categorical authority, in Kant's and Durkheim's term, which is another putative characteristic of a moral rule. Instead his treatment demonstrates that "don't rat" is employed "constitutively" in Garfinkel's sense of that term as an "exegetical narrative" (Wieder) or "interpretive base" (Heritage) by officers and inmates to explain breaches of the tacitly or explicitly recognized moral rule, "don't lie." In these cases, lying about what "really happened" may or may not, depending on an accounting of a secondary set of normatively defined decision rules, make one complicit in the deeper moral violation of an "undeserved" beat up, causing pain to an innocent person. Could a rule with such implications operate with the same conditions that Jerry finds for his "morals"? In other words, could "don't rat" operate within mundane morality, as I argued in Chapter Four, *to constitute* as well as to regulate the local order of the jail, or for that matter any social order?

Jerry narrative suggests that it could not. Moral rules construct (but do not guarantee) the very possibility of viable social orders. They apply not only to "my group" but to yours as well (assuming our groups must communicate

and interact in some way); hence we can disagree about the facts of the matter (what happened and how the rules were applied) but we interpret and negotiate our disagreements on the basis of the “idealization of the interchangeability of standpoints” (Schutz; see Chapter Four) which includes the “objective” moral facts supplied by mundane morality. Neither the “don’t rat” rule nor its earlier childhood manifestation, “don’t tattle” become entrenched as justificatory accounts unless the context of their usage has certain problematic characteristics. Children do not need to prevent each other from tattling and to punish violators through the attachment of social stigma unless they perceive the adults who might be tattled to as harsh and unduly punitive against those who violate the adult decrees.

Similarly, the “don’t rat” rule becomes entrenched for correctional employees in institutional environments that suffer from prolonged and serious crises of legitimacy. Since, for various reasons, inmates rarely experience the moral atmosphere of the prison or jail as “justice oriented” (Kohlberg), the rule tends to be more pervasive and have even more force for them. I believe that in the then present context of Jerry’s accounts, the “don’t rat” rule was entrenched, but that numerous uniformed employees with leadership statuses like Jerry’s had recently received some public and sympathetic support from some of the dominant authorities.

M: I think I can say – I think that the Board of Correction is totally misused by this Department – I think that they should, I think most of the people on the Board of Correction are, are, are legit. And I think they could do so much more, if only they would allow them. In other

words, I don't think they really allow them – I don't think they *side* with the inmates totally all the time,

I: Yeah

M: I think they are, that they are on the side of the officer, the righteous, you understand what I'm saying, but Legal Aid, whereas Legal Aid is to me is a total loss.

I: Okay.

M: Those people to me are so *liberal* and, and in their thinking, and that there's no hope for them. They – "I don't care what you do, you're wrong." But the Board of Correction, I met a lot of people connected with the Board of Correction that were really very fair.

I: Uh huh.

M: And the Department, ah, I dunno, I think maybe they, if they were given a chance they could be very helpful. Even for the officers, for our side.

The authorities' support for uniformed staff who would "soften" the "don't rat" rule's normative force was not without ambiguity, however, given the ongoing problem of legitimacy in the Department. But as Jerry's and other employees' accounts excerpted in Chapter Nine suggest, uniformed staff were at that time engrossed in *intra*-group disputes over how to interpret and apply the "don't rat" rule.

When the "don't rat" rule is deeply entrenched and, in a hypothetically worst-case scenario, given the same given categorical authority or "weight" as a moral rule, an implosion of social order follows. This is because the rule tacitly legitimates the subjection of subordinate or weaker individuals to wanton suffering, making otherwise competent moral reasoners complicit in

the “thuggery.” Truly, life in such conditions is or would be “nasty, poor, brutish and short.” Instead of conflating the norms of inmate and officer “codes” with “morality” we would be much better served by conceptualizing “don’t rat” as the first and primary prescription for social action in an informal policy of group-specific loyalty that develops in organizations or groups whose members face uniquely unbalanced and non-legitimated relations of power and authority. If the prior problem of power relations are “corrected,” the policy will lose force because the instrumental (“strategic”) objectives of the group will by and large no longer be served by it. It may not be eliminated, but it’s normative-justificatory force will be diminished to the extent that members will not be continually forced to reckon morally with it, as they were for so long (and probably still are) in the NYC Department of Correction.

