

DISCRETION AND JUSTICE IN EDUCATIONAL  
ADMINISTRATION: TOWARDS A NORMATIVE  
CONCEPTUAL FRAMEWORK

A Thesis

Presented to the  
Faculty of Graduate Studies and Research  
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In Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy



by

Otto B. Toews

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## ABSTRACT

This study is a philosophical inquiry. An attempt is made to develop a normative conceptual framework which could help school administrators resolve ethical and moral issues when they must exercise discretion. The conceptual framework classifies and interrelates the moral terms and judgements needed to resolve ethical and moral problems. The framework is normative not only because it classifies and interrelates moral terms and judgements but because it leads to some specific moral conclusions. First and foremost, it leads to the conclusion that moral judgements must be made on the principle of justice. To do so, the framework points out that the person who makes moral judgement must establish the duties, rights, moral motives, and deserts which make a judgement just. Secondly, the framework points out that the rules governing the application of judgements must meet two conditions: they must be just and as unrepressive as possible. Finally, the framework claims that moral judgements are made on an objective basis of approval and a subjective basis of approval. The objective basis is a person's knowledge or belief about an object. The subjective basis is a person's sense of fellow-feeling. Indeed, it is argued that without this special subjective basis (i.e., sense of fellow-feeling), there could be no moral judgements but only some other forms of judgements such as pragmatic, prudential, or aesthetic.

The application of the normative conceptual framework to the exercise of discretion by school administrators is unique to this

study. In making this application, the unnecessary and necessary use of discretion is analyzed with the assistance of a framework developed by K.C. Davis.<sup>1</sup> The purpose of the application is to show how the normative conceptual framework can help to confine, structure and check the use of discretion so as to reduce injustice and improve the quality of justice in schools.

The final chapter explores what a school might be like where the normative conceptual framework is used to control the use of discretion so as to reduce injustice and improve the quality of justice. Several features are highlighted. Such a school would be characterized by a liberal view of authority, a plurality of authorities, the use of rational and moral persuasion as well as the use of just rules. The merits of each of these characteristics for school organization and management are discussed.

The philosophical inquiry conducted in this study is pursued in the tradition of what Frankena refers to as normative and meta-ethical thinking. He describes this kind of thinking as "providing the general outlines of a normative theory to help . . . answer problems about what is right or ought to be done, and as being interested in meta-ethical questions mainly because it seems necessary to answer such questions before one can be entirely satisfied with one's normative theory".<sup>2</sup> A third kind of thinking, which is also necessary to deal with actual moral issues, is called descriptive empirical enquiry. The study does not pursue this line of thinking. The use of normative and meta-ethical thinking to develop a normative conceptual framework should be followed by descriptive empirical thinking to establish the applicability of the framework. This is a large task and is therefore left for further study.

FOOTNOTES

<sup>1</sup>Kenneth Culp Davis, Discretionary Justice: Preliminary Inquiry (Chicago: University of Illinois Press, 1977).

<sup>2</sup>William Frankena, Ethics (Englewood Cliffs: Prentice-Hall, 1963), p. 5.

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## CHAPTER I

### THE PROBLEM: ADMINISTRATORS, DISCRETION AND JUSTICE IN SCHOOLS

The purpose of this study is to develop a normative conceptual framework for making moral judgements when school administrators exercise discretion in pursuit of justice. The framework attempts to identify critical moral concepts and judgements which administrators ought to use in exercising discretion and to illustrate how these are interrelated. The framework is conceptual in that the building blocks are concepts or abstractions of which discretion and justice are examples. The framework is normative in that the concepts and judgements involved concern such notions as right, wrong, duty, responsibility and desert and because these concepts and judgements are prescriptive, that is, they are meant to guide action.

The study assumes that, since the administrators of schools require the exercise of discretion, a normative conceptual framework is needed to guide administrators when they exercise it. The exercise of discretion refers to situations where the effective limits of action leave the administrator free to make a choice among possible choices of action.

Implicit in the normative conceptual framework developed in this study is a theory of justice. The framework explains what is meant by justice and how the quality of justice can be improved. Indeed, the framework addresses substantive and procedural concerns regarding the pursuit of justice. In fact, the framework should enable school administrators to deal with this key moral issue: "How should people decide what is morally right to do in specific situations?"

## I. THE NEED FOR A NORMATIVE CONCEPTUAL FRAMEWORK FOR EXERCISING DISCRETION

In order to determine the significance or importance of undertaking this kind of study, the need for a normative conceptual framework for exercising discretion must be established. This is done in two parts. First, the widespread exercise of discretion by school administrators is discussed. Second, a case is made for the need for a normative conceptual framework to help administrators deal with ethical and moral issues in schools.

### A. Exercising Discretion

I think the greatest and most frequent injustices occur at the discretion end of the scale, where rules and principles provide little or no guidance, where emotions of deciding officers may affect what they do, where political or other favoritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made.<sup>1</sup>

In order to understand the concept of 'discretion', it is useful to begin by observing how it is used in jurisprudence. Dworkin points out that it is used to refer to situations where "someone is in general charged with making decisions subject to standards set by a particular authority".<sup>2</sup> He describes it as an area of decision-making "left open by a surrounding belt of restrictions".<sup>3</sup> He identifies several ways in which the word is used, two of which are uses in the weak sense and one in the strong sense. Sometimes it is used in the weak sense to mean that the standards an official must apply cannot be applied mechanically but demand the use of judgement; other times the weak sense refers only to the observation that some official has final authority to make a decision which cannot be reviewed by someone else. The strong sense of discretion refers to a situation where the person

is not bound by any standards established by authorities. Then he must establish his own standards. Dworkin points out that nominalists employ the second weak sense because they maintain that judges always have discretion because they are ultimately the final arbiters of law. He says that positivists use it sometimes in the first weak sense and sometimes in the strong sense. When rules of law are vague or reflect an "open texture" judges must exercise judgement in applying legal standards. When no rules or legal standards apply, the judge is not bound by any standards furnished by a particular authority. Then he must exercise discretion in the strong sense. The judge is free to use whatever standard he chooses.<sup>4</sup>

This concept of discretion derived from jurisprudence has been applied to the exercise of discretion in administrative law by Davis. His usage of the concept of discretion incorporates the different meanings described by Dworkin.

In this study, which follows Davis, the exercise of discretion refers to situations where the effective limits of a person's actions leave a person free to make a choice among possible choices of action. The decisions involving justice made by administrators range from being based on precise rules to those based on various mixtures of rules, principles, standards, and discretion to unfettered discretion. Davis maintains that justice is most readily, and probably most frequently implemented in interactions governed by rules. Injustice is probably most frequently inflicted when administrators have discretion--where rules, principles, and standards do not offer sufficient guidelines for decision-making.

Davis claims that most research is conducted about law and

government and virtually none deals with exercising discretion. He claims this applies to jurisprudence, public administration, and administrative law. Partly, he says this is due to a preoccupation with scientific knowledge. Norton Long reports: "The problem of education of public administrators has been clouded by the misconception that only scientific knowledge constituted reliably useful instruction".<sup>5</sup> Likewise, administrative law in general focuses primarily on formal proceedings or judicial review and largely neglects the exercise of discretion.

#### 1. Exercising discretion in schools

Discretion is exercised extensively by school administrators. Much of it is exercised routinely with regards to procedural issues like whether to:

- (a) listen to or ignore pleas from staff, students, and parents;
- (b) offer reasons or withhold reasons for introducing a policy;
- (c) punish or warn an offender;
- (d) consider or ignore the uniqueness of a particular situation;
- (e) consider or ignore the psychological conditions of staff or students;
- (f) withhold or offer advice;
- (g) conform to or depart from the policies of other administrators;
- (h) consider or ignore the time required to deal with a particular problem or situation;
- (i) consider alternative interpretations of laws and rules;

- (j) entertain sympathy for a person in a particularly difficult situation;
- (k) exercise leniency;
- (l) grant exceptions;
- (m) give priority to certain demands or requests;
- (n) grant an exception in order to force certain action;
- (o) pursue certain courses of action which are of doubtful legality;
- (p) take preventive actions.

Administrators are not required to make only procedural decisions but they must also resolve substantive issues through the exercise of discretion. This is how many policies, rules, and regulations are made. The following is a sample list of substantive issues:

- (a) preparing timetables;
- (b) allocating workloads;
- (c) implementing rules regarding discipline;
- (d) hiring staff;
- (e) selecting materials;
- (f) developing curriculum;
- (g) establishing reporting procedures for student evaluation;
- (h) involving staff in decision-making;
- (i) conducting staff meetings;
- (j) conducting faculty meetings;
- (k) establishing budgeting procedures;
- (l) allocating facilities.

All these areas are governed partly by provincial legislation, division policies and school policies. They are issues which an administrator can deal with to a great extent by using his or her own discretion or by establishing school-based policies and regulations.

Even though policies and regulations have been developed within a school regarding substantive issues, the administrator still has considerable latitude in the application of policies in each situation. For example, a school might have developed a fairly comprehensive set of rules governing student deportment at school spelling out what students may or may not do. Even then, an administrator may exercise discretion regarding a misdemeanor committed by a student by:

- (a) not acting on the misdemeanor;
- (b) trading punishment for an apology;
- (c) suspending punishment;
- (d) reducing punishment;
- (e) pardoning a student (e.g., not enforce suspension).

In short, administrators are constantly faced with the possibility or necessity of exercising discretion. They can never get away from it. They need to understand the parameters within which discretion must be exercised.

The exercise of discretion by school administrators is further complicated by the fact that most issues faced by them involve the weighing of social and personal values. Since education is a moral enterprise, that is, it must provide worthwhile educational experiences, the issues dealt with by administrators usually involve questions of right and wrong. Further, since decisions made by

administrators frequently are either prescriptive or proscriptive, they require that administrators make moral judgements. That is so particularly if one of the goals of administrators is to see that schools function on the principle of justice.

In conclusion, there is a need for a better understanding of the discretion used by administrators in schools. The exercise of discretion is widespread. Since the exercise of discretion refers to situations where the effective limits of a person's actions leave him free to make a choice among possible choices of action and inaction, they are situations where administrators are free to improve the quality of justice or condone injustice. Since many issues faced by administrators involve ethical and moral issues, it is morally significant how they exercise discretion when they resolve issues arising at school. It is for these reasons that this study focuses on the application of a normative conceptual framework to the exercise of discretion by school administrators.

## 2. Authority to exercise discretion

For administrators to be able to exercise discretion, they should have the authority to do so. This statement raises the following questions: What does it mean to say that a person has the authority to exercise discretion? How is authority legitimated? Must the legitimate use of discretion be justified?

First, what does it mean to say that a person has authority? 'Authority' refers to that ability which some people seem to have to get other people to obey them without recourse to the use of force. One person accepts the advice of another on the basis that the latter

is an 'authority' on the matter. In fact, when a teacher has to resort to force, it is sometimes said that he or she has lost his or her authority or that his or her authority has broken down. How can an educator solicit this kind of authority? How do people come to exercise authority? A person may have authority de jure where he or she derives the right to issue orders from a particular position he or she holds. This is usually spelled out in a set of rules or a legal system. A person may exercise authority de facto or simply due to the fact that others obey him or her on the basis of certain personal qualities or superior knowledge or experience which he or she possesses but not from any position. The former is an example of being in authority and the latter of being an authority. Of course, both may apply to the same person in which case the person's position of authority is fairly strong because he or she is in a position of authority as well as being regarded as an authority.

In summary, when people are an authority or are in authority (or both), they may exercise power over other people. This includes the exercise of discretion. A person probably has most power when he or she is an authority who is also in a position of authority. Administrators are de jure in a position of authority. They need to be an authority in order to maximize their ability to exercise discretion.

For people to exercise discretion, they should have legitimate authority. Max Weber believes that authority in organizations is legitimized in three ways:

- (1) by the sanctity of tradition,
- (2) by values that derive from conceptions of the divine or

supernatural power (the Charismatic Leader),

(3) by a belief in the legal/rational supremacy of the law.<sup>6</sup>

More recently, sociologists like Gouldner, have explained the basis for legitimacy as follows:

The authority of the modern administrator is characteristically legitimized on the basis of his specialized expertise; that is, administrators are regarded as proper incumbents of office on the basis of what they know about the organization or their professional skills, rather than whom they know.<sup>7</sup>

But, who decides what constitutes an appropriate basis of specialized expertise? Gallagher notes that this question draws attention to a paradoxical situation:

The concern of local client groups with the power of legitimate authority, a centrifugal tendency, contrasted to the centripetal one of problems in the local system, and the innovations necessary to solve them, deriving from larger systems.<sup>8</sup>

How should professions in a service organization (i.e., educational organizations) respond to this paradoxical situation where they must serve the collective interests of the client group and at the same time retain their authority to solve problems and not become entirely subservient to the demands of the client group?

Second, what is the nature of authority? Downey and Kelly<sup>9</sup> explain it in relation to the concept of "freedom". The word "free" denotes the absence of some restraint. In the use of the word "free" there is the implicit assumption that the restraint that is absent is an undesirable restraint. Freedom is generally regarded as something worth having.

A distinction is made between two kinds of freedom--between the negative and positive views of freedom; between 'freedom from' and 'freedom to'. Both imply the absence of restraint because each view

presumes the other. Sometimes 'freedom' is used prescriptively, that is, a demand that a state of freedom be created. However, to speak of freedom in this kind of unqualified way cannot be to demand the removal of all restraints. That would be confusing license with freedom. However, this distinction is important since it suggests that the existence of some restraints is not incompatible with the notion of freedom. This would suggest that the prescriptive use of freedom does not demand that all restraints be removed but that the presence of restraints must be justified in all cases. It follows that the idea of authority used to apply justifiable restraints is not incompatible with the notion of freedom.

The issue of legitimation must be distinguished from the issue of justification for it is possible for an authority to be legitimized without it being justified for the person with authority to exercise it. For example, suppose it were traditionally legitimate for an administrator to exercise his or her authority to pressure a child to improve his or her spelling skills by strapping any child who misspelled more than half the words in a spelling test. That would not necessarily justify the administrator's use of his or her authority. It is important to raise the question of whether exercising authority can be justified. Since exercising authority means prescribing or proscribing action for other people, it is important that administrators know that they are justified in exercising it.

So far, only negative arguments against the use of authority

have been offered. Are there any situations or circumstances in which it would be justified to exercise authority? J.S. Mill in his classical article, "On Liberty", suggests one fundamental justification for the existence of restraints. He advocates the following principle for exercising restraint: ". . . the sole end for which mankind are warranted, individually and collectively, in interfering with the liberty of action of any of their member, in self-protection".<sup>10</sup> It is justified, he says, to exercise authority to restrain a person from interfering with or causing harm to others although it is not justified to restrain a person from harming himself. In short, exercising authority can be justified to ensure that freedom can be enjoyed by all rather than license by some. As applied to schools, this suggests that authority must be exercised in schools to protect all members from each others' excesses.

Does the educational context suggest any other justification than the one provided by Mill for exercising authority? Do educators have responsibilities for which they need to exercise authority? According to R.S. Peters, who conducted an analysis of the concept of education,<sup>11</sup> the answer is yes. He concluded from his studies that the purpose of education is to initiate children to a depth and breadth of worthwhile knowledge and understanding. In other words, education refers to those processes which stimulate a desirable state of mind and person, involving knowledge and understanding. Specifically, the task of education therefore, is to promote various parallel lines of development. Schools should promote the development of critical thinking or cognitive development in children through various communication skills, listening skills,

questioning skills, analyzing skills, and sharing skills. Second, personal development should be nurtured in schools. This includes the development of critical acceptance of self, ability and willingness to take the initiative (being a self-starter), ability and willingness to be industrious (finishing what one starts), ability to manage cooperative and competitive situations, ability to recognize the function of leading and following, and the ability to pursue personal integrity. Third, an interest in aesthetic experiences like beauty in art form, harmony in music, and rhythm in drama should be nurtured. Fourth, education should promote the acquisition of decision-making skills. This includes skills in framing issues, inquiring into relevant facts, critical thinking, and making evaluative judgements. Finally, it is essential that educators promote an appreciation for some of the socially accepted values of our society. These include an appreciation for a sense of truth, honesty, justice, and compassion.

It should be emphasized that these goals are not achieved automatically. Educators have known this intuitively and the research in developmental psychology has confirmed it.<sup>12</sup> Students must be initiated to new choices, experiences and ideas to promote development. Educators must exercise authority to provide students with appropriate developmental experiences. However, the educators' authority is only provisional. If they are successful, the learner will acquire greater autonomy. This, in turn, should reduce the educators' authority. In short, the important issue is not one of authority and freedom but one of authority and authoritarianism--the use and abuse of authority.<sup>13</sup>

In conclusion, since the exercise of discretion should be

subsumed under the exercise of authority; discretion should be exercised only when it is legitimate and justified to do so. Certainly, that should be the case if discretion is exercised to improve the quality of justice and reduce injustice.

