5

Ethics

Crimes and Misdemeanors (1988)

Aunt May: For those who want morality, there's morality.

Halley: No matter how elaborate a philosophical system you work out, in the end, it's gotta be incomplete.

—from *Crimes and Misdemeanors*

What distinguishes morally right action from morally wrong action? This is the primary question posed within ethics. It is also one of the questions posed within *Crimes and Misdemeanors*. In this film we meet characters who "represent," either by word or deed, many of the ethical theories philosophers have developed in answer to this question. Seeing these theories "made flesh" is useful in discussing the pros and cons of each. As always, the first few sections of this chapter provide a general introduction to the topic—one that does not require previous acquaintance with the movie. My advice is to read up through section 5.3, watch *Crimes and Misdemeanors*, then pick up reading again with section 5.4.

5.1 What Is Ethics?

Of all the subareas of philosophy, moral philosophy (also known as "ethics") is the one that is most familiar to nonphilosophers. We are all used to the idea of making moral evaluations of the actions of ourselves and others—judging some actions as morally right and others as morally wrong. But let's step back for a moment and ask, What is going on when we make moral evaluations? In chapter 2, I introduced a distinction between value judgments and nonvalue judgments. The examples I used by way of illustration were:

S1: Some of Hitler's actions indirectly caused the death of millions of people.
S2: Some of Hitler's actions were morally wrong.

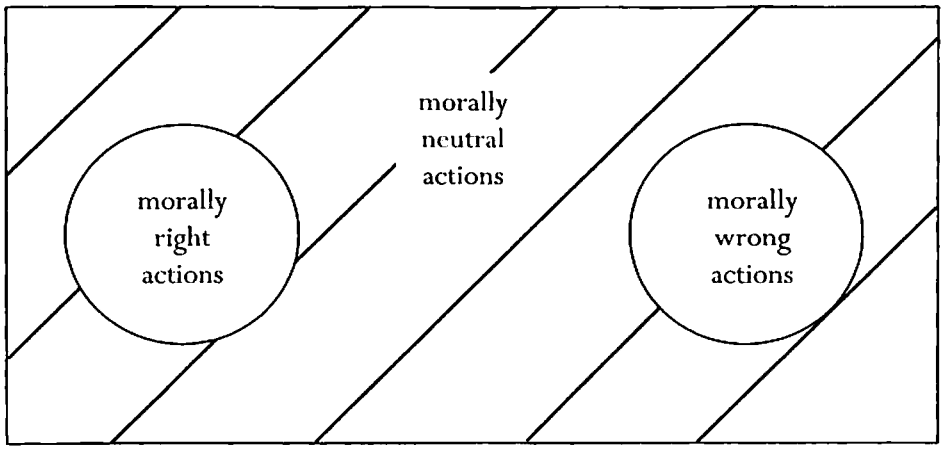

Figure 5.1

S2 is a value judgment: it is judging the value or worth of Hitler's actions. In particular, it is stating that some of Hitler's actions fall toward the "bad" end of the moral spectrum. *S1*, on the other hand, is a nonvalue judgment. It is not making any sort of evaluation of Hitler's actions. We, on being confronted with *S1*, are likely to infer moral condemnation of some of Hitler's actions, but that move on our part is an inference: it is not included explicitly in *S1* itself. This difference is important. To generate *S2* from *S1*, we must supply an additional premise, such as:

> Moral Principle 1: Any action that indirectly causes the death of millions of people is morally wrong.

Now the question becomes: Where did Moral Principle 1 come from? Is it in turn an inference from some more general moral principle? Or, is it something that is just a brute moral fact? Ethics is the field of inquiry that looks at these sorts of questions.

First and foremost, moral philosophy is concerned with figuring out what distinguishes morally right actions from morally wrong ones. To see what this means, consider the diagram in figure 5.1. The rectangle-shaped figure of this Venn diagram represents the set of all possible human actions. (Throughout this chapter, we shall be confining ourselves to moral evaluation of *human* action.) The two circles within the rectangle represent the set of morally right and morally wrong actions, respectively. The area within the rectangle not falling within one of the two circles represents the set of morally neutral actions. I assume that many actions are morally neutral: they have no moral status either way. For example, my tying my left shoe, then my right

one is neither morally right nor morally wrong. Many actions, perhaps *most* actions are of this sort.

Of those actions that *do* have a moral status, what features of the action determine whether it is morally right or morally wrong? This is the central question within moral philosophy. Using this diagram in figure 5.1, this question boils down to, What is special about the set of morally right actions that sets them apart as morally right? Finding the answer to this question is the first step toward determining, for any given action, whether it is right or wrong.

Different ethical theories propose different answers to this question. Some theories view the *consequences* that arise from an action as decisive in determining the moral status of that action. Thus, an action that produces overall good consequences is morally preferable to an action that produces overall poor consequences. Other ethical theories ignore consequences altogether and focus instead on the *intentions* of the actor—what he was trying to do when he performed that action. If an actor had good intentions when he performed the action, then the action is morally good—never mind that horrendous consequences may have accidentally been produced.

Obviously, the above sketch is just a sketch. Philosophers owe us much more detail in fleshing out the individual theories. For example, what constitutes *good* consequences? How does one figure out what the relevant consequences of an action are? In the case of theories that focus on intentions, what are *good* intentions? As we shall see in section 5.4, the major ethical theories do specify these things in detail. For now, I shall hold off an examination of the individual ethical theories and discuss them in the context of their depiction in *Crimes and Misdemeanors*.

I should warn the reader that, while my presentation of ethics is fairly standard, there are some dissenting voices in the history of ethics that I must omit for spacereasons. The way that contemporary philosophers understand ethics would have seemed quite foreign to ancient philosophers such as Plato and Aristotle. While the current standard is to treat ethics as dealing primarily with moral evaluation of *actions*, the ancients viewed ethics as concerned primarily with evaluation of *whole persons*. In particular, ethics in classical Greece was concerned first and foremost with evaluating character traits that made an individual good. Some modern ethicists (e.g., Alasdair MacIntyre) have called for a return to the classical understanding of the proper domain of ethics.