Summary

Jerry’s narrative has revealed a complex convergence of organizational social facts, institutional-legal rules, informal group norms, and mundane morals with which uniformed custodial staff must reckon in their DOC careers. I will summarize my explication of this convergence here, reserving a discussion of the broader implications of my analysis for the Conclusion to this study.

A. Background

Throughout this study I have argued that mundane morality or

"morality in action" cannot be understood independent of the broader institutional and organizational contexts that provide the basis for social actors' accountings of the "facts of the matter" that influence their decision-making. Organizational social facts constitute the "background knowledge" or "taken for granted" assumptions social actors reckon with when faced with significant and intractable practical-moral problems.

For Jerry, a leader among supervisory custodial staff whose views commanded respect and moral deference, the Department's ongoing crisis of legitimacy manifested itself particularly acutely in the use of force policy. Like many others in different positions in the Department, Jerry perceived other members as acting more often than not on the basis of self-interest or simple weakness in the face of decisions with potentially threatening consequences. The moral failings of members of his own as well as other groups was a pervasive theme in Jerry's narrative. The current use of force guidelines were the product and ongoing object of power struggles between the Department's civilian managers, the courts and prisoners' rights advocates, and uniformed staff. Expressing his ambivalence, Jerry described the use of force guidelines as "garbage," but also as "holding us to a very high standard," which perhaps symbolically sums up uniformed staff's accounting of the morally relevant social fact background to this aspect of their custodial responsibilities. Normative obligation to obey the guidelines had not been established in the Department at this time, and thus an informal policy of

group loyalty that served the objective of individual self-preservation was in effect.

B. Types of rules/norms and their social statuses

Jerry's narrative reveals that four types of rules converge on situations that entail uniformed staff's justificatory discourse for use of force situations. My use of the term "type" refers here to James Edgerton's (1985) sense of "function" discussed in Chapter Four. These types of rules were: (1) the formal-legal rules that constitute the Department's use of force guidelines; (2) the moral rules "don't lie" and "don't harm"; (3) the conventional, group rule "don't rat"; and, (4) the two decision rules involving inmate desert and officer intention that provide normative exceptions to the moral rules and may therefore provide justification to apply the "don't rat" rule.

Each type of rule is potentially open to disputed interpretation. Rules of the first type provide the occasion for the convergence of the other three; in themselves they have no normative force. Their "force" lies in the fact that they are a strategic element in the dominant authorities' struggle for power. An application of the rule "don't rat" is virtually always a violation of the rule, "don't lie" (either by commission or omission), and thus brings into play one or both of the decision rules. When "intention" to do the (morally) right thing is present, the group policy of loyalty is affirmed and a normative exception to "don't lie" is socially acceptable, backed by the moral ideal of

compassion towards one's fellows. "Don't rat" may also make one complicit in violations of the moral rule "don't harm." The decision rule concerning the inmate's desert is relevant here, and may provide a normative exception. When neither decision rule is applicable, exceptions to the moral rules are not justified and thus the group policy is "voided." Jerry's narrative illustrates that a competent mundane moral reasoner may reckon these situations by acting on morality's dictates to "load the gun" (attempt to prevent future harm) but preserve his right to self-preservation by "not pulling the trigger."

At the historical moment that the conversation between Jerry and I took place, each type of rule had achieved its own distinct, *de facto* status within uniformed staff's justificatory discourse. This is an important consideration for explicating organizational conflict, since these statuses can and do change, which, concomitantly, alters the reckoning members must undertake. During that period of the Department's history, as mentioned, the formal-legal rules were "soft" (to use Schauer's [1991] terms discussed in Chapter Four) and had little normative force among custodial staff. These rules were regulative only in the sense that custodial staff had to reckon with the fact that the dominant authorities would interpret their actions with reference to them.

The two decision rules were, I believe, entrenched. If leaders like Jerry publicly allowed and articulated exceptions on the basis of these rules, my

inference as to the rules' status is not unwarranted. These rules were certainly regulative in the sense that they provided grounds for reasonable, socially acceptable accounts of "what happened."