### 3. The role of administrators in schools

What is the context in which school administrators exercise discretion? This question is dealt with in March's account of the school context in which administrators have to work. He describes school administration as:

. . . a bus schedule with footnotes by Kierkegaard. It involves the rudimentary pragmatics of making organization work-- laws, rules, logistics, therapy; complicated questions of inference, the interpretation of information, and the invention of justification of action; subtle literary and philosophic issues of human meaning; constructive criticism of daily events as art.<sup>14</sup>

The role is complicated by a context which is described by March as being ambiguous, diffuse, parochial, and normative.<sup>15</sup> The context is ambiguous in that the statement of objectives, the selection of technology, and the interpretation of past experience frequently are vague and indefinite. The classic goals of promoting intellectual and personal development, equality, and social development, are difficult to translate into specific objectives without losing the scope of the general goals. Whenever goals are fairly clear, it is difficult to know what alternative technologies of schooling are appropriate and effective for their implementation. Little is known about the relationship between educational goals and the technology of schooling. Furthermore, it is difficult to interpret past experience. Why things happened in the past is often

obscure and therefore experiential inferences are often misleading. Consequently, the administrative situation in schools is analytically obscure. This can and does lead to behavioral rigidity where an administrator is expected to act in terms of socially established norms without being able to reduce or challenge inconsistencies among actions, objectives, technologies and experience.

Second, March points out that the administrative system in education is diffuse. It is generally understood that administrators pursue important activities like planning, co-ordinating, controlling, decision-making, and providing leadership. But, it is difficult to describe precisely what administrators do in specific behavioral terms. Nor is it easy to establish the impact of administrative actions on schooling. This might be due to, in part, the "loose coupling", March suggests, between the activities of administrators and the learning activities of children as well as the teaching activities of teachers.

Third, March suggests that the administrative system is parochial. Most educational administrators are geographic and occupational "locals." They have been in education all their lives and they work near the place where they grew up and were educated.

Fourth, March maintains that the administrative system in education is normative. The context affects their beliefs and the beliefs of others around them about the nature of education. Their careers are largely regulated by social norms, that is, they go about their jobs in ways dictated by social expectations even though they might complain about the consequent misallocation of the way they must

use their time. In general, they share society's basic articles of faith about education and this context affects how they make value judgements.

In summary, the realities of schools and the expectations of administrators requires the exercise of discretion. When administrators exercise discretion in this context, they inevitably encounter moral and ethical issues.

#### B. The Need for a Normative Conceptual Framework

Since the main focus of the study is to develop a normative conceptual framework for the exercise of discretion by school administrators, it is essential that the need for such a framework be clearly established. This need is established in three ways. First, an attempt is made to show, through the use of a hypothetical example, that school administrators face numerous moral concerns. Administrators are faced with many situations where they must resolve ethical and moral issues. Parents would be gravely concerned if administrators did not attend to ethical and moral problems in a morally responsible manner. Second, an attempt is made to see how an administrator, who has been persuaded to accept a cultural relativistic position, would respond to moral concerns in school. It is pointed out that many social scientists seem to resolve ethical and moral issues in a cultural relativistic manner, in other words, let the conventions of culture settle all value issues, including moral value issues. If this would be done in a morally responsible manner, then people would have no need for a normative conceptual framework. Wellman's<sup>16</sup> counter-arguments to cultural relativism are

advanced and cultural relativism is rejected on the strength of Wellman's counter-arguments thus helping to establish the need for a normative conceptual framework. Third, an anthropological analysis of the evaluative process is presented. This analysis does not reflect a cultural relativistic position, in contrast to most social scientists. Rather, the analysis points to the need for a normative conceptual framework for resolving value issues, including ethical and moral issues.

#### 1. Moral concerns about school

Would parents be concerned about anything at all if administrators were to ignore moral issues? Would they see such a situation leading to moral decline in schools and would that bother parents? What might a reasonable parent be concerned about should moral issues be ignored by administrators?

It is assumed in this argument that a reasonable person has the cognitive and affective qualities of a morally responsible or decent person. The cognitive quality is that he has a concept of right and wrong, can distinguish between right and wrong, and can understand the meaning of right and wrong. The affective quality is that he has what Hume refers to as the 'sentiment of humanity' (a feeling for the happiness of mankind and a resentment of misery). Why might such a reasonable person be concerned over the decline of morals in schools?

Suppose Mr. Smith is a parent with a child in an elementary school where Mr. Jones is the principal. As a morally responsible person, Mr. Smith knows that whereas all people have objects of inter-

ests as well as objects of disinterests and that people generally try to attain the former and avoid the latter, people do not necessarily make all decisions on this basis. Morally good people try to do what is right because they believe that the act is right and because they want to do what is the right thing to do. Morally bad people pursue their objects of interests in spite of their wrongness or with indifference as to their wrongness. The principal who is a morally good person will punish (object of disinterest) a person only when he believes that it is the right thing to do and he will do it from the desire or commitment to do what is right. The principal who is a morally bad person might favor one student over another in spite of its wrongness or with indifference as to its wrongness. Mr. Smith believes that morally bad people deserve an expression of disapproval or punishment. Most important, he is concerned that the morally irresponsible principal will ignore or maybe even forget the standard of right and wrong as well as the meaning of right and wrong. Should that happen, how can he treat children in a morally responsible manner, let alone teach them to be responsible children?

Mr. Smith is aware of the possibility of moral decline in school because he is aware of the human condition. He realizes, from personal experience as well as from the observation of other people, that people frequently encounter conflicts of interest. These are situations where two or more people want the same object of interest but only one or the other can have it. This conflict generates competition which can drive the contestants to 'war' or to compromise. He believes that the best way to control the competition is to establish a just set of rules covering the competition. A morally

irresponsible administrator acts with indifference towards just rules. For example, he might ignore the rules set for the administration of examinations by allowing some students to see the exams in advance but not allowing others to see them.

Mr. Smith would be concerned that the competition would be just and fair; i.e., that the distribution of objects of interests and disinterests would be impartial to all involved and not favor some recipients over the others without sound principles or reasons. Mr. Smith would fear that a morally irresponsible administrator might encourage the violation of the just rules governing the competition for objects of interest. For example, some students might be favored over others in gaining access to courses in high demand.

Mr. Smith would also hope that the principal would choose morally preferred alternatives when several alternatives are available. For example, rules can range from being oppressive to being liberal. The morally preferred options are rules which enable the competitors to satisfy their interests to the maximum degree and which will require them to suffer the fewest possible objects of disinterest. In different situations different rules would be liberal. Mr. Smith would be concerned that the morally irresponsible principal would be indifferent to the non-repressive condition. For example, the principal might feel that as long as his school regulations concerning punctuality are fair, he does not have to consider the harshness of his regulations. The principal's only concern would be that a regulation apply equally to everyone. It might be acceptable for the principal, for example, to suspend a student for one week from all classes for arriving late once, provided that his regulation were

applied to everyone. This would concern Mr. Smith because he would feel that the principal had been indifferent to the harshness of the regulation.

In short, Mr. Smith would be concerned that the principal would be indifferent to the Golden Rule which is reflected in all major religions.

Although Mr. Smith is aware of the fact that knowledge and beliefs are a necessary part of moral judgements, he is also very much aware of the fact that making moral judgements involves motives. With regards to the motives, Mr. Smith would be concerned that the morally irresponsible principal would not have the desire to do what is right and not do what is wrong. Mr. Smith would be concerned that, more and more frequently, the principal would not be influenced by the motive to do what is right but would be motivated by the passion of self-interest. A person who acts from self-interest does not take into account the moral consideration of doing right for right's sake. For example, a principal who was motivated only by self-interest might spend very little time at school because he would prefer to golf or look after his investments. Consequently, he would neglect the educational needs of the children in school.

Mr. Smith would also be concerned about the possibility that a morally irresponsible principal would not respect those parents, children, and teachers who do what they believe to be right from a sense of duty. How can a principal like this create an environment where children develop a sense of responsibility? Mr. Smith might be inclined to withdraw his child from that school. Furthermore, Mr. Smith would also be concerned about the lack of moral indignation

expressed about a person who has done something wrong when he had reason to believe that it was wrong. That would constitute an unscrupulous act. Nor would Mr. Smith expect that such a principal would sympathize with the children when they experience sorrow or defeat. Mr. Smith feels strongly that a special feeling of sympathy (fellow-feeling) is necessary for people to have moral concerns and to make moral judgements.

Mr. Smith is also concerned that an irresponsible principal would not feel a sense of shame or guilt when he has done something wrong nor would he nurture that kind of feeling in others, staff and students, at school. The feeling would be lacking because disapproval would not be expressed about wrong acts and so people who have done wrong acts would have no need to hide from the disapproval of others. The students who pester smaller children at school would not have to fear disapproval and so would not be dissuaded from doing unscrupulous acts. The teacher who discriminates against certain students would not have to fear the disapproval of the principal should the discriminatory act be disclosed.

Mr. Smith would also be concerned about the degree of moral irresponsibility of the principal. If Mr. Smith observed that the moral decline was restricted to a shift from being a morally decent person (a person who does what he believes to be right from a sense of duty most of the time) to being misguided (believing something to be right when, in fact, it is wrong), Mr. Smith might feel that the shift can be arrested because the principal still wants to do what is right. For example, suppose the principal believes that it is always wrong for students to request to be excused from detentions even when

a detention interferes with a dental appointment which had been arranged weeks in advance. In this case the principal did what he thought was the right thing to do, namely, deny all requests for rescheduling detentions. However, he probably is misguided on this matter. A discussion with some parents and teachers might set him straight on this matter. What is important is that he had retained a commitment to do what is right.

However, if the principal were to slip to the point where he has a number of blind spots (persistently failing to see that what he does is wrong) then the situation is more serious. For example, Mr. Smith would be concerned if the principal could never understand the children at school. Instead of hearing what the children have to say regarding school affairs, the principal would always interpret everything they say his own way. When children request an extra dance, he would accuse them of not wanting to do anything but dance all day. When they object to the lack of co-ordination of the test schedule, he would suspect that they do not want to write any tests. Mr. Smith would be concerned about the principal's blind spot towards children. He would consider this a rather serious situation, maybe even serious enough to withdraw his child from the school.

Mr. Smith would fear the situation when the principal has no scruples at all in that he acts with indifference to the wrongness of an act or he acts in spite of its wrongness. The situation would be considered intolerable. Perhaps Mr. Smith might lodge a formal complaint with the school authorities (Superintendent or School Board member) concerning the unscrupulous acts perpetuated by the principal.

Undoubtedly many parents would become disturbed at this point because the students would be unhappy and angry at the way they are treated at school. Something would have to be done about the situation.

If the principal were to suffer from a pathological condition where he is deprived of a sense of wrong or right, he would clearly have to be removed from office because that would constitute a hopeless situation. Mr. Smith probably would feel sorry for the principal who had obviously been struck by some very serious illness. However, the principal would be in no position to offer moral leadership and therefore would have to be removed. Hopefully, after suitable treatment, he could once again, become a morally responsible person.

In conclusion, Mr. Smith probably is most concerned that the principal of the school where his daughter attends, has a sense of right and wrong as well as a sentiment of humanity. These he regards as absolutely essential conditions for morally responsible conduct. He expects nothing more from the principal than he does from all people.

This brief account of Mr. Smith's moral concerns about the principal's decisions and actions, points out the importance of the main question of the study. The Smith scenario illustrates that parents have many moral concerns about what goes on at school. School administrators are constantly faced with ethical and moral issues. They need a scheme for problem solving sensitive to moral and ethical overtones. In other words, the situation described in the Smith scenario points out that school administrators need a normative conceptual framework for resolving ethical and moral issues.

## 2. The ethical implications of cultural relativism

The principal in the Smith scenario need not accept the arguments attributed to Mr. Smith and still consider himself a rational and 'morally responsible' person. He may have been convinced, for example, that the discoveries of Anthropology have had revolutionary implications for ethics. Through the principal's readings in the works of people like Sumner,<sup>17</sup> he may be convinced that one's only moral obligation is to conform to one's society. In other words, he may be convinced that no ethical judgements can be rationally justified. He has correctly observed, and has been convinced by his observations, that most anthropologists believe that the scientific study of cultures has undermined the belief in ethical absolutes of any kind.

Carl Wellman raises two important questions in his critical analysis of the cultural relativism advanced by anthropologists.<sup>18</sup> First he asks: Just what has been discovered that should compel people to revise ethical postulates? He notes that scientists have observed that certain things that were once thought to be absolute have turned out to be relative to culture in that they vary with and are causally determined by culture. Exactly what things are relative to culture is still being debated by anthropologists. Wellman claims that this empirical issue must be dealt with by scientists.

The second question Wellman asks is: Assuming that cultural relativity is a fact, what follows for ethics? The answer to this question depends on what anthropologists refer to when they use words like "value". He points out that they seem to refer indiscriminately to the things which have value, the characteristics which give these

things their value, the attitude of the persons who value these things and the judgements of those people that these things have value.

"Morals" seems to refer variously to the mores of a people, the set of principles an observer might formulate after observing their conduct, the practical beliefs the people themselves entertain, or the way they feel about certain kinds of conduct. Consequently, Wellman claims that there are at least ten different areas of interests to ethicists which anthropologists might consider to be relative to culture. These ten areas of interest are explored to see how a principal, who has been persuaded to accept the assumptions of cultural relativity on each of the ten areas of interest, would respond to moral issues in schools. Wellman's counterargument will be advanced in each case.

a. Mores

Anthropologists define mores as those customs which are enforced by social pressures. The principal recognizes that members of society are expected to conform to certain established patterns of action of their society. Deviation results in disapproval or punishment. Mores differ from one society to another depending on the culture of each society.

The principal concludes from these observations that what is right in one culture may be wrong in another depending on the mores of the respective societies. For example, it may be morally right in one culture for a boy in school to defend the integrity of the family name by demanding a fight but it may be wrong in another culture to defend one's honor by demanding a fight. Both positions would be considered right because the cultures of the respective boys approve

of the respective courses of action.

Wellman raises the question: Why should it be granted that mores make an act right or wrong? The social scientists simply reply that 'right' means 'according to mores' and 'wrong' means 'in violation of mores'. In other words, the 'ought', which tells one what to do, receives legitimate directiveness from the demands of society. Wellman points out that this position is objectionable in that it makes it self-contradictory to say that some customary ways of acting are wrong. It also suggests that social reformers are always wrong.

Many social scientists offer the following reasons for claiming that 'one ought always to conform to the mores of society'. First, each society adopts mores which are conducive to its own survival and well-being under its special circumstances. The good life is assured for the members of a society through conforming to its mores. Wellman asks: Is this really more than a tendency? Is there room for reform in most societies? Should the mores change when the conditions for a given society change?

Second, many social scientists argue that disobedience would destroy the mores which, in turn, would result in anarchy and disaster for the member of the society. Wellman counters by pointing out that, whereas this is a concern which should be taken seriously, it does not necessarily prove that one ought always to obey all the mores of society.

Third, it is argued that mores should be obeyed because they give shape and meaning to life for the people in each society. Wellman points out that, although it is important for people to have

meaning, it does not follow that it is necessary and essential for members of a society to obey all mores.