5.2 *Moral Objectivism versus Moral Relativism*

In chapter 2, we considered cognitive relativism, the claim that the truth of all judgments is relative to some set of background assumptions. These background assumptions were usually understood to be a conceptual framework that an individual uses in

making sense of the world. I noted in section 2.1 that there are other, more circumscribed versions of relativism. One such theory is **moral relativism**, according to which there are no objective moral facts: the truth of all moral evaluations is relative either to individual or cultural moral standards. Moral relativism is contrasted with **moral objectivism**, the view that there *are* moral facts—facts about what is morally right and morally wrong, facts that do not depend on what anyone or any group of people happens to think. Like cognitive relativism, moral relativism has achieved some support among both intellectuals and the general population. Much of this support is the result of increasing contact over the past century between Western (in particular, mainstream Anglo-American) society and far-flung cultures. Some of these other cultures have very different ideas about which sorts of practices are acceptable and which are not. While cultural anthropology and television have brought the peoples of the world into our living room, contact between cultures is nothing new. Herodotus, the principle historian of the classical era, notes that, even in ancient times, differences between social norms of different cultures were apparent. There was no single set of practices that all people everywhere held in common. To many, the diversity of social norms shows that there are no objective moral facts. This line of reasoning resembles the main empirical argument for cognitive relativism discussed in section 2.3. We will consider it further below.

A second line of argument for moral relativism can also be traced out in classical sources. Thrasymachus, one of the characters in Plato's dialogue *The Republic*, puts forward the position that can be roughly summarized as "might makes right." What Thrasymachus meant was that moral standards are determined by the politically dominant group in a culture and are aimed at preserving that group's political power.

Before looking at some of the arguments pro and con, I would like to describe moral relativism in greater detail. Moral relativism further subdivides into two distinct theories, depending on which individual or set of individuals the truth of moral judgments is assumed to be relative to. **Moral subjectivism** is the view that moral judgments are true or false relative to an individual's moral standards. Thus, if *I believe* that eating meat is morally permissible, then it is morally permissible for me to eat meat. Others may disagree as to the moral status of eating meat, but that is irrelevant, because the only arbiter of morality is the individual engaging in the action and her own moral code.[1] **Cultural moral relativism** is the view that moral judgments are true or false relative to the actor's culture's moral standards. If I live in a culture in which eating meat is considered acceptable, then it is morally permissible for me to eat meat.[2] If, on the other hand, I live in a culture in which eating meat is looked down upon, then it would be morally wrong of me to eat meat. According to cultural moral relativism, it is possible for an individual's moral judgments to be false. This occurs when the individual's moral standards are at odds with those of his culture. Thus, there is a court of appeals of sorts (that is, one's culture's standards) for moral judgments within cultural moral relativism. We are still within the realm of relativism however, since even cultural moral relativism claims there is no objective fact about what is morally right and what is morally wrong. There is a third view within ethics that, while not a version of relativism, shares much in common with it. That view **moral nihilism**, holds that moral statements are meaningless. According to moral nihilists, the very notion of evaluating actions on moral grounds makes no sense. While moral nihilism does not have many followers among current philosophers, it has had followers in the past. Emotivism, the view that moral statements are really expressions of emotional responses to certain events, was popular early in the twentieth century. According to emotivism, the statement "Some of Hitler's actions were morally wrong" is equivalent to "Some of Hitler's actions—*yuck!*" I will return to a discussion of moral nihilism in later sections. For the rest of this section, however, I shall concentrate on the two versions of moral relativism defined above.

What sorts of arguments can be given in favor of moral relativism? Let's consider cultural moral relativism first. One line of argument begins with the observation that different cultures vary widely in their moral standards. In some cultures, eating meat is uniformly frowned upon; in others, it is not. In some cultures, it is uniformly frowned upon to walk around with one's genitals exposed; in others, it is not. We are all familiar with these differences in moral standards across cultures. Indeed, no one (not even the most ardent moral objectivist) would deny the claim that there is a great deal of diversity in the world regarding which types of actions are considered to be morally acceptable and which are not. The cultural moral relativist uses this diversity in moral standards as evidence for the total relativity of moral truth. If there really were objective moral values, so the argument goes, one would expect to see all cultures adopt roughly the same set of moral standards. Since one sees diversity of moral values across cultures instead of uniformity, moral relativism is supported. The general intracultural uniformity of moral standards tips the tide of reason in favor of cultural moral relativism.

Yet is the argument outlined in the preceding paragraph a good argument? Does (1) intercultural moral standard diversity plus (2) intracultural moral standard uniformity imply cultural moral relativism? I think not.[3] There are two ways of criticizing this argument. The first route attacks the argument on the grounds that it is structurally unsound.[4] According to this criticism, (1) intercultural moral standard diversity and (2) intracultural moral standard uniformity *do not* logically entail that cultural moral relativism is correct. To see this, the moral objectivist considers a related argument that highlights the original argument's flaw.[5] The related argument runs something like this: Different cultures have different views on whether the earth is flat or not. In general, the degree of intracultural agreement on this point of geography is quite high. (That is, the members of a culture either uniformly believe the earth is flat or uniformly disbelieve it). However, (1) intercultural diversity and (2) intracultural

uniformity on the question of the earth's shape do not entail that there is no objective fact of the matter about whether the earth is flat or not. Some cultures (namely, those cultures in which the flat-earth hypothesis is widespread) are just mistaken on this point. Similarly, the moral objectivist would say that some cultures have adopted incorrect moral standards. Mere difference of opinion does not constitute evidence in favor of relativism, whether cognitive or moral.

A second way of criticizing the argument given in support of cultural moral relativism attacks the truth of the premise that states there is a high degree of intercultural diversity in moral standards. Some have argued that the differences we see in cultural moral standards are fairly superficial, the protestations of cultural anthropologists notwithstanding. At a deeper level, cultures' moral standards *must* have many aspects in common. The reason this is so, argues the moral objectivist, is that there are certain norms of behavior that all viable cultures must respect, lest the culture cease to exist. For example, a culture in which care for infants and small children was not a norm would be a culture that wouldn't survive past the current generation. It is not too difficult to come up with other moral principles of this sort—that is, principles that constitute minimum requirements in order for a group of people to form a cohesive and viable culture.

Perhaps the relativist can salvage some form of moral relativism by retrenching to moral subjectivism. While there is a high degree of uniformity of moral beliefs among members of the same culture, this agreement is not absolute. Abortion, euthanasia, and capital punishment should all be familiar examples to Anglo-Americans of actions whose moral status is highly controversial. Maybe the cultural moral relativist got it wrong. Maybe it is the *individual*, not the culture, whose moral standards are the ultimate arbiter of morality—and intracultural moral controversy proves it. Here again I think the moral objectivist can counter that mere difference of opinion does not imply relativism. Without compelling argument to the contrary, the objectivist can claim that some people are just mistaken in various of their moral beliefs.[6]

The preceding argument and counterargument has left us at a stalemate. The moral relativist's main arguments are seen to be seriously flawed. However, merely pointing out flaws in an argument does not by itself show that the conclusion of that argument is false. So, moral relativism is still a straw afloat. Are there any reasons that can be given against moral relativism? I think there are. To see them, we must revisit the tolerance-based argument discussed in section 2.8.