As discussed earlier, the conventional group rule, "don't rat" had been entrenched, but its normative force was "softening" as a result of the strong leadership of some uniformed staff who were publicly promoting change in the Department's legal and moral atmosphere.

The two moral rules, don't lie and don't harm, operate within the framework of mundane morality. They provided Jerry with an "interpretive base" for both the intelligibility and evaluation of social action. The moral rules did not "dictate their own application" in the sense of providing Jerry with a determinant set of alternatives for his own and others' decision-making. They rather signaled the unequivocal necessity of these decisions and their profound significance for individual and social welfare. Unlike, the "don't rat" rule and other conventional norms, the significance of moral rules for social action does not diminish or increase according to the background features of the social-organizational context. Even if moral rules are consistently overridden and justifications for these violations become entrenched, social actors must inevitably come to terms with the social degradation that will follow.

C. Contextualization Cues

In Chapter Five I discussed the characteristics of moral language and

argued that one of the tasks of the discourse analyst is to identify the various contextualization cues that social actors employ to communicate their moral understanding. Jerry's narrative served to demonstrate several of the characteristics discussed in Chapter Five as well as some contextualization cues that directed my interpretation and analysis. The first of these was Jerry's reference to certain emotions that accompanied his accounts of significant events. These "moral emotions," the most explicit of which was resentment (regret, fear, guilt, sympathy, compassion, and deep satisfaction were also explicit or implied), signaled challenges to Jerry's personal-moral integrity that the organizational contexts of decision-making and justification presented.

One term, "righteous," was employed throughout Jerry's narrative. In Jerry's usage, an action or decision could be righteous and one could feel "righteous" about an accomplished act or decision. A "righteous" individual, for Jerry, was a person of moral rectitude.

Jerry identified different sources for the rules and norms with which he reckoned. These were the "Blue Shirt" for the uniformed staff's loyalty policy and its "don't rat" rule, and "my head" and "my family" for "morals." This identification, I believe, is a typical cue for mundane morality at work, but I would not expect it to always emerge as explicitly as it did in Jerry's narrative.

Finally, Jerry's narrative presented several characteristics of moral

reasoning. Jerry used one term, consistency, to express how judgments and evaluations involving moral norms should be made. Besides consistency, we can infer with some degree of support from the actual dialogue that objectivity and impartiality were also criteria for moral judgments about when to apply the decision rules to evaluate a member's actions.

1. Numerous writers on morality have developed arguments similar to Johnson's about the importance of narrative for moral understanding. Johnson cites, among others, the work of Martha Nussbaum, Alasdair MacIntyre, Richard Rorty, and most importantly in terms of his underlying assumptions about the metaphorical basis of both common sense moral concepts and philosophical moral theory, George Lakoff.

Chapter 11. Conclusion

Implications of a Reconstructed Approach to the Sociology of Morality for Sociological Theory and Future Research on Social Conflict

At the conclusion of Chapter Six I made the claim that prison scholars' set of fundamental theoretical assumptions about the genesis, maintenance, and transformation of social conflict within the correctional organization represented their "moral images of the world" (Putnam, 1987). This, I argued, is because these assumptions entail the scholars' fundamental pre-suppositions about how humans are able to meet social expectations and further social goals. In other words, sociological theories that define the relationship between social order and social action are "moral images" because they imply how individual and collective welfare can be achieved through their representations of the processes through which individuals are both socialized into communities as "competent members" and individuated from those communities in ways that enable personal and collective transformation.

My attempt to reconstruct an approach to the sociology of morality that incorporates and expands some of Durkheim's ignored or overlooked insights about the nature of morality, moral judgment, and social order is, at the most general level, an attempt to transform the "moral images" that guide current sociological research on social conflict. As numerous critics have argued, sociological theory in the postwar period has moved from the

search for nomothetic knowledge associated with structural functionalism and Parsons' normative approach to post-positivist relativism about the sources of and possibilities for both commonsense and social scientific knowledge (Alexander, 1995; Bohman, 1991). Ethnomethodological, phenomenological, and other micro-sociological critiques of the normative approach developed in the 1960s and 70s implied, but did not usually address directly, the broader relativist positions embraced today by social constructionist and postmodernist theorists.