Wellman concludes that it does not seem right to say that mores make an act right or wrong. The meaning of ethical terms cannot be defined in terms of mores. The principle that one always ought to obey the mores of one's society cannot be maintained. The fact that different societies have different mores does not prove that a particular act can be right in one society and wrong in another.

b. Social institutions

The principal is opposed to adopting social institutions from other countries to the school setting in which he is working. A social institution is a type of organization which involves a pattern of activity in which the people involved play recognized roles. For example, the principal would be opposed to introducing the British primary infant classroom organization and management into his Canadian suburban school. He agrees with social scientists when they claim that, since the specific form an institution takes seems to vary from society to society depending on the culture of each society, social institutions are relative to culture. He feels that it follows that an institution from one society should not be imposed upon the people of another society. He believes that institutions are expressions of a total culture and therefore will not fit different cultures. In fact, the transfer of an institution may even maim or interfere with the well-being of people of a society who have a different culture. The institution simply cannot produce the same results in a different cultural setting. Wellman doubts that borrowing institutions

with modifications is always bad for the people of a different culture. In fact, he points out that societies have borrowed from each other for centuries without apparent destructive consequences.

c. Human nature

Social scientists' claims about the profound effect of enculturation on people suggests that what a person is depends upon the society in which he has been brought up. Consequently, the principal believes that no kind of action, moral character, or social institution is made inevitable by human nature. In other words, there are no fixed limits to human nature. For example, whether a child will learn to read depends, he believes, entirely on the cultural background of the child and not on psychological characteristics of the child. Therefore, the child who does not learn to read is simply regarded as having had cultural experiences which impede the development of reading skills. Certainly, the principal has no appreciation for the development of moral reasoning as outlined by Kohlberg. Wellman raises doubts about the necessity of taking one of the two alternatives, namely, that human nature is either entirely fixed or entirely plastic. Maybe enculturation can mold only within certain human limits. If that is the case, then moral action is not determined only by culture.

d. Acts

The principal also accepts the claim that acts are relative to the culture in which they are perpetrated. He accepts the social scientists' argument that the same type of action may take on specific differences when performed in different societies because of the fact

that those societies have different cultures. The principal concludes that the same kind of act may be right in one society and wrong in another. In other words, the rightness of an act depends upon its consequences and the consequences may well vary from one society to another. For example, to force a child to learn to read in our society means something quite different from the meaning of that act from a tribe in a tropical climate. In our society 'learning to read' might mean giving a child equal job opportunities but in the tribal society it has no meaning for livelihood. In fact, it may impede the acquisition of necessary hunting skills by locking the child up in a school to read. However, Wellman asks: Does it follow that the nature of an act is entirely culturally relative? For example, is it right for a boy to fight to defend his honor because that is the practice of his culture?

Although Wellman concedes that the consequences can help to determine the rightness or wrongness of an act, this premise must not be confused with the observation that the same act can be both right and wrong. The social context makes the act different. Is the act of defending one's honor by fighting when faced with an inner city youth gang which lives by the motto 'might is right' the same as fighting to save one's honor in the classroom? They are the same in that they both are acts of fighting. They are different in that the act may be necessary in the street situation to avoid further harassment while that need not be the case in the classroom in which differences can be discussed. Therefore, the conclusions that the same kind of act may be right in one society and wrong in another is not the same thing as to say that two acts which are precisely the same in

every respect may differ in rightness or wrongness.

Wellman cautions that this argument should not be confused with the view that acts are made right or wrong by the mores of a society. That consequences and principles may establish the rightness or wrongness of an act in different cultures is not the same as to say that an act is right in one society because it is customary and wrong in another society because it is not customary.

#### e. Goals

The establishment of goals is also viewed by the principal as being determined entirely by the culture of a society. Different societies are known to pursue different goals--might, glory, wealth and comfort. Similarly, children bring different goals, depending on their cultural background, with them to school. Their goals are not better or worse; they simply reflect the respective cultures of the children. Therefore, it is argued that it is impossible to compare the value of acts or total ways of life, because they are only means towards certain ends (goals). The means can only be evaluated in terms of their ends, and ends lack a common measure or standard of comparison.

Wellman doubts that the ends really lack a common measure or standard of comparison. Certain ends appear to be more worthwhile than others. For example, he suggests that pleasure seems to be intrinsically better than pain.

#### f. Value experience

The principal believes that the same objects and situations can generate very different experiences for people with different

cultural backgrounds. Social scientists have pointed out that people from different societies apparently experience the same objects or situations in quite different ways depending on the cultural differences existing among the societies. In other words, the nature of the experience is determined by the process of enculturation that the person has undergone. For example, the child who comes from a home where he is introduced to interesting new books might respond very differently from other children, to the announcement at school that a new order of books has arrived in the library. It is assumed, by the principal that the non-reader comes from a home where reading is not encouraged or maybe even discouraged because it is considered a wasteful fantasy experience.

Wellman raises a number of important questions. Can the same experience be good for one person but not for another? Is it possible to consider that people who are confronted by the same object or situation, indeed, have different experiences? Should one conclude that the same object or situation can have different value for people from different cultural backgrounds?

g. Moral emotion

Social scientists claim that moral emotions are also relative to culture. What a person desires, approves, or feels guilty about seems to be determined by his cultural background. For example, in one society a boy may feel guilty about not having fought to defend the honor of his family whereas a boy from another society may feel guilty about initiating a fight. It would follow that an act can be morally good in one society and morally bad in another society

depending on whether a society approves or disapproves of the act.

Wellman doubts that moral value depends only on whether a society approves of it or not. He asks: If moral emotion (i.e., approval or disapproval) is sufficient, why does it make sense to ask someone why he approves or disapproves of something? Such a request for a justification for the approval or disapproval would seem redundant. He concludes that the fact that moral emotions are culturally relative does not prove that identical acts can be morally good in one society and morally bad in another.

#### h. Moral concepts

Linguistic studies suggest that people from different cultures conceptualize their experiences in different ways. Therefore it is believed, by the principal, that moral concepts vary from culture to culture. For example, the Greek concept of virtue has changed through the centuries. The Christian concept of obligation is probably not understood in non-Christian countries. Therefore, it is argued that people from different cultures are bound to disagree on ethical questions.

Wellman points out that people using different concepts could never disagree because disagreement presupposes that both parties are thinking in the same terms. If each person is using his own terms, how can they agree on common questions, let alone common answers? For example, when two people use the term 'democratic' differently from each other, they do not necessarily disagree with each other because they are not talking about the same thing even though they are using the same words. Comparison becomes possible only when ideas are

stated in the same concepts with a shared meaning.

i. Moral judgements

The aspect of cultural relativity most closely related to the concerns of this study is moral judgements. Acts which are considered right in one society are considered wrong in another society. These kinds of observations have convinced the principal that ethical judgements are relative to culture. Many anthropologists have concluded that one ethical judgement is no more valid than another or that all ethical judgements are equally valid.

Wellman raises the following objections by analyzing two interpretations. First, he points out that ethical judgements might have equal validity either because all are valid or because none are valid. The conclusion is that every moral judgement applies to the people in the society in which it was made. Wellman points out three ways in which this affirmation of objective validity is defended by social scientists. First, it is maintained that ethical judgements have objective validity because it is possible to justify them rationally. The rational justification is based on the premises accepted in a given society. Since the premises are culture-bound, they do not offer a universal validity but a culturally relative validity. Wellman claims this does not constitute a real justification. If reasons can be rejected by others without error, how can objective validity be claimed? A claim to validity must include not only logical consistency but also a claim that the premises are correct.

Furthermore, many anthropologists maintain that any ethical judgement is an expression of a total culture. Therefore

any single judgement must be judged in terms of its coherence with the total culture. No justification is available for the total culture since it is not a part of a more inclusive cultural pattern. Wellman makes the same objection as he did to the former argument since the latter argument also allows the justification to rest on an arbitrary cultural foundation. It cannot offer objective validity.

The third defense claims that any ethical judgement has objective validity because it is an expression of a moral code. Moral codes are made valid by the fact that necessary social cohesion requires that the people of a society conform to a common moral code. Of course, any given moral code applies only to a particular society and therefore offers ethical validity only to that society. Wellman raises the following objections. He claims it is possible to challenge some ethical judgements without destroying the entire moral code of a society. Furthermore, it is always wrong to challenge a particular form of social stability? To argue that it is wrong to challenge the stability of a society requires an appeal to some other basis of validity than is provided by the premises of that society to avoid a circular argument.

Willman's second interpretation of the anthropological view of moral judgements is as follows. Moral judgements are relative because they have no objective validity. In other words, it is claimed that the distinction between true and false (or correct and incorrect) does not apply to moral judgements. The first argument for the denial of objective validity is to claim that individuals make different ethical judgements because they judge from different, culture-bound terms of references. In other words, ethical judgements are the product of enculturation and not of rational justification.

Wellman points out that this line of argument confuses the origin of a judgement with its justification. What reason is there to believe that what causes people to judge as they do has any bearing on whether or not their judgements are correct?

The second argument for the second interpretation points out that it is impossible to settle ethical questions by using scientific methods. If there is no method available for establishing objective validity, it is argued, then it makes no sense to make the claim. Wellman challenges the assumption made by social scientists that the scientific method is the only method for establishing the truth. Mathematicians do not seem to feel that they must rely on observation and experimentation to establish validity. How would social scientists conclude that ethical judgements have no objective validity through the use of the scientific method? Wellman concludes that the fact that the objective validity of ethical judgements cannot be established through the use of the scientific method does not prove or indicate that it cannot be established through some other methods of reasoning.

Third, it is conceded by social scientists that there might be some method of settling ethical problems, but it cannot be a method of reasoning. Any reasoning is based on some premises. Since all premises are culture-bound, there is no objective basis for argument. As a counter to this argument, consideration should be given to a combination of objective factual information relevant to a specific moral problem coupled with the subjective weight of moral principles. This alternative will be developed in this study.

In summary, Wellman correctly claims it is not possible to

establish that moral judgements are made only on the basis of cultural relativity.

j. Moral reasoning

Finally, the principal in the Smith scenario believes that moral reasoning is also relative to culture. When a person's ethical statement is challenged, he will attempt to justify his position through reasons used in his culture. The reasoning of each culture differs from all others in two ways. The reasons may rest on different assumptions or they may draw inferences in a different manner. The former starts from different premises and the latter obeys different logics. Wellman has already dealt with the former above. The latter seems to lead to the conclusion that moral reasoning, since it is relative to culture, has no objective validity because it cannot be substantiated. This follows from the point that to appeal to the same kind of reasoning would produce a circular argument. To appeal to any other kind of reasoning would make the argument irrelevant to the moral problem at hand.

Wellman raises several objections to this kind of argument. First, different kinds of reasoning are in fact used by logicians to justify a given kind of reasoning (e.g., the use of syllogistic arguments). Second, how is it possible to show that a particular moral argument is valid? The arguments can be shown to conform to the principles of an identifiable logic. If the other party does not accept the principles of logic he would remain unconvinced. However, just because a person was not persuaded by a moral argument does not prove that the argument is not valid. Persuading a person and proving

a point are not identical. Third, is the claim to objective validity of a moral statement automatically empty in the absence of any justification for it? The opposite assertion seems to lead to an infinite regress for, if every valid justification requires further justification, that would seem to lead to an infinite regress. Wellman has not attempted to establish the objective validity of moral reasoning. Nor can it be established that moral reasoning is entirely relative to culture.

In conclusion, several generalizations are confirmed by the analysis of cultural relativism. First, it must be recognized that since grounds of proof may vary by culture, rational justification may reflect specific cultural features. Second, facts are a necessary condition for moral justification because appropriate knowledge of the moral context is critical in resolving ethical and moral issues. But, facts are not sufficient to resolve ethical and moral issues. Hence, the inadequacy of cultural relativism. The resolution of ethical and moral issues requires not only the facts relevant to a moral context but it also requires a normative conceptual framework in which to make the evaluative judgements.

### 3. Normative aspects of the evaluative process

Not all social scientists subscribe to the position of cultural relativism outlined and critiqued above. Some have identified what has been described as an evaluative process which takes into account the normative aspects of value issues, including moral issues. The conceptual framework of the evaluative process offered by Kluckhohn and Strodtbeck<sup>19</sup> is one example.

When Kluckhohn and Strodtbeck analyzed the evaluative process, they identified three analytically important elements which take into account more than the culturally related facts, emotions and logics on which cultural relativism is based. What follows is an analysis of the three elements to show the need for a normative conceptual framework by analyzing the evaluative process.

The three elements are the cognitive, affective, and the directive. They give "order and direction to the ever-flowing stream of human acts and thoughts as these relate to the solution of 'common man' problems".<sup>20</sup> The cognitive element refers to the existential premises of a person's conception of what in fact exists. For example, a principal needs to check carefully to make sure that the situation as he perceives it with regards to the particular teacher who seems to be too 'settled in' is factually accurate. Are the same assignments used year after year? Are they used the same way? Just what kind of relationship does the teacher have with the students, parents and fellow teachers? What range of suitable learning experiences are indeed made available to the students by that teacher?

The affective element refers to the value premises or normative and aesthetic propositions. What value assumptions are made by the principal? These include value assumptions about effective teaching, desirable learning activities, and suitable strategies for staff development. It is very important that the principal critically examines his or her value assumptions, and how they relate to the assumptions held by other people, including the teacher whom he is trying to help. It is particularly important in situations where one person (i.e., the principal) might prescribe action for another person

(i.e., the teacher). Entailed in this situation are normative values which are called moral values--values which a person is obligated to act upon.

Kluckhohn and Strodtbeck identify a third element of the evaluative process which is not recognized by most social scientists. The third element is the directive element. It refers to the activity of making a 'choice' as a process or a transactional interplay through time. It reflects a disposition to 'select' differentially regarding various aspects over a period of time prompted by a sense of 'purpose'. For example, the principal does not respond automatically in a particular fashion given his perception of the existential premises and value assumptions. He is also prompted by a disposition to select on the basis of his sense of purpose. Without the disposition or commitment to 'choose' and 'act', the principal need not act upon his cognitive and affective awareness of the situation.

Kluckhohn and Strodtbeck emphasize that the three analytical elements--cognitive, affective, and directive--must be understood in relation to each other. The relationship is summarized as follows:

It is from the cognitive and affective elements and the relationships between them that the value system derives its content in the forms of existential premises and normative assumptions. There would be no value system which takes human behavior out of the realm of the purely instinctual were it not for the quite highly developed human capacity for intellection and affectivity. But it also seems apparent that there would be no ordered, no systematic, value system without a directive tendency which both aids in the selection among possible value systems and also serves to give continuity to a total system.<sup>21</sup>

The directive element provides the unity between the cognitive and the affective. It is the primary element in the evaluative process in that it is most crucial for the understanding of both the

integration of the total value system and its continuity through time by providing direction (movement) to the cognitive and the affective. The 'commitment' to act upon the existential premises and value assumptions is essential in situations where people have to make moral judgements. Kluckhohn and Strodtbeck's emphasis upon the directive element points to the need for a normative conceptual framework to make ethical and moral judgements.

## II. THE STUDY

### A. The Problem

The philosophical problem formulated for the study is: What kind of normative conceptual framework should be developed to assist administrators in exercising discretion so that the quality of justice will be improved and injustice reduced in schools? The problem exists for two reasons. First, the exercise of discretion is widespread in schools and frequently involves the resolution of ethical and moral problems. Second, a normative conceptual framework would be useful to administrators in resolving ethical and moral issues when they exercise discretion.

An attempt is made in this study to develop a normative conceptual framework through the use of the analytical strategies of normative ethics and meta-ethics. The framework shows how ethical and moral issues can be resolved on the principle of justice through the use of specific judgements about the duties, rights, motives and deserts of all parties affected by the moral issues. The framework also establishes the standards for implementing just decisions.

## B. Methodology

An analytical philosophical approach is adopted to deal with the problem identified in this study. A combination of the analytical strategies of normative ethics and meta-ethics were used to develop the normative conceptual framework. Normative ethics involves asking questions about what is good or right in a particular case or as a general principle and then answering them by forming normative judgements as a conclusion. Meta-ethics answers logical, epistemological or semantical questions like, What is the meaning or the use of words like "right" and "wrong"? How can ethical judgements be justified? What is the distinction between moral and non-moral?<sup>22</sup>

Frankena refers to the combination as:

providing the general outlines of a normative theory to help us in answering problems about what is right or ought to be done, and as being interested in meta-ethical questions mainly because it seems necessary to answer such questions before one can be entirely satisfied with one's normative theory.<sup>23</sup>

Normative ethics and meta-ethics are both needed to develop a normative conceptual framework for resolving ethical and moral issues.

Descriptive or empirical enquiry is a part of the study only to a limited extent where it is needed to understand certain normative questions. In other words, limited attention is paid to the psychological and sociological factors,<sup>24</sup> social determinants<sup>25</sup> or the social reality of ethics.<sup>26</sup>

The normative conceptual framework is applied to hypothetical situations to illustrate the applicability and relevance of the framework. It is recognized that the use of hypothetical or contrived vignettes do not establish the applicability of a framework. However, vignettes can and do serve to explain and illustrate what is meant by

the abstract constructs which make up the framework. Only after a framework has been developed and explained clearly can it be applied to a real situation and assessed empirically.

The framework is applied to one actual case study. It must be emphasized that the application really only serves the purpose of illustration and not that of a formal empirical enquiry. It is hoped that the application to an actual case study might help to illustrate the analytical potential of the framework as well as point to the kind of research which should be conducted to determine the scope and limitations of the normative conceptual framework.