Recall that one benefit cited in favor of relativism is its apparent connection with tolerance. Moral relativism teaches that there is no such thing as the objectively correct answer to the question, Is *X* morally right? If I am a consistent cultural moral relativist, I will not—indeed, I *cannot*—criticize the norms of other societies as incorrect. While this may strike you as a reasonable position when it comes to many norms (for example, eating practices), the consistent moral relativist's "tolerance"

must also encompass other practices, such as slavery, the subjection of women, and genocide. Thus, the persecution of the Jews during the Nazi era was morally permissible, as long as that persecution was in line with the social norms current in the German Reich during the late 1930s and early 1940s. Similarly, consistent moral subjectivists cannot criticize on moral grounds the practices of others, either those within their own culture or those without.

Even stranger, moral relativism implies that moral progress (that is, the replacement of a set of cultural norms by a *better* set) is an impossibility. The overthrow of current moral standards is always morally wrong at the time the overthrow is occurring. For example, the actions constituting the civil rights struggle in the United States during the 1950s and 1960s must be judged by the consistent cultural moral relativist as morally wrong, for the actions were contrary to the then current norms. And according to them, anything contrary to a culture's norms is ipso facto morally wrong.

These implications of moral relativism are highly counterintuitive—they are so contrary to our normal understanding of what ethics is about that they demonstrate that moral relativism is not a tenable theory.

5.3 *An Overview of the Movie*

Crimes and Misdemeanors (1988). Directed by Woody Allen. Starring Martin Landau, Woody Allen, Mia Farrow, Alan Alda, Angelica Huston, Sam Waterston.

With a nod to Fyodor Dostoevksy and his great novel *Crime and Punishment*, Woody Allen's *Crimes and Misdemeanors* poses the question, What happens to ethics in a world in which the wheels of justice are not set right in the end, either by an omnipotent godlike the evil-doer himself? Many believe that *Crimes and Misdemeanors* is Allen's greatest film combining comedy, drama, and philosophy (and some fine acting, too) with more deftness than any of his efforts before or since. The film weaves together two subplots. In one, Judah Rosenthal, a successful physician, loving family man, and all-round pillar of the community, is the protagonist. We only learn later that he has a secret. His way of dealing with the problems generated by this secret form one subplot. Clifford Stern is the movie's second protagonist. Cliff is a never-do-well filmmaker whose current project is a documentary on the philosopher Louis Levy. Cliff's wife has other ideas. She convinces Cliff to work on a documentary about her successful TV-producer brother Lester. While working on this documentary, Cliff meets and falls in love with the documentary's producer, Halley Reed. Cliff's travails in his work and romance with Halley form the movie's second subplot. The character that links the two subplots together is the rabbi Ben, who is both Cliff's brother-in-law and Judah's patient. The two subplots finally intersect at a wedding reception for Ben's daughter at the end of the film.

The viewer needn't know anything about ethical theory to recognize the cleverness of Allen's screenplay, but appreciation for Allen's wit and creativity grow with even a passing knowledge of ethics. In *Crimes and Misdemeanors* Allen has managed to bring several ethical debates to life, and he has developed the main characters so that the major ethical theories are "represented" by someone in the film. *Crimes and Misdemeanors* also poses various existentialist questions, so it will be one of the two focus films in chapter 8, on existentialism.

5.4 *Ethical Theories in* Crimes and Misdemeanors

Even if one assumes that moral objectivism provides the correct interpretation of ethics, there are still many questions yet to be answered. What makes an action morally praiseworthy? What makes an action morally blameworthy? These are very abstract questions that are hard to get a handle on. Consider something more concrete: the scene in which Judah calls up his brother Jack to make arrangements for the hit man to kill Delores, beginning at the 43:00 minute mark.[7] I assume that, when you watched this scene in *Crimes and Misdemeanors*, your immediate response to Judah's action was moral condemnation—Judah's action was morally wrong. Why? What was it about Judah's action that made it morally wrong? Can you glean any useful generalizations from this concrete example that would be helpful in answering the two questions posed earlier in the paragraph?

This exercise points to a broad distinction made between ethical theories. **Consequentialism** is the view that what sets morally right actions apart from morally wrong ones has to do with the consequences that result from the action: morally right actions produce good consequences while morally wrong actions produce bad consequences. **Nonconsequentialism**, on the other hand, is the view that it is something other than consequences that is important in distinguishing right from wrong. Consider again Judah's action described above. Which of the following explanations comes closest to your way of viewing this example?

Consequentialist interpretation: Judah's action is morally wrong because of several factors. For one, he harms Delores in taking away the rest of her life. Also, unless her death occurred without any foreknowledge or pain on her part, the psychological and physical suffering Delores experienced right before her death must also be considered. Although we are not told anything about Delores's family, friends, and others who would be affected by her death, it is possible that these people also suffer as a result of Delores's death. In contrast, there appears to be relatively little positive that comes out of Delores's death that might compensate for the suffering she and others experienced.[8] This combined suffering is what made Judah's action morally wrong.

Non-consequentialist interpretation: Judah's action is morally wrong because, in so acting, he fails to recognize Delores's intrinsic moral worth as a person. In ordering her death, he treats her as a mere object that can be used in whatever way he sees fit. In an earlier conversation with Ben (MM 13:15), Judah even admits that he had been merely using Delores throughout their relationship. Ordering her death by the hit man is only the last in a series of wrong actions involving her. Even if Judah's action (the *ordering* of the killing) had failed in its ultimate goal because the hit man did not follow through with it, Judah's action in ordering the killing would have been just as wrong.

Even though both competing interpretations come to the same conclusion (that is, Judah's action is morally wrong), the line of reasoning that leads to these conclusions is importantly different.

