

## INTRODUCTION

With this special issue of *Law and Philosophy*, we honor the memory of Conrad D. Johnson, who died suddenly and unexpectedly, in the prime of his philosophical career. From the time he was a graduate student in the late 1960s until his death in 1992, Johnson thought with penetration and focus about the interrelations between law and morality. Perhaps no one did more during this period to illustrate, as he put it, “the ways in which moral reasoning has benefited, and might be made more consciously to benefit, from ideas that are at root essentially legal in character.”

Struck, in his first year of graduate school, by Hart’s remark that Hare’s moral theory represented “an excessively Protestant approach,” Johnson became convinced that much contemporary ethical philosophy had failed to appreciate the importance of custom, practice, and, especially, law to an understanding of morality. Even rule-utilitarian theories (as advanced by his teacher Richard Brandt), gave no intrinsic right-making weight to established practice and institutional process. According to “ideal” rule utilitarianism, right and wrong depend on the requirements of rules, the general teaching of which *would* have the best consequences. Johnson came to the view that while the consequences of a rule or practice (compared to those of alternative possible rules) are relevant to whether it should be followed, they are not determinative. Moral rules are *collective* strategies for achieving beneficial consequences, not the least of which is mutual trust. And this requires giving weight to established common practice in moral reasoning. Accordingly, he concluded, right and wrong (in a given social context) are determined by established rules, so long as their consequences are better than what could be achieved by trying to promote the good individually.

On this view, moral truths are much closer to institutional truths than philosophers have been inclined to suppose in recent decades. There is still an important distinction between a society's *mores* (its institutionalized moral convictions) and *morality* (what is actually right or wrong for people in that social order), since established practices may have worse consequences than individuals can achieve non-collectively. Still, the consequentialist rationale only provides a threshold. So long as it is met, morality depends on actual practice.

Johnson argued that the right way to understand morality's relation to social mores, on the one hand, and its rationale, on the other, is to see it on the model of law. His *Moral Legislation* defends the analogy along with the normative theory he bases on it. Like law, morality includes different institutional functions. When law-makers contemplate the task of legislation, they look to consequentialist rationale and need give no intrinsic weight to currently governing law. In adjudication, however, a judge is not permitted to proceed in this way. She must give weight to the established law, even if she thinks that other statutes might be more beneficial. Morality, too, admits of these distinctions, Johnson argued. Although we lack anything like a formal moral legislature, something deserving to be called *moral legislation* nonetheless occurs – by salient example, persuasive argument, and so on. But only rarely are we in a position to legislate. As agents, we outstrip our authority if we attempt either to achieve beneficial consequences unilaterally, or to follow rules the general following of which would be most beneficial. Here morality gives weight to precedent.

Conrad Johnson gave us the most systematic study and defense we have of the analogy between morality and law. This volume collects essays from colleagues (and one former teacher) who admired and benefited from his work and who knew him as a person of extraordinary integrity, generosity, and modesty. Conrad had a purity of interest in ideas, and in other people, that enriched and gladdened the lives of all who knew him. Moral and legal philosophy is in his (steadily appreciating) debt.

Finally, I must sadly note as well the passing of one of our contributors, Gregory Kavka. I believe his memorial essay for Conrad to be the last article Greg completed.

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