### C. Limitations of the Study

The topic of this thesis, "Discretion and Justice", conjures up innumerable moral issues--too many to address in one study. The difficulty of eliminating many issues is to do so without distorting the issues selected for the study. What are some of the issues, related to the main focus of the study, which will not be developed in the study?

First, the concept of 'just' has many senses. It can mean: being observant of custom or duty, righteous, fair, honest, legally right, lawful, what is due to or from a person, deserts, rights, what one ought to do.<sup>27</sup> The concept seems to cover the whole range of a person's conduct in so far as it affects others--all that they have a right to expect from oneself or one has a right to expect from them. It would also seem to be the sum of all virtue.<sup>28</sup> The question arises: Is there some principle whereby human life might be organized so that there would exist a just society composed of just people? This is,



indeed a broad question which invites discussion of a wide range of issues and theories: the separation of legal and moral issues,<sup>29</sup> theories of punishment<sup>30</sup> such as deterrence,<sup>31</sup> retribution<sup>32</sup> and prevention,<sup>33</sup> the relationship between justice and mercy or benevolence,<sup>34</sup> new moralities,<sup>35</sup> the relationship between ethics and conduct,<sup>36</sup> the enforcement of morals,<sup>37</sup> the relationship between morals and religion,<sup>38</sup> the morality of utility,<sup>39</sup> morality and determinism,<sup>40</sup> justice and intuitionism,<sup>41</sup> justice and blame.<sup>42</sup> Since any one of these issues could generate enough questions and theories for a thesis, no attempt was made in the study to review all these issues.

Second, the study concurs with the prevailing tradition in philosophy that 'justice' is related to the idea of 'equality'.<sup>43</sup> Aristotle claimed that justice consists of treating equals equally. A. Ross claimed that equality is the formal element of justice.<sup>44</sup> However, 'justice' does not refer only to equal treatment but also to action which is not capricious or arbitrary.<sup>45</sup> The exclusion of arbitrariness encompasses the notion of rationality, objectivity, consistency, impartiality as well as equality. Non-arbitrariness can be determined only with reference to grounds, values and ends on which claims are made.

Third, the notion of justice as equality introduces a complicated and longstanding debate of issues like "equal treatment," "equal objectives," "equal opportunity," "equal end results," as well as the interrelationship of these issues.<sup>46</sup> The literature on egalitarianism which attempts to deal with these issues and numerous related issues is not reviewed in this study. Reference is made to some of these issues only in-so-far as they arise in the development

of the main thesis of this study. It is acknowledged, however, that the several issues identified above, which are not developed in this study, are issues which would help to clarify the normative conceptual framework developed in the study.

The exercise of discretion also raises a number of issues which could not be developed in this study. The use of discretion extends over a very broad area of judicial and administrative responsibilities although it seems to be more widely used in the administrative field than in the field of jurisprudence.<sup>47</sup> The use of discretion in due process is eliminated entirely even though it is recognized as an area which a wide range of discretion is used and misused.<sup>48</sup> In the administrative area, the use of discretion is further delineated to exclude the use of discretion in virtually all formal procedural situations (e.g., tribunals, hearings).<sup>49</sup> Since most critiques available on the use of discretion are restricted to the use of discretion in the judicial field, most of them have not been reviewed.<sup>50</sup> The use of discretion is explored only in areas where administrators receive general or no policy guidelines which they must translate into action which is appropriate in their administrative areas of jurisdiction. Dworkin would probably describe this area as one in which a strong sense of discretion applies.<sup>51</sup>

The resolution of ethical and moral issues which arise when administrators exercise discretion require a normative decision-making model which takes into account all kinds of value issues--aesthetic, pragmatic, prudential, as well as moral issues. Most decision-making models make no explicit provision for dealing

with value issues and no attempt is made in this study to review various decision-making models to determine the extent to which they allow normative decisions to be made. Jantsch's work does provide a framework for making judgements though it does not explain what moral judgements to make nor how to make them.

One final limitation is placed on the study. The normative conceptual framework is applied only to administrators in schools. It is recognized that the framework might apply with equal significance to the exercise of discretion in other administrative areas as identified by Davis.<sup>54</sup>

#### D. Organization of the Thesis

The study is organized as follows. Chapter I establishes the need to develop a normative conceptual framework for the exercise of discretion by administrators in pursuit of justice in schools.

Chapter II delineates a particular area of responsibilities which constitutes a major aspect of the function of educational administrators, namely, the exercise of discretion. With the assistance of an analytical scheme developed by K.C. Davis, it is pointed out that much discretion should be eliminated, and that the necessary use of discretion should be controlled by confining, structuring, and checking it. It is argued that the use of discretion should be controlled so as to promote individualized justice and reduce injustice in schools.

A normative conceptual framework is developed in Chapter III. After a brief introduction to moral theory, the moral terms and judgements which are needed to resolve ethical and moral problems,

are classified, interrelated and illustrated. These five classes of terms and judgements constitute the main part of the normative conceptual framework. The framework outlines the judgements about duties, rights, motives, deserts, and justice which must be made to make a morally sound decision. The framework serves as a basis for responding to two fundamental moral questions: What is the standard of right and wrong? What is the meaning of right and wrong?

The normative conceptual framework is applied to a number of cases in Chapter IV. First, it is applied to several hypothetical cases to illustrate how the framework might be used in situations involving discretion so as to resolve the ethical and moral problems which arise. Second, the framework is applied to one actual case study. The purpose of the case is not to 'prove' the applicability of the framework but to illustrate how the framework might be used to resolve ethical and moral issues which arise in actual situations involving the exercise of discretion by school administrators. The use of an actual case study also identifies an area of research which should follow the development of a normative conceptual framework.

Chapter V explores some of the broader implications of the application of the framework to the administration of schools. It is maintained that such an application would promote certain features in school administration. It would promote a liberal view of authority, a plurality of authorities, the use of rational and moral persuasion as well as the establishment of rules on the principle of justice. The application is illustrated with the aid of several scenarios. The Chapter is concluded with several recommendations for studies in educational administration. Several questions for further research are also outlined.

FOOTNOTES

<sup>1</sup>Kenneth Culp Davis, Discretionary Justice: A Preliminary Inquiry.

<sup>2</sup>R.M. Dworkin, "Is Law a System of Rules?", University of Chicago Law Review, 35 (1965), 40.

<sup>3</sup>Ibid., p. 45.

<sup>4</sup>Ibid.

<sup>5</sup>Norton Long, "Politicians for Hire--The Dilemma of Education and the Task for Research", Public Administrative Review, 25 (1965), 118.

<sup>6</sup>Max Weber, The Theory of Social and Economic Organization (Glencoe: Free Press, 1964).

<sup>7</sup>Art Gallaher, "Directed Change in Formal Organizations: The School System", Change Process in the Public Schools (Centre for the Advanced Study of Educational Administration, University of Oregon, 1965), p. 33.

<sup>8</sup>Ibid., p. 38.

<sup>9</sup>M.E. Downey and A.V. Kelly, Theory and Practice of Education --An Introduction (New York: Harper & Row, 1975).

<sup>10</sup>John Stuart Mill, On Liberty (New York: Bobbs-Merrill, 1956).

<sup>11</sup>P.H. Hirt and R.S. Peters, The Logic of Education (London: Routledge & Kegan Paul, 1970).

<sup>12</sup>Some of the major contributors in developmental psychology include Clive M. Beck, B.S. Crittenden and E.V. Sullivan (ed.), Moral Education: Interdisciplinary Approaches (Toronto: University of Toronto Press, 1971); Erick H. Erickson, Identity: Youth and Crisis (New York: W.W. Norton & Co., 1969); John H. Flavell, The Developmental Psychology of Jean Piaget (Toronto: D. Van Nostrand, 1968); Lawrence Kohlberg, "Development of Moral Character and Moral Ideology," edited by M. Hoffman and L. Hoffman, Review of Child Development Research, I (New York: Russell Sage, 1964), 381-431; and Jean Piaget, The Moral Judgement of the Child (London: Routledge and Kegan Paul, 1968).

<sup>13</sup>M.E. Downey and A.V. Kelly, Theory and Practice of Education --An Introduction.

- <sup>14</sup> J.G. March, "American Public School Administration: A Short Analysis", School Review, 86:1 (February, 1978), 217.
- <sup>15</sup> Ibid.
- <sup>16</sup> Carl Wellman, "The Ethical Implications of Cultural Relativity", Journal of Philosophy, 60:7 (1963).
- <sup>17</sup> W.G. Sumner, Folkways (Boston: Ginn, 1940).
- <sup>18</sup> Carl Wellman, "The Ethical Implications of Cultural Relativity".
- <sup>19</sup> F.R. Kluckhohn and F.L. Strodtbeck, Variations in Value Orientations (Evanston, Illinois: Row Peterson, 1961).
- <sup>20</sup> Ibid., p. 2.
- <sup>21</sup> Ibid., p. 8.
- <sup>22</sup> Frankena, Ethics, p. 4.
- <sup>23</sup> Ibid., p. 5.
- <sup>24</sup> See Barbara Whooton, Crime and the Criminal Law (London: Stevens and Sons, 1963) and J. Wilson, N. Williams, and B. Sugarman, et al., Introduction to Moral Education (Baltimore: Penguin Books, 1967).
- <sup>25</sup> Maria Ossowska, Social Determinants of Moral Ideas (Philadelphia: University of Pennsylvania Press, 1972).
- <sup>26</sup> J.H. Barnsley, The Social Reality of Ethics (London: Routledge and Kegan Paul, 1972).
- <sup>27</sup> A.J. Meldon, Ethical Theories (Englewood Cliffs, New Jersey: Prentice Hall, 1967), p. 21.
- <sup>28</sup> Ibid., p. 21.
- <sup>29</sup> See Sidney Hook, Law and Philosophy (New York: University Press, 1964); H.L.A. Hart, Law, Liberty, and Morality (New York: Vintage Books, 1963); and H.L.A. Hart, Punishment and Responsibility (New York: Oxford University Press, 1968).
- <sup>30</sup> See Alf Ross, Directives and Norms (London: Routledge and Kegan Paul, 1968); and H.L.A. Hart, Punishment and Responsibility.
- <sup>31</sup> M.P. Golding, Philosophy of Law (Englewood Cliffs, New Jersey: Prentice Hall, 1975).
- <sup>32</sup> See M.P. Golding, Philosophy of Law; and Richard A. Wasserstrom, Morality and the Law (Belmont, California: Wadsworth Publishing Co., 1971).

<sup>33</sup> See Barbara Whooton, Crime and the Criminal Law; C.S. Lewis "The Humanitarian Theory of Punishment" in In God in the Dock (Ann Arbor, Michigan: Wm. B. Eardmann Publishing Co., 1954); and Marc Ancel, "New Social Defence", In Social Defence: A Modern Approach to Criminal Problems (London: Routledge and Kegan Paul).

<sup>34</sup> William Frankena, Ethics; and A.J. Meldon, Ethical Theories.

<sup>35</sup> Daniel Yankelovich, The New Morality (New York: McGraw Hill, 1974).

<sup>36</sup> See G.E. Moore, Principia Ethics (Cambridge: University Press, 1960; D.G. Brown, "Mill on Liberty and Morality," Philosophical Review, 81 (April, 1972) 133-158.

<sup>37</sup> Richard A. Wasserstrom, Morality and the Law.

<sup>38</sup> Ruth Beechick, "Lawrence Kohlberg: Why Johnny can be good without being religious", Christianity Today, XXII:6 (Dec.30,1977), 12-17.

<sup>39</sup> See T.L.S. Spriggs, "A Utilitarian Reply to Dr. McCloskey", Inquiry, VIII (1965), 264-291; and H. McCloskey, "Utilitarian and Retributive Punishment", Journal of Philosophy, 64 (1967), 91-110.

<sup>40</sup> Gerald Dworkin, Determinism, Free Will, and Moral Responsibility (Englewood Cliffs, New Jersey: Prentice-Hall, 1970).

<sup>41</sup> John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1973).

<sup>42</sup> J.E.R. Squires, "Blame", in H.B. Acton (ed.), The Philosophy of Punishment (Toronto: Mcmillan, 1969), 204-211.

<sup>43</sup> M.P. Golding, Philosophy of Law.

<sup>44</sup> W.D. Ross. Foundations of Ethics (Oxford: Clarendon Press, 1939).

<sup>45</sup> M.P. Golding, Philosophy of Law.

<sup>46</sup> See John Rawls, A Theory of Justice; Emerson, "The Egalitarian Paradox in Public Education", Canadian Journal of Education, 4:3 (1979), 53-9; Ivan Defaveri, "The 'Egalitarian Paradox' Reconsidered: A Comment on Emerson", Canadian Journal of Education, 5:3, 1980; 99-103; and C. Jenks, Inequality: A Reassessment of Family and Schooling in America (New York: Harper & Row, 1972).

<sup>47</sup> K.C. Davis, Discretionary Justice: A Preliminary Inquiry.

<sup>48</sup> Barbara Whooton, Crime and the Criminal Law.

<sup>49</sup>See Ontario Royal Commission Inquiry into Civil Rights (McRuer Report) (Toronto: Queen's Printers, 1968); and Davis, Discretionary Justice: A Preliminary Inquiry.

<sup>50</sup>See Barbara Whooton, Crime and the Criminal Law; R.M. Dworkin, "Is Law a System of Rules?"; American Friends Service Commission, Struggle for Justice: A Report on Crime and Punishment in America (New York: Hill and Wong, 1971); and Ontario Royal Commission Inquiry into Civil Rights (McRuer Report) (Toronto: Queen's Printers, 1968).

<sup>51</sup>R.M. Dworkin, "Is Law a System of Rules?"

<sup>52</sup>Yeheskel Dror, Public Policymaking Re-examined (San Francisco: Chandler Publishing Co., 1968).

<sup>53</sup>Erich Jantsch, Technological Planning and Social Futures (New York: John Wiley, 1972).

<sup>54</sup>K.C. Davis, Discretionary Justice: A Preliminary Inquiry.

## CHAPTER II

### THE EXERCISE OF DISCRETION BY SCHOOL ADMINISTRATORS

Where law ends tyranny begins.<sup>1</sup>

William Pitt

Where law ends individualized justice begins.<sup>2</sup>

Kenneth Culp Davis

In his book, Discretionary Justice, Kenneth Culp Davis, claims that individualized justice is made possible through the exercise of discretion. In fact, he claims that 'where law ends individualized justice begins'. However, he also sees many problems associated with the exercise of discretion. This Chapter reviews the constraints within which discretion should be exercised so as to promote justice. The next Chapter outlines a normative conceptual framework for making moral judgements when discretion must be exercised to promote justice.

#### I. THE CONCEPT OF DISCRETION

Davis claims that administrators have discretion whenever the effective limits of their action leave them free to make a choice among possible choices of action and inaction.<sup>3</sup> He points out that discretion is not limited to what is authorized or what is legal but refers to whatever is within the "effective limits" of the administrator's course of action. An administrator may choose to exercise discretion in areas where the law is silent and even in areas

covered by the law. It should be noted that discretion may be exercised to do nothing, even in situations where the law requires that an administrator take specific action. For example, a principal is required to report all teacher absenteeism as well as the reasons for the absenteeism to the Superintendent's Department. However, a principal can exercise his or her discretion, however illegally, not to report certain absenteeism and probably get away with it.

Discretion is not exercised only with regards to substantive choices. It is frequently exercised with regards to procedures, methods, forms, timing, degrees of emphasis, and many other factors. Strictly speaking, exercising discretion is distinguished from making decisions based on the application of law and or facts. However, whenever an administrator does not feel that the laws and facts speak for themselves, but that after they have been considered, a decision must still be made as to what is desirable or right in the circumstances, then, in fact, the administrator is exercising discretion. Consequently, virtually all decision-making situations involve discretion in varying degrees. Seldom do the facts and laws speak for themselves because most decision-making situations in schools do not involve only facts and laws but also values and influences. It is the value component which requires of administrators to decide what is desirable or right.

Discretion is not exercised only with regards to the question "What is desirable or right". Frequently it is also used to guess about known facts or to make judgements about doubtful law. For example, an administrator might exercise discretion about the unknown facts concerning the family situation of a teacher who is frequently

absent and consequently might overlook some of the absenteeism. An administrator may be doubtful about the law as to when compassionate leave may be granted and therefore might exercise discretion in specific situations that arise. An administrator may also exercise discretion on the basis of the impact of a decision on the parties involved. A family man with several young children might not be able to afford a 1/200 salary deduction for the days absent to attend a close friend's funeral in a distant city. An administrator may choose to exercise discretion to protect the teacher from this hardship. In short, the reality of exercising discretion is rather untidy. Discretion is exercised in many instances as a part of fact-finding, application of the law, and determining what is the desirable or the right thing to do.