Let's consider the consequentialist interpretation of events first. Judah's action is wrong because it produced bad consequences. With this observation we are pushed back to a further question: What is it about the consequences of Judah's action that makes them bad? In attempting to answer these questions, the English philosopher **John Stuart Mill** (1806–1873) looked for guidance to human psychology. What sorts of things do all humans desire? To this Mill answered, "Pleasure and freedom from pain are the only things desirable as ends; . . . all desirable things [i.e., particular objects of desire] . . . are desirable either for pleasure inherent in themselves or as a means to the promotion of pleasure and the prevention of pain."[9] What Mill meant was, looking as hard as you will, the only thing you will find humans really care about is pleasure (and freedom from pain). Particular things humans might want (for example, a fancy car, a good reputation, or a loving family) are desirable only insofar as they bring about pleasure for someone. According to this view, something (an object or an action) that was neither itself inherently pleasurable nor the means to the production of pleasure would not be desirable.

Once this principle about human psychology was accepted, Mill believed, the upshot for ethics was clear. Actions are morally right to the extent that they produce good consequences. Good consequences are consequences that result in lots of pleasure. So, actions are morally right to the extent that they produce lots of pleasure. Mill captured this inference in the principle (variously known as "the principle of utility" and "the greatest happiness principle"), which claimed "Actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."[10]

Since Mill equated *happiness* with *pleasure*, the greatest happiness principle is the equivalent to the claim that actions are morally right to the extent that they produce lots of pleasure.

Interestingly, Mill did not think that all pleasures were created equal. He was not calling for everyone to adopt the life of the glutton, seeking sensual pleasure at every

possible opportunity. Even if someone could manage to satisfy all of his sensual desires—the proverbial happy pig—his life would not be as pleasurable as that of someone engaged in intellectual pursuits. According to Mill, "It's better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied."[11] It's not that Mill thought sensual pleasures bad; quite the contrary—all pleasures, he felt, are good. It's just that sensual pleasures are not as deeply satisfying as other types of pleasures (for example, the pleasure an individual receives from intellectual pursuits or the "warm, fuzzy feelings" one receives from helping others).

Many contemporary followers of Mill have formalized his views in an ethical theory called **act utilitarianism**. According to this theory, acting in a morally right fashion is a matter of: (i) figuring which action will maximize overall happiness and (ii) choosing that action. Ethical decision making starts with a choice. A person has various options; which of several alternative actions is the person going to choose? The process for making morally correct decisions according to act utilitarianism can be boiled down to a three-step process:

1. Enumerate all the alternative actions from which the actor has to choose.
2. For each alternative, figure out the total amount of happiness that would result if that alternative were chosen. (This sum total is referred to as the alternative's **utility**.)
3. The alternative with the greatest utility is the morally right thing to do under the circumstances. Any alternative with less than maximal utility is morally wrong.

Let's apply this process in analyzing Judah's decision to ask his brother Jack to arrange for a hit man to kill Delores. Prior to the actual choice, Judah has various options open to him. He could have confessed his infidelity to his wife, as Ben had suggested. He could have "done nothing"—continued on trying to hide the affair and the embezzlement while not taking steps to silence Delores. He could have arranged for the hit man. (This is what Judah ends up choosing.) There are in fact many things Judah *could have* done, many different actions he *could have* chosen. All of these possible actions are what is meant in step 1 by "the alternatives."

Each of these alternatives has ramifications for the (un)happiness that various people would experience. The first alternative (confessing to his wife) would result in some unhappiness on his wife's part when she learns that her presumed-faithful husband is in fact not faithful. This knowledge will have ramifications for Judah and his happiness level. (Perhaps his wife will divorce him or perhaps their marriage will suffer in other ways.) While Ben suggests that this new honesty in their marriage will be a blessing in disguise, this is by no means guaranteed. There may be other people affected were Judah to choose this option. Among them are Judah's friends, relatives, neighbors, and

patients. The list of affected people could grow to be quite large. Admittedly, most of the people on the list would be only marginally affected by this choice, but, if we want to follow through in applying the step 2 of the process, we need to consider them as well.

What about the second alternative—the "do nothing" alternative? Who would be affected, and to what extent would they be affected in terms of their (un)happiness? Here again, there is a relatively small set of directly affected people (Judah, his wife, Delores); however, the list of marginally affected people may be quite large.

Finally, what about the alternative that Judah actually chose in the movie? What is the utility associated with that alternative? Obviously, Delores suffers. Death is not bad in and of itself within utilitarianism; however, since life is a prerequisite for experiencing happiness, actions that cause the death of persons generally turn out to be morally wrong according to act utilitarianism. Furthermore, if Delores's death caused her pain and suffering just before she died, that fact would tend to make this alternative all the worse. But, we cannot end the analysis there. Even though we may focus on the consequences for the murder victim when judging a homicide to be morally wrong, act utilitarianism requires that we consider *everybody* affected and that we take the *overall* amount of (un)happiness resulting from an action as the final measure in determining its moral status. The action's effect on Judah, his wife, his family, and his friends must also be taken into account. We learn in the closing conversation of the movie (MM 93:30) that Judah and his family have prospered because of Judah's choice. While the short-run consequences for Judah's state of happiness are bad (pangs of guilt so severe he seriously contemplated turning himself in to the authorities), in the long run, he and everyone he cares about prospered. Does this mean that, according to act utilitarianism, Judah did the right thing in choosing to have Delores killed? No—or at least not necessarily. That would depend on many things that we, as viewers of the movie, were given little information about: Did Delores have close friends and family who would have suffered greatly at learning of her murder? Was Delores generally a happy person, who could be expected to produce a lot of happiness during the remainder of her life, had she not been killed? Did the person who was convicted of Delores's murder suffer as a result of being falsely accused? (We are given some information that the answer to this question is no—he had already committed a string of murders sufficient to get him a life sentence, anyway.) Would Judah ultimately be found out, contrary to his expectations, so that, in the *very* long run, he and those around him would have their prosperity broken? A strange feature of act utilitarianism is that, if the circumstances (and corresponding consequences) turn out just so, even homicide will be judged as morally right. We shall return to this feature of act utilitarianism later.

This exercise highlights several interesting attributes of act utilitarianism. First, the theory is egalitarian, which means that everyone's happiness needs to be considered,

Everyone is treated equally: the actor making the choice doesn't count as any more important than anyone else. Each person's contribution to the overall utility is a function not of his position in society but only of the total amount of happiness he experiences if that alternative is chosen. The powerful don't count as any more important than the powerless; the rich don't count as any more important than the poor; the "innocent" don't count as any more important than the "guilty."