My discussion in Chapter Two suggested that post-positivist, constructionist social science often assumes epistemological as well as one or several versions of moral relativism. As Jeffrey Alexander (1995) contends, the two poles of postwar sociological theory present us with an irreconcilable choice: "Either knowledge of the world is unrelated to the social position and intellectual interests [*and I add moral interests*] of the knower, in which case general theory and universal knowledge are viable, or knowledge is affected by its relation to the knower, in which case relativistic and particularistic knowledge is the only result" (p. 91).

Some critics, most notably Anthony Giddens (1987), Jurgen Habermas (1984), and Alexander (1988; 1995), reject this dichotomy on theoretical grounds as distorting the complex, dialogic relationship between the knower and the known. In general, these critics draw directly or indirectly on rationalist assumptions about the way in which the symbolization of concepts

in human languages enables the “decentering of the knower” and the standardization of evaluative categories that facilitate the possibility of universal knowledge, assumptions that also inform many of the inquiries currently grouped under the rubric of cognitive science (Audi, 1995).

Durkheim, as discussed in Chapter Three, was a self-described “renovated rationalist” who endeavored to reconcile the significant insights of empiricism and rationalism in order to provide a framework for sociological research that “leaves reason with its specific power, but accounts for that power, and does so without leaving the observable world” (Durkheim, 1995, p. 18).

Rationalism has had a strong voice in postwar Anglo-American epistemology and moral philosophy (Arrington, 1989; e.g. Baier, 1958, 1995). For a variety of reasons, however, the “renovated” rationalist alternative has not been developed in twentieth century American sociological theory, even though Durkheim’s influence has been and still is enormous. The underdevelopment or rejection (depending on one’s point of view) of rationalist metatheory may in part explain the dichotomous choices that today face the sociological analyst. Furthermore, it may also help explain the abandonment of the sociology of morality. For, above all, this pursuit requires, as I have implied throughout, the return to certain rationalist tenets in order to develop a viable interpretive framework for analyzing moral discourse. Fundamental for the interpretive framework is recognition of the

strong connection between normative standards of rationality and of morality, and that this connection is displayed and reproduced in discourse in which social actors negotiate their explanations of and justifications for social action on the basis of a distinction between "advocative" or "critical" morality and conventional morality or "mores."

As Durkheim recommended, however, the objective is to remain focused on the "observable world." Beyond Durkheim's intellectual era, the "linguistic turn" that emerged in and dominated twentieth century philosophy and social science refocused the "observable" to the symbolic world of signs, speech acts, and texts or, in general terms, to "discourse." Yet for all the enumerable discussions of norms, rules, and rule following and social regulation, researchers committed to "the observable" have not turned their attention to analyzing discourse in interactional contexts that engage social actors' moral understandings. We have little, if any, accumulated knowledge of the micro-social characteristics of practical moral reasoning, even as we collectively use this same term to describe what we do, with each other, every day of our lives.

One of the significant directions that I have pointed to in this study is the analytic separation of the operations of "mundane morality," which encompasses the common sense features of "moral facts" about the world, including mutually recognized moral rules that guide the interpretation and explanation of social action, from cultural, personal, or group-defined

“values.” At the first level of analysis, discourse analysis can draw the connections between the operations of mundane morality in practical reasoning and the social contexts within which practical reasoning takes place and which provide social actors with a set of overarching values (goals) and regulative ideals. The second level of analysis can focus on how and when mundane moral reasoners instantiate various norms and rules and the contextualization cues they use to signal the social meanings and statuses they accord these norms and rules.