What is the fundamental problem concerning the use of discretion? Davis puts it as follows: "What can be done to minimize injustice to individual parties, from the exercise of discretionary justice?"<sup>4</sup> This is a part of the larger question raised in this study: How can the quality of justice be improved for individual parties, and how can injustice be reduced? Davis points out that conventionally, the response to the issue of promoting justice is to build a system of rules and principles to guide decisions in individual cases. In short, traditionally the legal community feels that 'government of laws' can ensure the quality of justice and reduce injustice. However, Davis correctly points out that government is really of law and of men. Government really consists of legal systems and the discretion exercised by the people in government whether it is a national government, city hall, or the elected and appointed officers of an

education system. Therefore, it is important that administrators learn to exercise discretion in a manner which promotes the quality of justice and reduces injustice.

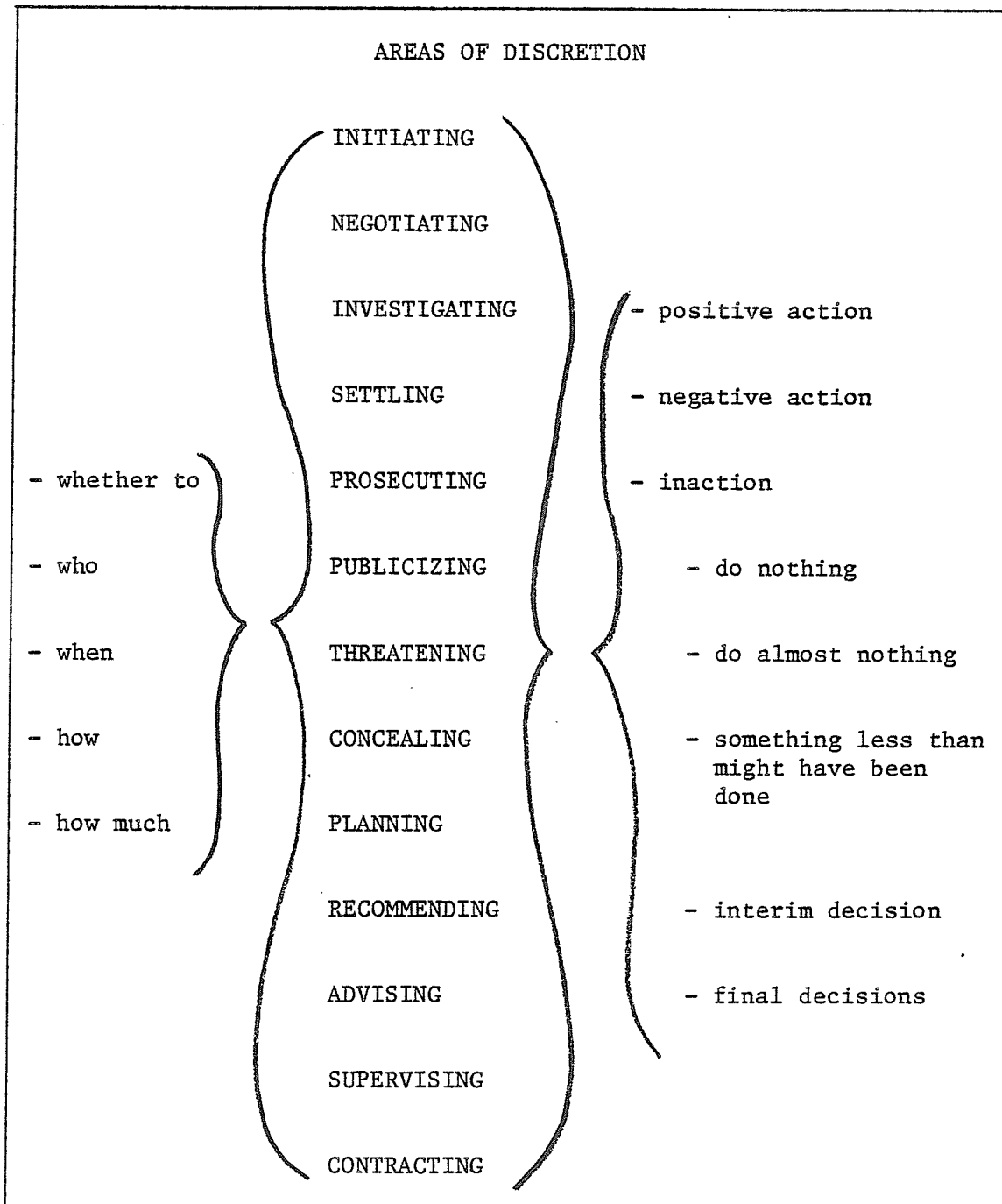
Before Davis' framework for the exercise of discretion to promote justice is discussed, it is important for the purpose of this study to observe the extent to which administrators in schools use discretion. If Davis' premises about the use of discretion apply to school administrators then his framework might also be applicable to the school situation.

## II. THE RANGE OF DISCRETION

Just as Davis observed that administrators at all levels in government exercise a wide range of discretion, so also administrators in schools exercise a wide range of discretion. Chart 1 outlines many areas of responsibilities in which administrators exercise discretion. How do they apply to school administrators?

First, school administrators exercise discretion when they decide whether or not to initiate action with regards to a particular issue or problem. An administrator, for example, may observe that a staff needs to be reorganized to enable a declining staff to attend to all the programs and activities traditionally offered by that school. The administrator may be aware of more appropriate alternative organizational models. However, usually no reorganization will take place until the administrator takes the initiative to reorganize the school. The administrator decides whether to initiate an organizational change, who should be involved in making a change, when the change should take place, how that change should be introduced, and how much

CHART 1



Areas of Discretion adapted from Discretionary Justice: A Preliminary Inquiry.<sup>6</sup>

change should be encouraged. The administrator might decide to effect the change through unilateral action, or through a decision-making process involving the staff. The administrator decides whether to introduce the organizational change immediately, in a few months, in a year, or in a few years. The change might be introduced through administrative action or through committee discussions and plans. The administrator also decides on the extent of the reorganizations to be introduced. Should the entire staff be reorganized or only part of the staff? If only part of the staff, which part should be reorganized?

The range of questions just outlined point to a prior decision by the administrator, namely, a decision to take positive action. The decision could have been to take negative action in which case the administrator would not explore more effective ways of delivering the curriculum with a declining staff. In that situation the administrator might pursue the negative action of urging the staff to simply try a little harder to compensate for the declining numbers on staff. Of course, the administrator could have decided to remain inactive and passively accept a reduction of the curriculum as the staff declined. The administrator could quite literally do nothing or almost nothing. The administrator might confine his or her response to the problem by complaining to the Superintendent's Department about the difficulty of delivering the curriculum with a declining staff. The administrator could also try something less than might be done. For example, the administrator could have introduced interdisciplinary teams but need not have replaced Department Heads with interdisciplinary Team Leaders when interdisciplinary Team Leaders are required to make the Teams' effective

administrative units.

The administrator also could have chosen to make interim decisions thus avoiding final decisions. The introduction of interdisciplinary teams is a fairly major decision which cannot be reversed that easily without significantly affecting many staff members. An interim decision might have been to consider a reorganization or to review the existing organization with a view to refining it or streamlining it. These are all steps of relative inaction which can be reversed readily. They do not address the magnitude of the problem raised by the situation where an attempt is made to retain a curriculum with a declining staff.

A decision to initiate action as illustrated above is not the only area of discretion in which a wide range of questions may be considered. An administrator's responsibility to negotiate is another area in which discretion is exercised. The example of reorganizing a school to maintain a program of studies presented many situations which require negotiations with central administration regarding staff, facilities, supplementary budgets, and services. An administrator may also negotiate an appropriate reorganization plan with various interest groups on staff. However, not everything should be a matter of negotiations with just anyone. For example, the negotiations involved in establishing time-table priorities should involve all interest groups on staff and not only some in order to develop a considerate and fair time-table. Some issues require negotiations and others may have to be resolved by other means. Time-table priorities, for example, probably should be negotiated but the question of what is meant with "development as an aim of education"

is not a matter of negotiation but a matter of psychological and philosophical considerations. An administrator might be aware of these kinds of distinctions so that discretion is not exercised to negotiate when the issue itself demands a different form of solution.

There are many other areas of responsibilities in which discretion is exercised. An administrator may choose to investigate a situation or problem before making a decision about it. On the other hand, he or she may choose not to investigate, conduct virtually no investigation or an incomplete investigation. An administrator frequently must choose how he will settle it unilaterally, by negotiation or some other means such as allowing the passing of time to settle the issue. Sometimes an administrator must decide whether or not to prosecute and, if so, what form of prosecution is appropriate. An administrator frequently needs to decide what information should be publicized to parents, staff, or students. In fact, on many issues parents' knowledge of what takes place at school depends on what information an administrator chooses to share with the parents. The use of threats especially with students is subject to the exercise of discretion. When should an administrator threaten students with suspension? Suspension as such is governed by a set of rules but not so the threat of suspension. Concealing information is also an effective administrative tool. Does an administrator share the school budget with the staff or conceal a portion of the budget?

Administrators exercise considerable discretion in planning. The planning of a time-table--taking into account the composition of a staff, individual student programs, facilities, and the curriculum--

requires numerous discretionary decisions. The use of discretion in working out time-table details can affect the workload of staff and the course options of students significantly.

Administrators are also involved in recommending and advising staff, students, and parents on many matters. In the senior grades administrators are involved in recommending courses to students. Teachers sometimes solicit the advice of an administrator on how to work with a specific student who is not cooperating. In these and other situations, administrators may offer advice or withhold it. They also have to decide what kind of advice to offer or withhold. Again, considerable discretion is exercised.

Administrators are involved in contracting teachers to work in schools. After the interviews have been conducted, the administrators have to make a decision as to who is the most 'suitable' candidate for the job in question. Discretion is involved in making that final recommendation based on the available factual information as well as general impressions of the respective candidates.

The task of supervising also involves discretion. Who should be supervised, how often and on what basis? When does an administrator 'look the other way' and when does he take issue with a staff member?

This list of responsibilities, which is not meant to be exhaustive, points out the wide range of discretion exercised by administrators. It does not indicate the frequency of the use of discretion because each of the areas of responsibilities (i.e., initiating, negotiating) can occur any number of times in a day. Each time they occur, the administrator must decide whether or not to exercise discretion (which frequently is a discretionary decision to

begin with), whether to take positive or negative action, and so on. That would suggest that administrators exercise discretion frequently every day. This raises the question: Why do they have so much discretion?

Davis suggests at least three reasons why administrators have so much discretion. First, many discretionary situations not now governed or guided by rules should be governed by rules or guidelines. For example, administrators receive notice from the Superintendent's Department on the number of staff available for the following year as well as the budget allocations. Frequently, it is left entirely up to administrators as to how the staff will be deployed, what will be purchased with the money and how the building will be used. This situation creates an extremely wide range of discretion. Priority can be given to any one staff or program or group of students in the way staff is deployed and the way classes are time-tabled. Administrators can allow or disallow many expenditures on the grounds that there are insufficient funds since staff need not know what funds are available. These situations can lead to injustice.

Some rules and guidelines could and should be introduced to limit the range of discretion open to administrators. For example, rules and guidelines can be developed to limit the discretion exercised in establishing a budget. Such guidelines might include the following:

(a) the total budget available to the school must be disclosed to the staff;

(b) the procedures for spending the budget must be disclosed to the staff;

(c) the actual amounts of money assigned to each category of expenditures should be announced.

In short, factual information concerning budgetary matters should be available to all staff members so that they can understand the school operation. Such information can improve the quality of justice. This is not to suggest that administrators should not exercise discretion in budgetary matters. An administrator must coordinate the efforts of the entire school and therefore needs some discretion to attend to these responsibilities. However, the responsibilities must not be without limits in the school.

There is a second reason why administrators have so much discretion. Many discretionary situations are without rules because nobody knows how to formulate rules in these areas. For example, one of the responsibilities of a Superintendent of Education is to direct, coordinate, control, and evaluate the educational function of a School Division. This responsibility cannot be reduced to a set of rules. This broad area of responsibility can be broken down to areas like finance, organization, personnel, and curriculum. However, these areas can be outlined only in general terms and not in the form of rules. For example, in the area of finance the Superintendent is responsible for developing and coordinating recommendations to the Board of Trustees regarding the annual education program and the annual operating and capital budgets. In the area of organization, the Superintendent is required to prepare and amend the position descriptions of administrative personnel (middle management) who report directly to him. How could the Superintendent reduce the role of

middle managers to a set of rules? In the area of personnel, the Superintendent, on the advice of the Assistant Superintendent, must recommend to the Board the selection, promotions, tenure, and termination of all other professional educational personnel as well as teacher aides and library technicians assigned to schools. How can these judgements on qualifications and personalities be reduced to a set of rules? In the area of relationships, the Superintendent is responsible to provide administrative guidance and leadership to and supervise the activities of assistant superintendents and the school principals. These general responsibilities of guidance and leadership cannot be reduced to a set of rules. In the area of curriculum, the Superintendent is responsible for encouraging the initiation and investigation of new ideas, provide opportunities for experimentation, and ensure the implementation of worthwhile innovations in education. To do so in all facets of the curriculum across the grade spectrum is a responsibility which, again cannot be reduced to a set of rules. Similarly, the responsibilities of school administrators and teachers cannot be reduced to a set of rules.

There is a third reason why administrators have so much discretion. Many discretionary situations are without rules because discretion is preferred to any rules that might be formulated. Imagine the kinds of rules about educational assumptions which would have to be formulated in the area of curriculum development. Which psychological assumptions would be adopted and locked into a set of rules for K-12? Which epistemological assumptions would be selected? Which value assumptions in our pluralistic society would be translated into rules? The constant changes taking place in these areas would

make it most undesirable to reduce them to sets of values. What is more, any attempt to reduce a broad area like curriculum development to a set of rules, would increase the details of rules so much that the people who would be expected to apply the rules might eventually rebel against the excessive detail to which they would have to attend. The rebellion probably would take the form of an increase in the use of discretion.<sup>7</sup>

Many school administrators have tried to manage student behavior through elaborate sets of rules. Invariably administrators come to the conclusion that a few simple rules seem to be preferable to any attempt to identify a rule and a corresponding punishment for the violation of the rule for every conceivable situation which might arise in schools. The simple rules coupled with the use of "common sense discretion", seems to be more practical and indeed, encourages the application of individualized justice as fairness. It allows teachers to take into account extenuating circumstances which the rule-makers could not anticipate. Rules alone untempered by discretion, cannot cope with the complexities of justice.

Discretion provides a source of creativeness. It allows for curriculum innovation as opposed to conformity to the proposed program of studies. It allows for individualized justice in student management. It allows for the development of dynamic relationships among senior managers, middle managers, teachers, students, and parents. It allows for change to take place.

In summary, it is apparent from this brief review of the use of discretion, that it can be used constructively and destructively. Constructive use of discretion, it is maintained in this study, should

reflect an improvement in the quality of justice and reduce injustice. Destructive use of discretion would reflect an absence of justice or condone injustice. Therefore, the problem is not a matter of eliminating the exercise of discretion but: "What can be done to improve the quality of justice for individuals and reduce injustice through the exercise of necessary discretion?" The balance of this Chapter discusses steps which can be taken to improve the quality of justice when administrators exercise discretion. It is maintained that the quality of justice can be improved by eliminating the use of unnecessary discretion and by confining, structuring and checking the use of necessary discretion.

### III. A FRAMEWORK FOR EXERCISING DISCRETION

Davis' argument that unnecessary discretion should be eliminated and necessary discretion should be controlled is based on the following principle:

When discretionary powers are too broad, justice may suffer from arbitrariness or inequality. When discretionary powers are too narrow, justice may suffer from insufficient individualizing.<sup>8</sup>

The review of the use of discretion by school administrators, in the previous section, would seem to bear out Davis' conclusion. Hence the need for exploring how unnecessary discretion can be eliminated and how necessary discretion can be controlled. The three types of strategies, recommended by Davis, to control the use of discretion are confining, structuring, and checking. However, before these controls will be discussed, strategies for eliminating unnecessary discretion are reviewed.

### A. Eliminating Unnecessary Discretion

What can be done to cut back on the unnecessary use of discretion? Davis describes two approaches: rule of law and non-delegation. He recommends only the former.