Utilitarianism also assumes there is some way to measure the happiness that people experience, so that the happiness level experienced by person A can be meaningful added to the happiness level experienced by person B. (This assumption is built into step 2 of the process.) Finally, utilitarianism is a general ethical theory; it tells us in general what properties distinguish morally right actions from morally wrong actions. According to act utilitarianism, an action is morally right if it produces at least as much total happiness as any other action an actor could have performed. The theory can be used either after the fact (that is, after a decision has already been made) to assign moral praise or moral blame, or prior to a decision to figure out which among several alternatives is the morally right thing to do.

Act utilitarianism is only one theory within the utilitarian family of theories (that is, theories that base evaluations of moral worth on an action's *consequences*.) Another version of utilitarianism is a theory called **moral egoism**. According to this theory, the only person whose happiness matters in determining the moral status of an action is the actor.[12] Thus, if my happiness is maximized when I perform action X, then action X is the morally right thing to do. The extent to which others are affected by one choice over another is not relevant in determining the moral status of an action. Keep in mind, as with act utilitarianism, that moral egoism focuses on long-run happiness. It is possible that the morally right thing to do according to moral egoism is an action that only bears fruit after many months or years. Furthermore, it may turn out that the way to maximize my own level of happiness is by helping others, either because helping others makes me feel good or because helping others increases the likelihood that others will help me in the future. While moral egoism has its problems (as we shall see in the next section), one shouldn't turn it into the straw man theory that implies that it is morally right for me to satisfy my every whim.

The character in *Crimes and Misdemeanors* that most clearly embodies moral egoism is Judah: in both word and deed, he shows that his sole concern in making decisions is how an action is going to affect himself. At the end of the movie, everything points to his success in having maximized his self-interest.

But, is it really the case that the consequences of an action are the correct thing to focus on in making judgments about an action's moral status? Recall that above I distinguished between two possible reactions to the question, Was Judah's action in arranging for the hit man to kill Delores morally right? The first reaction embodied the consequentialist view of ethics: Judah's action was wrong because it produced

worse consequences than some other action he could have chosen. Many philosophers reject this way of doing ethics; however, they disagree among themselves as to what the correct theory is.

Among philosophers, the ethical theory that is the most popular alternative to consequentialism is Kant's ethical theory, named after the German philosopher **Immanuel Kant** (1724–1804).[13] According to Kant, the consequences of an action are totally irrelevant in determining the moral status of an action. Rather, it is the actor's intention (that is, the motive that was driving the actor when she performed the action) that is the sole determiner of the action's moral status. It is hard to formulate Kant's view in a single sentence; one can, however, think of Kant's ethical theory as a set of nested descriptions that, when taken together, specify what it means for an action to be morally right. First, as we have already seen, an action is morally right if the actor's intention in performing that action was good. There is only one kind of good intention—the intention to do one's duty. One's duty is to act according to those general principles that one can will others to also act according to. (This latter sentence may strike some readers as a rough paraphrase of the golden rule, "Do unto others as you would have them do unto you." Kant rejected identifying his view with the golden rule; however, for our purposes here, this is probably close enough.) So putting it all together, **Kant's ethical theory** states that an act is morally right if the general principle the actor is following in performing that action is a principle that the actor can and does will others to act in accordance with.

Let's reconsider Judah's action in arranging for the hit man to kill Delores in light of Kant's ethical theory. The first item of business is determining what general principle Judah was following when he performed that action. This is a tricky issue, because the way we describe this general principle will make a huge difference in whether the principle is universalizable. If we make the principle too specific (so that it is applicable only in this one case), it will not really be universalizable. For example, if the "general" principle Judah is following is, "Whenever a person has a mistress who is threatening to reveal both his affair and possible embezzlement, then that person will call his brother who has connections to the mob to arrange for a hit man to kill said mistress," this principle is not general enough to really capture what is driving Judah in arranging for the hit man. What is motivating him is the desire to protect himself against the threat that Delores poses to his well-being. That the particular thing he is being threatened with is exposure of his affair and financial improprieties is mere detail. Thus, the correct way to describe the general principle that Judah is acting based on is, "Whenever a person threatens my well-being, I will kill that person." Is *this* principle something that Judah can and would will others to also act in accordance with? No—because he will certainly at some point pose a threat to others. However, he would not desire that the person he threatens kills him. Judah makes his rejection of the universalization of this principle clear a little later in the movie when, wracked by

guilt, he confides to his brother Jack that he is considering confessing his crime to the police (MM 80:00). This act constitutes a threat to Jack, and Jack makes very clear that he won't stand for Judah following through with it. Judah's reaction shows that he is quite unwilling to be killed now that the tables are turned and he is the one threatening rather than the one being threatened. So, the principle that Judah is following when he arranges for the hit man to kill Delores is not something that he is willing to universalize; thus, he is acting wrongly when he acts based on that principle.

Kant had a second way of formulating his ethical theory. This second approach is easier to understand and apply in many cases: "[Act so] as to treat humanity, whether in [your] own person or in that of any other, in every case as an end, . . . never as a means only."[14] The point Kant is making here is that it is always wrong to treat a fellow rational agent (that is, a member of "humanity") merely as an instrument to achieve one's own goals, without concern for that person as an autonomous agent with his or her own goals, desires, capacity for decision making, and so on. In formulating his ethical theory in this way, Kant meant to be describing the same theory in different words—all actions that turn out morally right according to the first formulation also turn out right according to the second, and vice versa. Indeed, Judah's action is also shown to be morally wrong according to this second formulation, since in this case as in others (by his own admission), he is merely using Delores to achieve his own ends.

So far, our discussion of ethical theories has focused on Judah. In many ways, though, it is the supporting characters in *Crimes and Misdemeanors* whose actions and statements are most useful in examining ethical theory. The two characters who are portrayed as deeply religious men, Ben (the rabbi) and Sol (Judah's father), present two different ethical theories that share in common a theistic base.

Sol represents an ethical theory called **divine command theory**, which holds that an action is morally right if that action is in accordance with God's will.[15] According to this theory, I act rightly when I do what God wants me to do; contrariwise, I act wrongly when I fail to do what God wants me to do. For an orthodox Jew like Sol, God's will is revealed to humans through Scripture. Obviously, divine command theory is not a single theory, but a family of theories, one for each religious tradition, because different faiths present different views of what God (or the gods) wills.