My analysis of Jerry’s narrative of “moral reckoning” provided an example of the latter focus, and revealed the complex constellation of rule-instantiation, interpretation, and justification in Jerry’s practical reasoning about the use of force. Contrary to the conclusions that normative sociological analysis of these kinds of conflicts has suggested, Jerry did not cover up or engage in illegal uses of force because he had internalized group norms that prescribed the “don’t rat” rule as the first commandment. Instead, the analysis demonstrated that Jerry employed mundane morality to navigate between two equally untenable positions with significant social ramifications that the Department’s ongoing crisis of legitimate authority generated: either support for the despotic control of correction officer “bullies” (the “ten percent”) or “snitching” in support of an abstract “rule of law” that the dominant authorities imposed in practice to further their own struggle for power. In the specific context of power and social control in the jails, Jerry’s

account of how to reckon with use of force conflicts established the possibility of achieving an ongoing social identity in which personal integrity would not be sacrificed for the sake of "just doing the job."

The explication of Jerry's reckoning has several important implications for researchers who want both to understand and help resolve deep and protracted conflicts in or between social groups and organizations. First, it is both descriptively distorting and counterproductive to assume that because some members collude in or tacitly support corruption or, in the researcher's estimation, immoral acts or activities that these members ignore, disagree with, or do not recognize the moral import of their conduct and the institutional-procedural rules they violate. People who describe their relations with other groups as being "on different sides," as Jerry did, often do not disagree about the moral rules or norms that are applicable to particular practical decision making contexts. In all likelihood, they do not have, in common parlance, "different morals," but they may bring different sets of considerations to bear on their accounts of the "social facts." Moreover, one group may bring a different constellation of first, second, or third order rules to account for certain typical, problematic events, as Jerry did with the two decision rules that he used to explain what happened in "bad" uses of force and to justify whether they should be deemed morally acceptable ("righteous").

Instead of siding with the moralizing position of one "side" or the

other (in organization studies, usually management), the researcher will be able to expose the disputing parties to a detailed explication of their own practical deliberations. This may result in a different focus for the parties' discussion and negotiation. For example, explication of Jerry's narrative revealed that although Jerry was extremely conscious and conscientious about the basic moral imperatives "don't harm" behind the use of force guidelines, he employed two normatively-defined decision rules that occasionally led to subversions of the guidelines, as well of the moral imperative, "don't lie." It would be an insult to Jerry, and by inference, to his colleagues, to point to the corruption and infer that unreflective group loyalty, based on effective subcultural socialization, was responsible for it. Indeed, a focus on loyalty is probably misplaced in analysis of group conflict, since, as I have argued, it is more a symptom than a cause of the tangible problems.

Instead, the researcher might be better served by directing the focus to (1) members' mutually reinforcing accounts of the organizational social facts that construct the perceived, painful ongoing necessity of violating one or several tacitly recognized moral rules; and (2) the normative content and application of second order decision rules to typical, problematic events. In the Department's context, for example, the disputing parties might have been productively directed to engage in discussions about the appropriateness and applicability of the decision rule's concept of "desert." Both or all parties in these discussions would employ mundane reasoning and mundane morality

to negotiate possible alternative, more mutually acceptable “exegetical narratives.”

Introduction of the prior research would enable them to do so with more critical reflection on the content and characteristics of their own and others’ particular, context-specific practical deliberations. In sum, this kind of research might assist members in arriving at common definitions of what they shall determine to be “advocative” or “critical morality” and the contingent norms or rules deemed applicable to some, but perhaps not other, conditions. The research framework can be applied to promote a kind of continuing, reciprocal “moral education” that recognizes and takes into account the features of an environment that members must confront daily and respects the moral capacities and understandings of members from all of the disputing groups. Nevertheless, as I suggested in earlier chapters, the researcher-analyst’s and members’ recognition of the operation of mundane morality in the work of constructing local social orders does not ensure the resolution of conflict. Members may still disagree and come to blows about the values and goals that they believe should guide their efforts. But analysis of conflict undertaken with this perspective will enable more productive discussion and mutual recognition of the nature of their disagreements and agreements, which in some circumstances may catalyze positive change.

Thus, to return full circle, I offer this suggestion. The reconstructed approach to the sociology morality developed here affirms, in it most

elemental assumptions, the classical liberalism behind Durkheim's assertion in Moral Education, that to teach morality "is neither to preach nor to indoctrinate; it is to explain." Explanation in moral terms is dialogic and processual. It is the product of members' ongoing attempts to define truth and goodness and to apply these definitions in the evaluation of daily events and activities. The sociology of morality has much to contribute, I hope, to this process.

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