Rule of law can be used to contain the discretion of administrators. For example, whenever senior administrators in education decentralize the operation of school divisions to varying degrees, the discretion given up by Superintendents is transferred to principals. The principals are free to do one of a number of things with that discretion. They can simply assume it. For example, a principal may have the responsibility of preparing a school budget within the parameters of the budget allocation to each school. The principal may determine how to spend the textbook budget as well as what hardware and software should be purchased with the base budget as it relates to each subject area or department. The principal may elect to decide whether the Science Department requires some glassware, how much colored paper is required for the art program, which brand of tools to buy for Industrial Arts, and so on. On the other hand, this discretion could be eliminated, in part, through rules. The principal, in cooperation with the staff may establish some rules for the preparation of a school budget. Such rules might include:

- (a) The budgets must be prepared through a Faculty Committee.
- (b) Decisions in the Faculty Committee must be made by consensus or two-thirds majority on money items.
- (c) Departments and Teams submit budget requests and an accompanying rationale to the Faculty Committee.
- (d) A time line is announced for submission, oral presentation

and decisions regarding the preparation of the budget.

(e) Accounting procedures are set up to ensure that budget decisions will be honored.

(f) The budget is published to the entire staff.

These rules or guidelines allow for the decentralization of decision-making without simply increasing the discretion exercised by principals. This is not to suggest that principals should have no discretion. An administrative contingency account could be built into the budget. The principal could chair the Faculty Committee; be the liason between the Superintendent's Department and the Faculty Committee; insist on certain standards for the submission of a rationale for budget submission; and enter the budget debates, usually with a much broader knowledge base about school budgets than the teaching staff. Budget deadlocks could be resolved by the principal as the administrator of the school. In other words, the principal would not be deprived of increasing discretion, but rules governing budget procedures at the school level would eliminate considerable discretion. With that kind of extensive information input, chances are that the budget decisions might be less arbitrary and more equal or fair.

Davis is quite right when he argues that non-delegation is no solution to the widespread use of discretion. For example, if the Superintendent (i.e., senior management) did not delegate responsibilities to school administrators (i.e., middle management), then senior management would have to exercise discretion to attend to the management of each school for budgeting to school discipline. It would be even more difficult for senior managers to exercise

discretionary justice (i.e., individualized justice) because they would not be informed adequately about the distinctive characteristics of each school situation. In short, non-delegation would eliminate the exercise of necessary discretion from school administrators. This would reduce the possibilities for promoting individualized justice in school.

Alternatively, the Superintendent could attempt to prepare a set of rules for everything that goes on in schools. This would include a set of rules for school organization, staff work load, hallway supervision, time-tabling, budgeting, record keeping, student discipline, parent communication, and graduation just to mention a few areas of administrative responsibilities. It is difficult to see how this might promote individualized justice because the generalization of rules to apply to all schools would fail to take into account individual situations. What is more, this approach would create a nightmare of details which might well lead to an increase of arbitrary discretion assumed by school administrators just to wade through and around the rules and related paper work.

In general, non-delegation does not seem to provide an appropriate solution to the widespread use of discretion because non-delegation does not promote individualized justice and can create an administrative nightmare. Time and again the course of action recommended to eliminate discretion is to involve more people and not fewer people in making decisions. For example, it was suggested that staff be involved, and not only informed, in planning the school budget. When more people are involved in making decisions then the discretion of one person (or a few people) is reduced. With greater

involvement, the discretion of one person can be weighed against that of others. The counter arguments of others can increase the possibility of taking special considerations into account.

### B. Controlling Necessary Discretion

It has already been pointed out that discretion is necessary for the administration of individualized justice. However, that discretion must be controlled. It will be suggested in this section that the use of discretion can be controlled by confining, structuring, and checking its use.

#### 1. Confining discretion

Confining refers to fixing boundaries for the exercise of discretion and keeping it within those boundaries. It has been pointed out earlier that rules, standards, and principles are used to confine discretion. The limitations of these approaches were also discussed. It was concluded that some discretion is essential to pursue individualized justice. The question is: "How can necessary discretion be confined?"

Davis recommends that administrators use a rule-making approach to confining discretion. Davis rightly argues that "administrators must strive to do as much as they reasonably can to develop and to make known the needed confinements of discretion through standards, principles, and rules."<sup>9</sup> The rules may be in the form of an abstract generalization which tries to answer a question in the abstract without a set of concrete facts. It is a rule which is not referenced to any particular situation. For example, schools usually have the rule that all visitors must first report to the office. The

rule applies to any and all people who, for whatever reason, show up at school. It applies to the husband of a staff member as well as to the fire inspector, student friend, or Superintendent. Some rules need to be that general. However, not all rules should or can be that general. A rule can be limited to resolve one or more hypothetical cases, without generalizing.<sup>10</sup> This alternative stipulative definition of rules enables an administrator to establish guidelines for specific types of situations long before he can make abstract generalizations (i.e., rules). This hypothetical rule-making takes the following form:

- (a) a hypothetical set of facts;
- (b) a statement of the problem raised by the facts;
- (c) an indication of the agency's answer to the problems;
- (d) a statement of the agent's reasons for its position.<sup>11</sup>

Davis points out that a rule in the form of a hypothetical case can only deal with "ordinary, usual, typical circumstances and with factual patterns that most frequently occur, and it can say nothing whatsoever about either unusual circumstances or circumstances that push the problem toward the borderland".<sup>12</sup> He claims that a rule can have "any degree of vagueness or precision, with or without one or more generalizations, with or without one or more illustrations, with or without one or more set of real facts, with or without one or more sets of hypothetical facts".<sup>13</sup>

How can hypothetical rule-making help to confine the use of discretion? Suppose a school division introduces a policy that all schools must have an "open door policy" during the lunch hour. Suppose it has been introduced on the premise (generalization) that

the students should have access to the school facilities during the lunch hour. The rule raises a multitude of problems for administrators because the rule is set in the form of a broad generalization. An administrator can elect to exercise considerable discretion in the application of the rule. For example, he may require that anyone who wants to be in the school at noon must check with the principal. Or, he may allow anyone including outsiders, to use the school at noon. The administrator may also develop an elaborate system of rules governing who may be at school, what they might do, where they may be, under what circumstances they will be asked to leave, and how they may obtain permission to be in school at noon. These rules could be established a number of ways. The administrator could develop them immediately, allow them to evolve from case by case adjudication, or establish them through hypothetical rule-making. To make all the rules immediately would be difficult because it would be difficult, if not impossible, to anticipate all the different situations which must be governed by the set of rules. To allow the rules to evolve from case by case adjudication would require a great deal of time. Each problem case would have to arise and then be taken through an adjudication process. It is doubtful that the "open door policy" could be implemented effectively while the adjudication process is taking place. The third alternative offers an interim solution. The administrator could identify a number of hypothetical situations that are anticipated and outline a few rules which govern those particular situations. For the time being the remaining situations would have to be dealt with by discretion until further hypothetical or real situations could be identified. For example, the administrator might

identify the following hypothetical situations and make rules governing these situations:

HYPOTHETICAL SITUATION	RULE
1. What if adults from the community want to use the school at noon?	Adults from the community may not use the school at noon.
2. What if the students want to play in the gym?	Students playing in the gym must have a staff supervisor.
3. What if students want to bring out of school friends with them at noon?	Students may not bring out of school friends with them to school at noon.
4. What if a person breaks a window at noon?	The person should be referred to the office.
5. What if the students want to play games or dance at noon?	The students must have a staff supervisor and restrict these activities to the all-purpose room.
6. What if students smoke in school at noon?	These students should be referred to the office.

Hypothetical rule-making is really a way of thinking--where the person tries to anticipate what might happen and then establishes some specific or general rules governing specific situations or sets of facts. It enables administrators to implement general legislation (rules) made by senior administrators (Superintendents) or politicians (board members) who are not close to school situations and therefore usually must develop only general rules or guidelines. It provides staff and students with considerable information as to how the rule

will be implemented. It reduces the exercise of discretion because the administrator has committed himself publicly, by announcing the rules, as to what course of action will be taken. Staff and students do not have to guess as to what the administrator expects. On the other hand, not all discretion has been eliminated. The administrator has not announced what he will do with students who are referred to the office. As time goes on, the administrator, upon recommendation from staff, might suggest other rules either to replace the announced rules or in addition to them. The identification of hypothetical situations and related rules can encourage staff to make concrete suggestions. For example, staff might observe that when students give up smoking in the washrooms, they go out on the porch for a smoke. The staff now has identified a new real situation (set of facts). A rule can now be made to govern this situation so that students are treated fairly by staff members as they exercise discretion.

The collection of hypothetical sets of facts and real sets of facts can provide the background against which an administrator can develop generalizable rules. For example, an administrator may announce the rule that all students should have access to the library at noon even though some students are disruptive in the library. The disruptive students should be dealt with individually. The whole student body should not be deprived of the use of the library just because a few students misuse the library. As time goes on this rule might be applied to more and more areas of the school.

Administrators should make every effort to provide reasons for the rules governing hypothetical situations because reasons help people to understand why a rule is introduced. The reasons also

confine discretion because reasons indicate to others the way a person thinks. They also provide the justification for a prescribed course of action. Exercising discretion is confined when a person announces reasons justifying a prescribed course of action.

The use of hypothetical rule-making covers many aspects of decision-making which frequently are left entirely to discretion. This decision-making area lies between the announcement of general policy made by administrators or politicians and the establishment of a good set of rules governing the implementation of the generalization. Identifying a hypothetical set of facts and announcing rules, as well as reasons for the rules, is an important and effective way of confining the use of discretion without eliminating it when administrators are required to implement general policy guidelines.

In summary, the purpose of confining discretion is to keep it within designated boundaries. This can be accomplished through legislation and by administrative rule-making. Hypothetical rule-making is one administrative rule-making procedure which should be used more effectively to confine the exercise of discretion. Case by case adjudication is inadequate because of its limited use to administrators. Usually it requires too much time. However, it can and should be used by administrators especially in dealing with serious breaches of the law or regulations by staff or students to ensure that individualized justice will prevail.

## 2. Structuring Discretion

How can the exercise of discretion be structured so that individualized justice will be done? How can its use be regularized

and organized so as to promote justice? Davis suggests seven instruments most useful for this purpose. These are: open plans, open policy statements, open rules, open findings, open reasons, open precedents, and fair informal procedures.<sup>14</sup>

Before each one of these strategies is discussed, it must be emphasized that "openness" is a very important aspect of all of the strategies. Openness helps to avoid arbitrariness and injustice through exposure. Secrecy or the absence of exposure can encourage departure from policies, rules, and procedures without providing good reasons or findings to support such departure. Consequently, the first and foremost condition for structuring discretion is to establish an optimum level of openness. The emphasis is on "optimum openness" and not "total openness" because openness can also interfere with the use of discretion. Disclosure of information about individuals can constitute an invasion of privacy or deprive the person of justice in the larger social context.

The seven instruments useful for structuring discretion are as follows. The first three instruments, plans, policy statements, and rules are different ways of stating the purpose, of an institution (or person). To begin with, an administrator has some general plans stated (or semi-stated) in the form of goals and objectives. For example, in the area of teacher evaluation, an administrator might have several goals including staff development, promotion, tenure, and termination. Suppose the administrator is convinced that the primary purpose of teacher evaluation is to promote professional growth as a part of the larger goal of providing quality education. The general goals with the specific emphasis on

professional development should be translated into a policy statement which identifies the priority as well as the guidelines within which teacher evaluation should take place. Without the policy statement the teachers are left guessing as to what form the evaluation will take or how each staff member might be evaluated. It is doubtful that this situation can promote development and it allows different treatment for different staff on an arbitrary basis.

Although the policy statement is essential, it is not enough. It must be translated into some school-based rules as to how it will be implemented and what criteria constitute growth. The rules should outline the procedures (meetings, conferences, etc.) through which the specific criteria will be established as well as outline the actual evaluation routine which will be implemented in a particular school. This is not only important information for teachers about the evaluation process but it places more specific and binding constraints on the discretion exercised by the administrator. For example, suppose an administrator announced the following rules for teacher evaluation:

(a) The principal in cooperation with each Team or Department will identify the specific aims and objectives for each Team or Department;

(b) The principal will discuss with each Team/Department how the Team as a whole attempts to implement these aims and objectives;

(c) The principal and the Team Leader will have a conference with each individual Team member to discuss teaching and curriculum priorities;

(d) The principal and Team Leader will both conduct a number

of classroom visitations for the purpose of observation;

(e) The principal and Team Leaders will have a follow-up conference with the teachers;

(f) The principal will prepare a Report and share it with the Team Leader and the teacher;

(g) The principal and Team Leader will support the teacher in the form of continuous professional consultation.

The rules just outlined are generalizable to all teacher evaluation situations in a particular school with the exception of at least one situation. The rules are awkward in the situation where termination of contract, due to failure to make an adequate effort to improve the performance, must be recommended. How should this situation be dealt with since professional development is not the only goal to be considered in this situation? An administrator may have difficulty identifying generalizable rules which would include this situation as well. For that reason, an administrator might consider a hypothetical rule-making approach for the one special situation. The administrator would outline the facts of the hypothetical situation-- a situation where a teacher is being evaluated for the purpose of professional development and possible termination of contract. The unique problem raised by such a situation would be identified--the problem of involving colleagues in a possible termination of contract controversy. The administration would outline how such a situation might be handled. For example, he might indicate that where professional development and termination of contract are both being considered, the evaluation will be conducted by the principal and the assistant superintendent for personnel. Step one and two in the

general evaluation routine could be retained. The Team and the Team Leader would not be involved in steps 3 - 7.

These rules would apply only to one hypothetical situation. They are not generalizable to all teacher evaluation situations. The rules do not outline precisely how the termination issue will be worked out probably because the situation is so unique that individualized justice is best met by allowing the principal and assistant superintendent considerable discretion. The discretion would be confined by the introduction of case by case adjudication as well as the precedents which would be developed by this procedure.

The principal would offer reasons or a justification for changing the rules for the one particular situation. The reasons might include the observation that most teachers would prefer not to get involved in that kind of controversy. The principal might also feel that any involvement by a Team or Team Leader in a possible termination issue could create distrust and suspicion among colleagues which could be detrimental to the functioning of a Team or a total staff.

Open findings and open reasons can also serve to structure the exercise of discretion. Findings summarize the facts of a particular situation and reasons explain why the particular decisions relative to the situation were made. Although it is recognized that findings and reasons cannot be written for every discretionary decision made by administrators, probably more of them should be recorded. Such a record could assist in the development of more and more generalizable rules. It must be realized, however, that the selection of reasons sometimes can be motivated by the acceptability of the reasons rather

than by the selection of important reasons. Never-the-less, open findings and reasons serve as an effective structure for exercising discretion because they compel administrators to think about the findings and reasons before making them public. The publications of the findings and reasons also invites critical reaction to them. Such responses can help to improve the quality of discretionary decisions. Again, it is not assumed that all findings and reasons must be public and that no discretion should be exercised. Total openness can impede individualized justice. An optimum level of structure must be sought.

What are the implications of open findings and reasons for educational administrators? For example, how might open findings and reasons affect the implementation of a promotion policy where consideration is given to requiring a student to repeat a grade? First, it should be noted that promotion policies are very important in that they can affect a student's self-concept, parents' perception of their child, and teachers' perception of the ability of a student. This is particularly the case with those students who achieve so poorly at school that they are required to repeat a grade. The decision to require a student to repeat is problematic because research tells us that students seldom perform better the second time in the same grade. So, what is the purpose of requiring a student to repeat? Is it to teach the student a lesson? If so, what lesson is taught? Could the same lesson be taught with less time and energy than it takes to re-do all the assignments of a whole year of work? Is the purpose to punish the student for not doing his/her assignments? If so, is the punishment appropriate, especially if the student has the skills to do the required work of the next grade? Is the purpose to

improve the student's attitudes towards school? Seldom does a repeater improve his attitude towards school and teachers who (as the student sees it) made the student repeat a grade. Is it used as a threat and a warning to other students to dissuade them from not doing their daily assignments? If so, is it fair to use some students as examples to frighten others to perform? Is it to maintain standards? Is a policy of requiring poorly achieving students to repeat a grade a necessary strategy to promote high standards for the vast majority of the students? Do the majority of the students really take their cues from the few who run the risk of requiring to repeat? Is it to stream poor achievers from high achievers? School wide consistency on this issue would require that all classes be homogeneously grouped based on ability and achievement records. However, the research suggests that, in most cases, heterogeneous class groupings provide a better learning environment for students. This review of the questions related to a promotions policy of requiring poorly achieving students to repeat a grade is made to point out the importance of promotion policies. They can affect students and school climates in many important ways.