Divine command theory is not alone among theories that ground ethics in a transcendent being (God). Ben presents an interesting alternative. In the first conversation between Ben and Judah, when Judah tells Ben of his affair and Delores's threat to expose it, Ben suggests that Judah confess to his wife (Miriam), with the hope that she will understand. Ben even sees this as a possible source of enrichment for Judah and Miriam's marriage as they work through the ramifications of Judah's infidelity. Judah

scoffs at this idea. Then Ben responds, "[I]t's a fundamental difference in the way view the world. You see it as harsh and empty of values and pitiless. And I couldn' on if I didn't feel with all my heart that there's a moral structure—with real me ing —with forgiveness and some kind of higher power. Otherwise, there's no basi know how to live . . ." (MM 13:50).

The theory that Ben is summarizing above is called **theistic natural law theo** Its key features are that right and wrong are grounded in the natural order of thi (what Ben calls "the moral structure"), which is ultimately grounded in God's p poses. You may be asking what the difference is between this theory and divine-c mand theory. The answer is that, for theistic natural law theory, there is a concept layer separating ethics and God's will, whereas for divine command theory, ethic defined directly in terms of God's will. According to theistic natural law theo everything has a purpose or function, one that God had in mind and that led God create it. This purpose or function is something that rational creatures like ours glean by examining how nature is "put together." Thus, unlike with divine co mand theory, we don't need explicit revelation from God to figure out whether action is right or wrong. Indeed, according to this theory, the theist has no spec access to moral knowledge because all that is required to discern right from wro is human reason.

Natural law theory also comes in a nontheistic flavor. This theory, appropriate called **nontheistic natural law theory**, grounds right and wrong in natural p poses and functions, but explains these purposes and functions without invoking G as creator. Rather, the concept of a "natural purpose" or "natural function" would cashed out by the theory of evolution and other laws of nature.

What about other ethical theories that are represented in *Crimes and Misdemeano* The most colorful character from the movie has to be Judah's aunt May, who we me during Judah's reminiscence of a Passover seder from his youth (MM 69:50). Sol labe her a "nihilist"; although, it is unclear that she is best described as a moral nihilist, anything, Aunt May represents cultural moral relativism. In particular, her statemen "might makes right" is the watchword for one way of understanding that theory. At t least, it is clear that she is no moral objectivist, as seen in the following exchange:

> **Seder Guest:** What are you saying, May? There's no morality in the whole world?
> **May:** For those who want morality, there's morality. Nothing is handed down in stone.

Before ending this section on ethical theories, it may be useful to offer a condensed description of all the ethical theories we have discussed, so that they can be understood in relation to one another.

Table 5.1 Ethical Theories.

MORAL RELATIVISM

- **Moral nihilism**[16]—all moral statements are meaningless
- **Moral subjectivism**—the individual is the final arbiter of morality
- **Cultural moral relativism**—the culture is the final arbiter of morality

MORAL OBJECTIVISM

- **Consequentialism**
  - (1) **Moral egoism**—an action is right if it maximizes the actor's happiness
  - (2) **Act utilitarianism**—an action is right if it maximizes overall happiness
- **Nonconsequentialism**
  - (1) **Kant's ethical theory**—an action is right based on the actor's intentions
  - (2) **Natural law theory**—an action is right if it accords with "nature"
    - (a) **theistic**—"nature" is fleshed out in terms of God's purposes
    - (b) **nontheistic**—"nature" is fleshed out without mentioning God
  - (3) **Divine command theory**—an action is right if it accords with God's will

5.5 *Evaluating Ethical Theories*

I hope you agree with me that *Crimes and Misdemeanors* is a rich source for introducing various ethical theories. The movie, however, does more than just introduce the theories, it also offers implicit arguments for and against the various theories.

One such argument has already been hinted at above. How would a utilitarian analyze Judah's action in arranging for the hit man to kill Delores? First, one must consider the amount of happiness produced by the action and compare it with the amount of happiness produced by the other alternative actions that Judah could have chosen under the circumstances. If it turns out that Judah's choice produces the most happiness, then it is morally right. But, our moral intuitions tell us that any ethical theory worth its salt had better judge Judah's action as morally wrong. If it doesn't, that is reason enough to reject the theory as unacceptable. Unfortunately for utilitarianism, depending on what happens in the future, Judah's action may well be judged by that

theory as the morally right thing for Judah to have done. Indeed, the movie hinted th this was the case. Delores appeared to be a loner who wasn't very happy, anyway, a neither she nor those close to her would suffer greatly by her death. Judah and h family, on the other hand, prospered because he made this choice, they prospered in way that was *only* possible *because* he made this choice. Even the person who was falsel accused of the murder was not harmed, since, as a multiple killer, his jail time woul not have increased because of his conviction for this crime. It is hard to point to some one apart from Delores who was harmed by her death, while it is easy to find thos who profited (in terms of their happiness level) because of it. And even for Delores, she died quickly and painlessly, the nature of her harm is limited to the happiness sh would have experienced had she continued living. The movie suggests that she was n a particularly happy person. Thus, this loss may be more than compensated for by th increase in happiness experienced because of her death by Judah and his family. Th analysis points to one of the most serious problems for utilitarianism sometime referred to as the **problem of rights**: utilitarianism doesn't recognize the notion o a right—for example, the right not to be killed. For this ethical theory, there is noth ing in and of itself wrong with killing someone, so long as that killing produces mor happiness than not killing.

Also, for the classical version of utilitarianism (e.g., act utilitarianism as described h section 5.4), there is no requirement that happiness be equitably distributed. Thus, caus ing a few innocent people to suffer for the sake of producing benefits for the many ma turn out to be the morally right thing to do according to act utilitarianism, so long as th benefits to the many taken together outweigh the suffering of the few and there was no other way to achieve those benefits apart from sacrificing the few. (An example often used to illustrate this **problem of injustice** with act utilitarianism is the use of involu untary human research subjects harmed in the course of medical experimentation.)

How would an act utilitarian respond? She might say, "This analysis is incorrect i implying that Judah's action would turn out right according to act utilitarianism. It i based on several false assumptions. First, it's unlikely that Delores had so little happi ness in her life that she didn't miss out on much by being killed. Anyway, the analysi offered above misses the point: act utilitarianism is concerned with the long-run happ piness produced, whereas the above analysis focused too much on the short-term con sequences of Judah's action."