The principal has final authority regarding the promotion or retention of a student. Normally, this decision is made in consultation with the student's teacher and parents. The importance and implications of retaining a child another year in the same grade require that steps should be taken to avoid arbitrariness and injustice. When principals are free to exercise discretion in this area, discrepancies undoubtedly may arise (just as they do in the

sentencing record of different judges).<sup>15</sup> The result is that some schools might retain poor achievers in grade 1, some in grade 6, some in grade 8, and some not at all. Is that fair to the students who have the fortune or misfortune of being in one or another school? Certainly not. How can appropriate findings and reasoning help to structure the discretion exercised by principals in such situations?

Several steps could be taken. The senior administration could conduct a study of the questions raised about the implications and reasons for retaining students. The findings of studies in this area could be disseminated and discussed with all the principals. A task force could be established to review the reasons offered for retentions in the light of the findings. The Superintendent's Department in conjunction with principals could develop some division guidelines within which principals would have to exercise discretion. The guidelines should take into account research findings. Procedures for determining promotions and retention would be developed and communicated. One important aspect of the procedure might be to introduce an appeal system which a parent could use when a child is asked to repeat. The appeal might be taken to an ad hoc joint committee of the teacher or teaching team, the principal, the parents, and a representative of the Superintendent's Department. The procedures, including the appeals procedure, would be made public to all staff, students, and parents. This approach would go a long way to structuring the discretion exercised by principals through open findings and reasons concerning the principle of retention as well as the issue of retaining individual students. Although this procedure reduces the discretion of the principal, it does not eliminate his

discretion. The principal can still exercise discretion as to what recommendation he makes for each student and the reasons offered. Most of the steps in the procedure are also restricted to school personnel which increases the influence of the principal. The appeal procedure probably would seldom be used if the principal exercised his discretion fairly. This is only one example of a school issue where findings and reasons should be used to structure the discretion of administrators. Many others could be cited.

Precedent can also be used to structure the discretion exercised by administrators. The use of precedent reflects a special emphasis placed on consistency. A high emphasis on the use of precedent leads to the development of law whereas a lower emphasis on precedent is reflected in the use of discretion. In fact, Davis suggests that the distinction between law and discretion is best shown in a series of stages in which precedent is:

- (a) almost always binding;
- (b) always considered and usually binding;
- (c) usually considered but seldom binding;
- (d) occasionally considered but never binding;
- (e) almost never considered.<sup>16</sup>

The use of the first two categories result in law whereas the last two reflect the use of discretion. The third stage indicates that there is a gradual transition from exercising discretion to making and using laws. Indeed, the use of precedent helps to distinguish law from discretion.

The primary emphasis on law and the relative absence of

discretion in jurisprudential literature would suggest that law is preferred to discretion. Law places a much greater emphasis on consistency which is considered a desirable quality because it can reduce arbitrariness.<sup>17</sup> On the other hand, binding precedent may make for undue rigidity. Precedent can destroy the individualizing element of equity. Excessive use of precedent can, in fact, lead to injustice and a failure to make use of new knowledge and understanding. Therefore, the emphasis in the use of precedent should be on the use of an optimum degree of the binding effects of the use of precedents.

It is important to note how the use of precedent can and should affect decision-making. When a new administrative issue arises, it will probably be dealt with by school administrators through the exercise of discretion unless someone has outlined a detailed series of rules to govern the issue. Gradually, the administrator might collect precedents (hypothetical or real) on the subject matter and so shift towards placing more and more emphasis on precedent. This progression from unguided discretion to the eventual formulation of rules is a major responsibility of administrators (Chart 2). It provides an important structure for the exercise of necessary discretion. What happens all too often, unfortunately is that administrators do not progress through the stages with many issues.<sup>18</sup> They continue to exercise unbridled discretion long after sufficient information and experience is available to establish principles and/or rules to guide the decision-making process. The initiative to move



through the stages must come from administrators since the new situation or policy usually does not dictate how an administrator should manage the situation through the use of precedent. The fact that it is a new situation frequently indicates that there are no precedents available. Only after decisions have been made in the new area of responsibility can precedents develop. When they emerge, it is up to the administrator to shift from using discretion to using precedents so as to ensure consistency where necessary.

How do these generalizations about the use of precedent to structure discretion apply to the role of educational administrators? For example, how could the use of precedent structure the discretion exercised by a board of trustees or a superintendent's department? Suppose the policy concerning the granting of leaves were as follows: 'An employee may be granted a leave of absence at the discretion of the Board. Each application shall be considered on its own merits.' The policy statement is very clear on how leaves shall be granted, namely, at the discretion of the Board. In practise what this might amount to is that the Superintendent's Department makes a number of recommendations after the Board has indicated how many leaves they are prepared to grant in a given fiscal year. The Board then accepts the recommendations submitted by the Superintendent's Department. The entire selection process is conducted through the exercise of discretion.

It should be pointed out that leave of absence policies are fairly recent in the history of most school boards. Consequently, it can be said that policies in this area are still in the early stages of development in Davis' stages of development from unlimited discretion

to law based on precedent. However, the question should be asked: Would individualized justice be served better if the exercise of discretion were structured through the introduction of precedents? In other words, should the granting of leaves of absence be tempered with the principle of consistency? Or, is this an area of jurisdiction which can best be served through the use of discretion?

First, consider the implications of allowing unlimited discretion in the dispensation of leaves of absence. This situation allows the following possibilities:

- (a) leaves are granted to males only;
- (b) leaves are granted to females only;
- (c) leaves are granted only for graduate studies;
- (d) leaves are granted only for undergraduate studies;
- (e) leaves are granted for travelling to some applicants but not to others;
- (f) leaves are granted to some applicants but not others to recover from fatigue or "teacher burn-out";
- (g) leaves are granted on the basis of personal favors;
- (h) leaves are granted on the basis of only some principals;
- (i) leaves are granted only to applicants who are 'potential administrative material';
- (j) leaves are granted only for teachers who plan to attend a foreign university.

These are only some of the possibilities when unlimited discretion is exercised in granting leaves. It is unlikely that any Board or Superintendent would commit all of the listed discriminatory

practices. However, is it good enough to encourage a system in which these and other discriminatory practices can take place without scrutiny? In all fairness to the teaching and administrative staff of a School Division, it would seem that the use of discretion should be structured so as to reduce the possibility of discrimination by building in a structure which would encourage fairness. Maybe precedents could be established so that certain basic principles will be honored in the granting of leaves. The precedents could establish, over a period of a few years, principles such as:

(a) no discrimination by sex will be practical;

(b) specific priorities for the granting of leaves will be announced in advance;

(c) minimum professional and experience qualification will be announced;

(d) recognized places of study will be announced.

If precedents could be established to support a few basic principles, then staff members would know how they are applied to establish an element of fairness. This procedure would help to structure the use of discretion but not eliminate it. Some balance between the use of precedent and the use of discretion is required to promote justice.

The problems of rigid reliance on precedent must also be avoided. These can be illustrated with reference to equal employment opportunity. For example, an employment policy might be stated as follows: 'No person shall be denied employment, reemployment or advancement, nor shall be evaluated on the basis of sex, marital status, race, color, creed, or national origin'. Suppose a division

had a tradition of appointing only male administrators. All precedent would then support a continuation of this practise. However, the practise is discriminatory on the basis of sex and therefore contrary to the principle of equal employment opportunities. A rigid adherence to precedent would not promote individualized justice in this case. It would have to be tempered with discretion to allow a break from tradition in order to introduce the principle of equal employment opportunities.

Finally, how can fair and informal procedures be used to structure the exercise of discretion? In administration, procedure refers to procedural practises short of a trial-type procedure as in a court of law. In other words, the question is: Are there certain procedures of inquiry, investigation, communication, and meting out punitive measures which administrators might adopt to structure the exercise of discretion? How might, for example, the policy of suspending students from school be affected by such structural procedures? Suppose the policy of a school division regarding student suspension is as follows: 'Principals may suspend students for a period of up to six weeks. The Superintendent shall be notified immediately by the Principal. These suspensions must be justified and open to review. Normally a Principal shall suspend, with cause, until the student and his parents come to a satisfactory arrangement with the school'.

This policy statement provides the principal with considerable discretion although it contains some important constraints (i.e., the Superintendent shall be notified immediately, the suspension must be justified, the suspension must be open to review, the suspension

cannot exceed six weeks). These conditions provide some structure for exercising discretion, but do they provide enough structure? Some areas which might need structure which are not included in the policy statement are:

- (a) For what cause may a student be suspended?
- (b) What investigation procedures should the principal follow?
- (c) What punitive measures should be considered before a student is suspended?
- (d) What communications with the students and parents should precede suspension?
- (e) On what grounds (psychological, sociological) might a principal exercise leniency?
- (f) What inquiry procedures and interrogation procedures are appropriate?

These questions are not raised to suggest a trial-type court hearing or procedure, but to indicate that answers to these questions have an important bearing on whether a student will be suspended. In-so-far as principals are free to answer these questions entirely on the basis of discretion, students from different schools probably will be treated quite differently. Is that a just and fair way to treat students? Consider for a moment, the situation where a principal has no guide except the previously quoted general policy statement. The principal can do as he or she pleases within very broad limits. He or she can choose to consider a misdemeanors without considering the student or act without conducting an investigation. He or she can be guided by a theory of retribution, by a theory of deterrence, by a theory of rehabilitation, or by no theory at all. The principal

can come up with a wholly emotional response without offering a rational basis for his decision. He or she can arrive at a decision without findings or reasons or declare a decision without reference to any of his previous decisions or the decisions of other principals in his school division or the Province (i.e., reference to precedents). The student is out of the building, while student, parent and principal try to arrive at a mutually satisfactory arrangement for his return. That gives the principal a considerable advantage in the discussion of mutually satisfactory arrangements. Such vast discretion can lead to a high degree of disparity in the number of students which are suspended from one school as compared to another. On a matter of such importance, a degree of consistency is required to make the system just for all students. The Superintendent's Department should take steps to introduce fair and informal procedures for the policy of student suspension by introducing principles, criteria, and rules for suspending students from school.

This concludes a review of seven instruments which can be used to structure the use of discretion. All of them should be used on many issues not at the minimum or maximum level but at an optimum level.

### 3. Checking discretion

Not only should necessary use of discretion be confined and structured, but it should also be checked. The principle of checking simply means that a bureaucracy should be organized in a way that ensures that everyone's action is checked by someone. There are many different ways of checking the use of discretion. Some of them,

according to Davis, are

- (a) checking by a superior officer in a hierarchical structure;
- (b) checking by colleagues;
- (c) checking by subordinates;
- (d) checking by a third party official critic (i.e., ombudsman);
- (e) checking by private organizations;
- (f) checking by the press;
- (g) checking by a tribunal;
- (h) checking by a reviewing court.<sup>20</sup>

Checking is usually most effective for the purpose of guarding against arbitrariness or illegality. For policies, rules, and procedures to be just, they must not be arbitrary nor illegal (assuming that the law is just). Therefore, it is important to establish a checking procedure for the exercise of discretion. The principle of checking is clearly recognized in the court of law. A jury of twelve is called so that the twelve will check each others' weaknesses, emotions, and idiosyncracies. A three-judge court is established for the same reason. How can the principle of checking be introduced to control the use of discretion by administrators in schools?

The supervision and review by superior officers is the most common and may be the most effective checking method used in schools. It takes various forms such as providing advance instruction, making random checks, and appealing a decision to a higher authority. There are some potential problems with this approach. First, school administrators can discourage aggrieved parties (e.g., teachers, students, parents) from taking their cases to superior officers

(e.g., Superintendent's Department). For example, suppose a school division has the following policy regarding students' rights to continue his studies in high school: High school students who have not received standing in at least half of the courses attempted in a school year may be required to write to the Superintendent requesting to continue. The principal of a high school in the division may not want a student, who has not received standing in at least half the courses attempted in a school year, to return the following year because the principal suspects the student of promoting the non-medical use of drugs at school. However, suppose the principal does not have definite proof--only teacher suspicions. The principal may wish to persuade the student not to return to school even though the student is determined to return. The principal may not want the matter to be referred to the Superintendent's Department because he or she really has no hard evidence on which to prevent the student from continuing his studies at the school. Consequently, the principal may not advise the student or his or her right to appeal the issue to the Superintendent who can grant the student permission to continue. The senior management may, in fact, cooperate with middle management in thwarting appeals. Appeals can be a lot of work and possibly create a big issue out of routine issues. The result may be that the student does not continue his studies because he or she was not informed of his right of appeal. It is very important that middle management inform teachers, students, and parents of their rights as well as appropriate procedures for soliciting reconsiderations of decisions made by middle management.

Sometimes reviews require the introduction of an independent review officer to attend to problems. School administrators must have a continuing positive relationship with staff and students. The need for this relationship can impede an effective review or interfere with the relationship after a review has been conducted. The example of the student who did not receive standing in at least half of his courses is a good case in point. If the student continues at the high school, it would be desirable for him or her to have an accepting relationship with the school administrators. If the student knew that the principal had tried to remove him or her from the school, that could create a negative relationship. However, the policy states that the request for permission to remain at school must go to the Superintendent and can be appealed to the Board. Both of these parties do not require a close working relationship with the student and therefore are in a better position to deal with the request. Both are also less influenced by the student's past performance and conduct at school which could provide the student with a more independent hearing. On some important issues it is important to introduce independent officers to exercise discretion.

Legislation is also used to check the discretion of administrators. These must of necessity be fairly general. For example, in Manitoba, the principal is required to exercise disciplinary authority over the students from the time they arrive at school until they leave for the day. The principal also has disciplinary power over students' conduct towards one another on their way to and from school. This regulation spells out when and where the principal must

exercise disciplinary authority. How that mandate is fulfilled is not spelled out. That allows the principal a great deal of discretion, including the discretion to prosecute or not to prosecute. Since circumstances vary so much from situation to situation and student to student, the legislation must be general. However, the principal (and Superintendent) should introduce confining, structuring, and checking procedures to ensure that the exercise of discretion will be just because legislation can only offer very general checks on middle management.

Should school divisions provide the services of an ombudsman to check the exercise of discretion? An ombudsman is an independent person who has no stake, directly, or indirectly, in any particular result. The only function of this office is to criticize and persuade. This seems to be an area of investigation and inquiry which requires considerably more study and experimentation. There are problems with introducing an ombudsman service at the national level because of the size of the office that would be required. The implications of setting up ombudsman services within particular agencies (such as school divisions) have not been explored sufficiently.<sup>21</sup>

These are only a few checking procedures of the many that might be considered. They should be used to prevent situations where administrators might exercise unfettered discretion. That is not to say that at no time must administrators exercise considerable discretion. It is sometimes inevitable in new and unpredictable situations. At the same time, it is important that the exercise of discretion be checked through a variety of procedures.

### C. Conclusion

In summary, it has been argued in this Chapter that school administrators must inevitably exercise discretion because the role simply cannot be reduced to following a prescribed set of rules. Moreover, discretion should be exercised so as to improve the quality of justice and reduce injustice. Justice should be the moral principle guiding administrators when they exercise discretion. Davis outlines four conclusions about the use of discretion in the pursuit of justice. First, when the discretion of school administrators is too broad, justice may suffer from arbitrariness and inequality. Second, when discretion is too narrow, justice may suffer from insufficient individualization. Third, school administrators must take care not to exercise discretion too generously nor avoid the exercise of discretion. In other words, administrators must exercise discretion but they should do so selectively so that justice will be done. Fourth, Davis recommends three ways of controlling the use of discretion. He maintains that its use should be confined, structured and checked through a variety of administrative strategies.

Davis' argument is important but not complete. The fact that administrators should exercise discretion to promote individualized justice, as outlined by Davis, also requires that administrators possess a clear understanding of the substantive and procedural dimensions of what it means to promote justice. They need to understand and be able to use the moral terms and judgements which are essential for resolving ethical and moral problems with justice. They need to know how to take into account the duties, rights, motives and deserts of everyone affected by a moral problem so that

justice will be done. They need to know how to act with justice. In short, they must have a concept of right and wrong; they must be able to distinguish between right and wrong; and they must be able to understand the meaning of right and wrong. These substantive and procedural concerns should be a part of the exercise of discretion but Davis' scheme does not provide a basis for understanding and applying the principle of justice to the exercise of discretion. Therefore, an attempt is made, in the next Chapter, to develop a normative conceptual framework which can assist school administrators in exercising discretion in pursuit of justice.

FOOTNOTES

p. 3. <sup>1</sup>K.C. Davis, Discretionary Justice: A Preliminary Inquiry,

<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid., p. 3.