Neither of these responses succeeds in thwarting the criticism. Whether Delores was a generally happy person or not isn't really the issue—the criticism points to a very basic assumption within utilitarianism that the ends justify the means. All *Crimes and Misdemeanors* is doing is pointing out that this assumption raises the specter o highly counterintuitive results. (The theory implies Judah's action was morally right whereas our moral intuitions insist that Judah's act was morally wrong.) Indeed, our moral intuitions *demand* that the type of action Judah performed (that is, killing some

one under those circumstances) be judged wrong based solely on the type of action that it was. Our moral intuitions tell us we needn't know anything about the future (short run or long run) to know that what he did was morally wrong.

The act utilitarian's concern that we look to the long run when calculating the utility associated with an alternative brings up a third problem for the theory: in order to actually follow through with this calculation, we need to know *a lot* about how the future of the world is affected by choosing one alternative versus another. As such, the theory isn't of much practical use in moral decision making. This problem is referred to in the literature as the **problem of omniscience**.

Despite all these problems, act utilitarianism continues to be a popular theory among philosophers. Even for nonphilosophers, its focus on consequences captures an important facet of our moral reasoning: in our everyday decision making, we look to what the likely outcome will be of acting one way versus another in deciding what we ought to do. But, in the words of the character Halley, "No matter how elaborate a philosophical system you work out, in the end, it's gotta be incomplete." As an all-encompassing ethical theory, act utilitarianism is seriously incomplete.

Does *Crimes and Misdemeanors* offer a better suggestion? Yes and no. One of the major themes in the movie is questioning the relationship between theism and ethics. This theme is relevant not only to the adequacy of utilitarianism but also to the adequacy of Kant's ethical theory and nontheistic natural law theory. Are those theories missing a necessary ingredient, namely, God?

The best entry point for this discussion is a revisitation of moral objectivism. Utilitarianism, Kant's ethical theory, natural law theory (both theistic and nontheistic) and divine command theory all claim to be objectivist ethical theories. Where does the *ought* come from within these theories? For example, why, according to the utilitarian, *ought* someone maximize happiness? Certainly, the following two statements say different things:

S: Action A maximizes overall happiness.
S': Action A is morally right.

Why, according to the act utilitarian, does *S'* follow from *S*? The utilitarian, following Mill, grounds *ought* in a fact about human psychology—the only thing that is desirable in-and-of-itself is happiness (in Mill's words, "pleasure and freedom from pain").

This question about where the "ought" comes from is not just a question for the utilitarian. One can equally well ask the Kantian, Why *ought* someone act only with an eye to following universalizable principles? Kant grounds *ought* in the assumption that "[n]othing can possibly be conceived in the world . . . which can be called good without qualification, except a Good Will,"[17] and in our existence as rational beings.

A line of argument that runs through *Crimes and Misdemeanors* disparages both of these responses as qualitatively inadequate. There are three conversations that are relevant here. The first is one we have already considered: the first conversation between Ben and Judah in Judah's office (MM 13:50). The second occurs in Judah's head as he is deciding whether to take Jack up on his offer to "get rid of" Delores (MM 40:50), begins with a replay of parts of the conversation mentioned above but continues with a new ending:

Ben: Without the law, it's all darkness.
Judah: You sound like my father. What good is the law to me if I can't get justice?

This "conversation" ends when Judah goes to call Jack. The third conversation is the one that links together the subplots of the movie—one involving Cliff and his travails, the other involving Judah and his murder. It occurs at the wedding reception for Ben's daughter. (The conversation stretches from MM 93:30 to MM 99:30.) In it, Judah informs us of what his life has been like since Delores was killed, by describing it to Cliff as a plot for a murder mystery. He repeats what we have already seen earlier in the film—that he was wracked by guilt just after the murder took place to such an extent that he contemplated turning himself in. The world, previously viewed by him as empty of values, is now seen as very much full of values—and his act is a major violation. The eyes of God are watching his every move. But then, Judah reports, something changed. Gradually, these feelings of guilt and the fear of being found out faded away. The murder was pinned on a serial killer, so he seemed to be totally off the hook. Occasionally, little pangs of guilt would surface, but, as time went on, they were less frequent and less disturbing. Several months later, he was back to his comfortable life of wealth and privilege, as if nothing had happened.

This latter conversation contains implicit reference to Dostoevsky's *Crime and Punishment*, the story of a man (Raskolnikov) who murders a neighborhood pawnbroker. A glaring difference between subsequent events in this novel and those in Woody Allen's movie is that Raskolnikov's guilt increases without abatement until finally, in order to find some sort of relief, he turns himself in to the police. Cliff cannot stand the idea that the murderer got away in Judah's "story." The killer is not even plagued with a persistently guilty conscience. This lack of ultimate punishment (either via incarceration or pangs of guilt) is what makes Judah's "story" so chilling.

While many theists would agree, the unsettlingness of a world without ultimate punishment is a special theme of Christian apologists, those who present arguments with an aim toward convincing others of the truth of Christianity. The character of Sol is proof that this tendency also appears within Judaism.

Yet, what's so bad about a world without ultimate punishment? Earlier I stressed the difference between a value judgment and a nonvalue judgment. Moral evaluations are instances of the former. But moral evaluations are more than that. Moral evaluations also include an implicit imperative or command. When you see someone about

to do something that you believe is wrong and you say to them, "It would be wrong of you to do that," implicit in that sentence is the imperative, "Don't do that!" While issuing a command (whether implicit or explicit) about a past action doesn't make much sense, still, the shadow of the implicit imperative is there when you judge as morally wrong an action that has already been performed. Earlier, I posed the question, Where does the 'ought' come from within various ethical theories? We saw what Mill and Kant had to say about their respective theories. Do their answers explain this implicit imperative in moral evaluations? If not, what could? Many apologists answer the first question with a no—the only thing that could serve to explain where the imperative comes from is the stick that God holds over everyone's head, ready to strike down evildoers, either here on earth or in the afterlife:

> If life ends at the grave, then it makes no difference whether one has lived as a Stalin or as a saint. Since one's destiny is ultimately unrelated to one's behavior, you may as well just live as you please. As Dostoevsky put it: 'If there is no immortality then all things are permitted.' On such a basis, . . . sacrifice for another person would be stupid. Kai Nielsen, an atheist philosopher who attempts to defend the viability of ethics without God, in the end admits, 'We have not been able to show that reason requires the moral point of view, or that all really rational persons, unhoodwinked by myth or ideology, need not be individual egoists or classical amoralists. Reason doesn't decide here. . . . Pure practical reason, even with a good knowledge of the facts, will not take you to morality.'[18] If there is no God, then there can be no objective standards of right and wrong. All we are confronted with is, in Jean-Paul Sartre's words, the bare valueless fact of existence.[19]

This "bare valueless fact of existence" is what Ben means when he said "Without the law, it's all darkness," and, "You [Judah, the atheist] see [the world] as harsh and empty of values and pitiless. And I couldn't go on if I didn't feel with all my heart that there's a moral structure—with real meaning—with forgiveness and some kind of higher power. Otherwise there's no basis to know how to live." Morality doesn't exist unless there is some transcendent being (God) who can invest the world with values "from without."

For what ethical theory does *Crimes and Misdemeanors* argue? It is interesting to note that the film doesn't end with Cliff and Judah's conversation and the implicit argument for some theist-based ethical theory, but rather gives the last word to a voice-over from Professor Levy:

> We're all faced throughout our lives with agonizing decisions . . . moral choices. Some are on a grand scale, most of these choices are on lesser points. But, we define ourselves by the choices we have made. We are, in fact, the sum total of our choices. Events unfold so unpredictably, so unfairly. Human happiness does not seem to have been included in the design of creation. It is only we, with our capacity to love, that give meaning to an indifferent universe. And yet, most human beings seem to have the ability to keep trying and find joy from simple things—from their family, their work, and from the hope that future generations might understand more.

Levy admits that we live in an objectively "indifferent [i.e., valueless] universe," but he thinks that isn't such a bad thing. I will leave you to ponder the significance of his suicide—of his own personal inability "to keep trying and find joy from the simple things."

Discussion Questions

1. Should counterintuitive implications count against an ethical theory? What does that say about ethics if they are counted? If they are not counted?
2. Which ethical theory does Cliff represent? What about Lester? Delores?
3. What is the significance of Louis Levy's suicide?
4. What is the significance of Ben's going blind?
5. Does ethics presuppose the existence of a god (or some means to set the wheels of justice right in the end)? Is atheism a "dangerous idea"? Do you agree with Judah that the "movie plot" he describes to Cliff at the wedding reception is "a chilling story"?
6. Do you think *Crimes and Misdemeanors* is implicitly arguing in favor of an ethical theory? If so, which one? What hints do you see in the movie of a preferred theory?
7. Is it really a *fact* about human psychology that the only thing desirable in and of itself is pleasure and freedom from pain?

Annotated List of Film Titles Relevant to Ethics

Films that contain implicit arguments against act utilitarianism

Extreme Measures (1996). Directed by Michael Apted. Starring Hugh Grant, Gene Hackman.

A movie that explores whether the ends always justify the means.

Run, Lola, Run (1999). Directed by Tom Twyker. Starring Franka Potente, Moritz Bleibtreu.

This movie brings up the problem of omniscience.

Other Films Relevant to Moral Philosophy

Schindler's List (1993). Directed by Steven Spielberg. Starring Liam Neeson, Ralph Fiennes.

At the beginning of the movie, the protagonist Oskar Schindler is a self-starting businessman and wheeler-dealer who sees the Second World War as an incredible opportunity for making money. But his attitude starts to change when he witnesses the suffering experienced by the Jews.

Crime and Punishment (1935). Directed by Josef von Sternberg. Starring Peter Lorre, Edward Arnold.

For those who'd rather watch an adaptation of Dostoevsky's novel rather than read it, here's your chance.

Annotated List of Book Titles Relevant to Ethics

"Classics" in the History of Moral Philosophy

Aristotle

Nichomachean Ethics. This book was written by Aristotle during his tenure as teacher and leader at the Lyceum (a precursor of the modern university) in Athens, 334–323 B.C.E. Aristotle's writing style makes the work somewhat difficult reading. Indeed, many scholars believe that *Nichomachean Ethics* was actually Aristotle's lecture notes, and was never meant for publication. The translation by Terence Irwin, published by Hackett in 1985 is highly recommended. The *Ethics* is also available in its entirety online at <http://classics. mit.edu/Aristotle/nicomachaen.html>.

Thomas Aquinas

Summa Theologica, completed in 1273. The source for natural law theory. Still very influential on Christian (especially Roman Catholic) doctrine. The *Summa Theologica* is also available in its entirety online at <http://www.ccel.org/a/aquinas/summa/home.html>.

Immanuel Kant

Fundamental Principles of the Metaphysic of Morals (sometimes translated as *Groundwork of the Metaphysic of Morals*). First published in German in 1785, this one-hundred-page book is the main source for Kant's ethical theory. The *Groundwork* is also available in its entirety online at <http://www.vt.edu/vt98/academics/books/kant/pr_moral>.

John Stuart Mill

Utilitarianism. Originally published in 1861, this very readable little book presents the most thorough and influential defense of utilitarian theory. Quotations here are from the Hackett edition published in 1979. *Utilitarianism* is also available in its entirety online at <http://www.utilitarianism.com/mill1.htm> and <http://www.la.utexas.edu/research/poltheory/mill/util/index.html>.

W. D. Ross

The Right and the Good (Oxford: Oxford University Press, 1930). Ross argues that ethical theories need not be one-dimensional. This book has been very influential in shaping recent moral philosophy.

John Rawls

A Theory of Justice (Cambridge, MA: Harvard University Press, 1971). This book tries to combine a reinterpretation of Kant's ethical theory with a social contract theory of justice.

Collections of Essays and Single Author Books on Moral Philosophy

James Rachels, *The Elements of Moral Philosophy*, 3rd ed. (New York: McGraw-Hill, 1999). An excellent introduction to ethics.

Daniel Bonavec, *Today's Moral Issues*, 4th ed. (New York: McGraw-Hill, 2002). This book marries ethical theory and applied ethics.

Kai Nielson, *Ethics without God* (London: Pemberton Press, 1973). This book examines the question, Does objectivist ethics presuppose the existence of God?

Jack Meiland and Michael Krausz, eds., *Relativism: Cognitive and Moral* (Notre Dame, IN: Notre Dame University Press, 1982). This book examines the pros and cons of moral relativism.

Related Works

Alisdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981). MacIntyre argues for a return to virtue-based ethics.

The History of Herodotus, first published in 440 B.C.E. Herodotus is the greatest historian of the classical period; his *History* is a useful early source for fodder for the cultural moral relativist's argument.

Fyodor Dostoevsky, *Crime and Punishment*, first published in 1865. An understanding of *Crimes and Misdemeanors* is enhanced with knowledge of this work. *Crime and Punishment* is available in its entirety online at <http://www.online-literature.com/dostoevsky/crimeandpunishment/>.