<sup>5</sup>Ibid., p. 3.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid., p. 43.

<sup>8</sup>Ibid., p. 52.

<sup>9</sup>Ibid., p. 59.

<sup>10</sup>Ibid., p. 60.

<sup>11</sup>Ibid., p. 61.

<sup>12</sup>Ibid., p. 63.

<sup>13</sup>Ibid., p. 64.

<sup>14</sup>Ibid., p. 98.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid., p. 106.

<sup>17</sup>Chapter I points out that 'non-arbitrariness' is a necessary but not sufficient condition of justice. See also M.P. Golding, Philosophy and Law.

<sup>18</sup>Ibid.

<sup>19</sup>Ibid.

<sup>20</sup>Ibid., p. 142.

<sup>21</sup>Ibid.

## CHAPTER III

### A CONCEPTUAL FRAMEWORK FOR MAKING ETHICAL AND MORAL JUDGEMENTS

Chapter III is the major focus of this study in that it attempts to identify the moral judgements which must be made to improve the quality of justice and reduce injustice. The substantive aspect of justice defended in this Chapter can be summarized as follows. For an act to be just, it must not favor one party over some others without sound principles or reasons. These principles or reasons must be established on the basis of the duties, rights, motives and deserts of all parties affected by the moral act. The principles and reasons must also take into account the standard of right and wrong as well as the meaning of right and wrong.

A normative conceptual framework is developed as follows. First, a brief introduction to moral theory is offered because the conceptual framework is based on moral theory. Attention is focused on how moral and ethical problems are resolved, how normative terms are used to make normative judgements, and what standards of right and wrong are used to make moral judgements. In short, the introduction to moral theory shows how moral judgements are made.

The introduction to moral theory is followed by a detailed account of how normative terms and judgements should be used to make moral judgements, so as to improve the quality of justice and reduce injustice. Five classes of moral terms and judgements will be discussed. An attempt is made to show how the classes of moral

terms and judgements interrelate. It is pointed out that judgements of justice require all classes of moral terms and judgements.<sup>1</sup>

The account of the five classes of moral terms and judgements is also used to respond to the two fundamental problems of ethical and moral theory which are identified in the introduction. These are: "What is the standard of right and wrong action?" and "What is the meaning of 'right' and 'wrong'?". A response to these two questions helps to identify the assumptions underlying the concept of justice adopted in this study.

The study does not suggest that the five classes of moral terms and judgements apply only to the exercise of discretion by school administrators even though the framework is applied primarily to the resolution of school related issues by administrators. A wide range of examples and applications in Chapter IV show the application of the framework to the ethical and moral problems faced by school administrators when they exercise discretion in pursuit of justice.

## I. AN INTRODUCTION TO MORAL THEORY

Moral and ethical problems have prompted people to devise different theories and strategies to resolve these problems. The origin of both words, 'ethics' and 'moral', indicates the most common approach to these problems. 'Ethics' means customs or habitual conduct in its Greek origin and 'moral' means customs and practices in its Latin origin. Many problems of good ends and right obligatory conduct are resolved by reference to custom and common practice. Conversely, ends which are not approved and conduct which is regarded

as wrong or evil are called unethical or immoral. Ethics refers to the set of rules or principles (i.e., a code of conduct) used to determine 'good' ends as well as 'right' action or obligations. A person who has no ethics at all is someone who has no code of conduct. Such a person is regarded with suspicion because his behavior is unpredictable and unreliable.

However not all moral problems can be resolved by standardized or personal codes of conduct. There are several reasons for this. Sometimes a person is caught in a conflict of principles. For example, suppose a guidance counsellor has promised a student not to share with anyone whatever is said in a counselling session. Suppose the student tells the counsellor that the student plans to kill one of the teachers on staff. Should the guidance counsellor keep his promise not to tell anyone or should he forewarn the teacher whose life is in apparent danger? Should he report the student's intention to people in authority--the principal, superintendent, police, or the students' parents? Needless to say, the guidance counsellor, whom we assume is aware of the conflict of moral principles, is faced with a moral problem. The 'promise keeping' principle establishes a prima facie obligation not to share the information which the student shared with him with anyone. The principle of 'saving human life whenever possible' establishes the prima facie obligation to report the student's intention to some authorities. What is the counsellor's actual obligation? To honor one of the principles is to avoid the other.

To avoid the conflict of principles encountered by the counsellor would require that people be able to draft codes of conduct

which would cover all experiences which people may encounter. One of two courses of action would have to be followed to meet this need. Someone would have to be able to anticipate all future experiences so that a moral code could be established to cover them adequately. The other alternative would be to be able to conjure up all possible hypothetical experiences so as to prepare a moral code to cover them. Both are impossible. People cannot anticipate every experience they will encounter in the future. It is equally impossible to identify and describe all possible hypothetical experiences. The result is that people continue to encounter moral problems due to the limitations and inadequacies of their codes of moral conduct. This situation results in considerable personal uncertainty and disagreement in beliefs and attitudes. How can people resolve these moral problems?

Two different approaches have been followed to resolve these moral problems. Historically these problems were referred to moralists who were recognized as people especially capable of determining the right course of action. The moralist might be a priest, medical doctor, medicine man, or any other recognized authority. He would meet an immediate practical need in that he would prescribe right courses of action for particular moral problems brought to his attention. He may have a theoretical interest in the basic principles of morality although this is by no means a consistent characteristic of moralists.

The second alternative to resolving moral problems through codes of conduct is through the development of moral theory. It is a quest and concern for knowing adequate reasons for determining what is the right thing to do. Moral theory provides people with different

ways of thinking through moral dilemmas to identify the best possible way of dealing with personal uncertainty regarding conflicting beliefs and attitudes. The development of moral theory is characterized by an investigation of questions like:

(a) What does it mean to say that a certain type of conduct is reasonable?

(b) What is the nature and criteria of valid moral judgements and by what criteria can they be judged valid?

(c) What is a good moral reason?

Moral theory is not merely speculative thinking about any hypothetical moral situation. It is based on the practical assumption which has been summarized as follows by Sir W. David Ross:

the existence of what is commonly called the moral consciousness; and by this I mean the existence of a large body of beliefs and convictions to the effect that there are certain kinds of acts that ought to be done and certain kinds of things that ought to be brought into existence, so far as we can bring them into existence.<sup>2</sup>

The development of moral theories requires an additional assumption identified by A.I. Meldon in his reference to moral discourse:

"Moral discourse, it would seem, is addressed to moral men, who recognize, understand, and can be moved by moral reason".<sup>3</sup> The appeal to moral reason is not to suggest that the basis for moral man has been resolved in favor of 'rationality' at the expense of an appeal to human nature. It is merely to suggest that moral theory is an appeal to good reasons for moral action.

Frankena identified three kinds of thinking which are involved in the development of moral theory.<sup>4</sup> First, he identified descriptive empirical enquiry. This is the kind of study conducted by

anthropologists, historians, and sociologists. They try to explain the phenomenon of morality by developing a theory of human nature. Second, he identified normative thinking. This is done by philosophers who inquire into what is 'good' or 'right'. The emphasis is on giving reasons for normative moral judgements like "It is wrong to tell a lie" or "Knowledge is good". Third, there is analytical, critical or meta-ethical thinking. It is not the purpose of meta-ethics to answer particular or general questions about what is good or right. The purpose is to answer logical, epistemological, and semantical questions like:

- (a) What is the meaning of 'right' in the moral sense?
- (b) What is the meaning of 'right' in the non-moral sense?
- (c) What is the nature of ethical problems?
- (d) What is the function of ethical judgements?

This Chapter focuses on normative and meta-ethical thinking necessary to resolve ethical and moral issues. In other words, this Chapter focuses on the ethical nature of problems as well as the function of ethical judgements.

#### A. Normative Terms

There are a variety of normative moral terms which give moral discourse its distinctive characteristics. These terms must be distinguished from descriptive terms which are used to make factual statements. Factual statements which enter into moral discourse frequently contain descriptive terms which identify psychological characteristics. Some examples are:

- (a) He remained loyal to the cause.
- (b) His kindness paid off in the end.
- (c) His teacher chastised him for his selfish behavior.

These sentences do not express normative judgements because they do not contain normative terms. In contrast to descriptive statements, the following statements are normative judgements because they contain moral terms:

- (a) You are obliged to help your colleague.
- (b) He is morally forbidden to go through with the act.
- (c) It is his duty to speak up on the matter.
- (d) Teachers must assume moral responsibility for the children.
- (e) The child was not blameworthy because he could not have anticipated the consequences.
- (f) It is morally necessary that you return the stolen goods.
- (g) In all fairness, you should assume some of the responsibility.
- (h) It is wrong to steal.

Similarly normative judgements could be made through the use of moral terms like:

evil, praiseworthy, laudable, justice, morally proper, reprehensible, heinous, morally repugnant, morally degrading, right, good, bad, ought.

Epistemic terms are another group of normative terms. They are used in making knowledge claims of various kinds. Examples of epistemic terms are:

rational, correct, incorrect, valid, invalid, relevant, irrelevant, excellence, know, warranted belief, credible, sensible, reasonable, groundless, absurd, evidence, true, false.

They are important terms for moral discourse and they are

used quite commonly because moral discourse includes a search for good reasons for normative judgements.

Sometimes moral terms are used in a non-moral sense. Some examples are:

- (a) Make a right turn at the next intersection.
- (b) That was a forbidding task.
- (c) Remember to bring the proper tools.

These are either imperative or declarative sentences that do not express moral judgements even though they include terms which are commonly used as moral terms.

Aesthetic terms make up another group of normative terms which are not used to make moral judgements. Some examples are:

- (a) The northern lights are beautiful.
- (b) He proved to be a witty after-dinner speaker.
- (c) He delivered an eloquent speech.
- (d) That is a magnificent mountain scene.

Some other aesthetic terms are:

harmonious, funny, boring, interesting, exciting,  
entertaining, lovely, pretty, elegant, repulsive.

Another group of non-moral normative terms is the class of charientic terms.<sup>5</sup> This group includes terms like:

boorish, crude, vulgar, polite, tasteful, pest, coarse,  
base, ladylike, gentlemanly, dignified.

Such terms are not descriptive terms because they are evaluative.

They normally do not refer to morally right or wrong action and therefore are not moral terms. For example, criticizing a person for picking his nose is no reference to the person's moral character. Nor are charientic judgements used to make aesthetic judgements. They are

used to make judgements about persons and their acts whereas aesthetic judgements are normally made about things and experiences.

Instrumental terms constitute a fifth group of normative terms. These terms indicate that the course of action in question is effective towards meeting some particular end. Some examples are:

(a) He was instrumental in restoring your health.

(b) This is a good pair of scissors for cutting paper.

No judgement is made as to the 'rightness' of the end served by the particular course of action. In other words, the pair of scissors is good for cutting paper regardless of whether it is right to cut the paper. Hence, 'good' is used strictly in an instrumental sense in this statement and not in a moral sense.

This study will focus only on those normative terms which are moral terms. The use of moral terms in ordinary moral discourse raises two fundamental problems of ethical theory. First, what is the standard of right and wrong action? Second, what is the meaning of the words 'right' and 'wrong'? J.S. Mill, for example, discusses the first but not the second. Recent philosophers have been preoccupied with the second rather than the first. What follows is a discussion of these two problems of ethical theory.

### B. Standard of Right and Wrong

What is the standard of right and wrong action? This question is another way of asking: "What characteristics must an act have in order to have the further characteristic of being right or wrong?" Philosophers who elect to establish standards of right and wrong action have adopted the following line of action in trying to establish the

validity of any item of a moral code:

Statement of standard(s)

Statement of fact(s)

Statement of judgement(s)

The following is an example:

(Standard) Any act which does the reverse of promoting happiness is wrong.

(Fact) Telling lies does not promote happiness.

(Conclusion) Therefore it is wrong to tell lies.

The conclusion is a moral rule arrived at by drawing an inference from the standard of right and wrong action together with a statement of fact. The rule might become an item of a moral code.

A note of caution should be sounded regarding moral codes and moral standards. The existence of different codes does not prove that there are different standards of right and wrong action. It only indicates that different standards are used. Nor does the absence of moral codes prove that there are different standards of right and wrong action. The rightness or wrongness of standards does not depend on whether any codes have been developed or written. Even if no proof is available for standards of right and wrong action, it does not follow that there are no universal standards of right and wrong action.

J.S. Mill attempted to establish a standard of right and wrong action. He claimed that the right-making characteristic of any and all action is that of promoting the greatest happiness. In other words, he maintained that if an action has the characteristic of promoting the greatest happiness then it has the further characteristic of being

right. The standard advanced by Mill is a proposition of the form:

All acts having the property of X are right,

Acts having a property the reverse of X are wrong.

The property X, for Mill, is the property of promoting the greatest happiness. Mill is an ethical hedonist in that he accepted the value judgement that all acts having the property X are right. He is a psychological hedonist because he believed that the only thing that men ultimately desire is happiness. He is also regarded by some as a hedonistic utilitarian because he believed that what makes acts right is their promotion of happiness. If an act produces happiness it is right, if it does not produce happiness it is wrong.

Mill offered some evidence for his doctrine that happiness is good or desirable. He claimed that "the sole evidence that anything is desirable is that people do actually desire it".<sup>6</sup> He maintained this claim is analogous to the statement that "the only proof capable of being given that an object is visible is that people actually see it".<sup>7</sup> He confused the suffix of 'visible' with the suffix of 'desirable'. He failed to realize that the suffix of 'visible' means 'capable of' and the suffix of 'desirable' means 'worthy of'. In so doing he committed the fallacy of equivocation.

Mill's standard of right and wrong action is a synthetic proposition. "An act is right insofar as it promotes the greatest happiness" is not an analytic statement because its negative is not self-contradictory. A person would make sense if he said "An act is not right insofar as it promotes the greatest happiness". To be a true analytic proposition the denial of the proposition has to be contradictory. For example, "A yard is not three feet" becomes, by

substitution, "Three feet is not three feet" which is self-contradictory. Second, an analytic proposition is one whose truth is determined by the meanings of the words used in the proposition. However, Mill does not define the word 'right' but, instead, identifies a standard of right and wrong action.

If Mill had been asked whether his synthetic proposition was a necessary proposition, he probably would have answered in the affirmative. He would have claimed that the 'happiness principle' is necessarily true and could not possibly be false even though he cannot offer proof but only some evidence. He claimed that his principle is a first principle, and therefore, like all other first principles, it is incapable of proof. Mill would have denied that the happiness principle was in any sense contingently true. There is a sense in which first principles are known a priori simply because they hold true in all cases. A first principle cannot be verified. In other words, if Mill was right, he would have identified a necessary synthetic truth.

This raises one of the most controversial problems in philosophy. The question which Mill's implicit claim raises is this: If he asserted a synthetic proposition, which gives genuine information about the world, how can we know that it is true except by observation of the world? If the proposition can be known a priori, how can it be anything but analytic or empty of any factual content? How can Mill enjoy the advantages of both? It is not the purpose of this study to resolve this question but merely to point out that Mill's line of argument raises this difficult question. If Mill had maintained that it is synthetic but not a priori, he would have

been consistent with the empiricist point of view. Since he claimed, implicitly, that these are synthetic a priori truths, he leans towards the rationalist point of view.

Furthermore, Mill has a tendency to confuse general value judgements with moral judgements and treats them all as moral judgements. He does so by using the word 'desirable' for 'good'. However, 'desirable' is not an ethical or moral term.

Implicit in Mill's standard of right and wrong action is the assumption that an act is right insofar as it promotes the good where 'good' refers to that which is desirable in itself. What is not clear is whether Mill advocated an agathistic (derived from the Greek word 'agathos' meaning 'good') position in the sense that Hastings Rashdall refers to an act as being right insofar as it promotes the good.

### C. The Meaning of 'Right' and 'Wrong'

The second fundamental problem of ethical theory is, "What is the meaning of the words 'right' and 'wrong'? Philosophers who try to deal with this question ask questions like: What do we mean when we say that an act is right or wrong? What do we mean when we say that an act is just or unjust? The simplest form of asking these questions is: What is rightness? What is justice? It is not immediately clear what people are asking for when they pose these questions. They could be asking for a list of examples illustrating right actions and wrong actions. They could be asking for a definition. In other words, they could be asking: "What sort of things are just?" or "What does the word 'right' mean?" Historically philosophers have experienced difficulties developing good answers for these questions.

Carnap<sup>8</sup> offered an explanation as to why the question "What is rightness?" defies a good answer. To explain the problem, he identifies three types of sentences. The first type of sentence he calls an 'object sentence' (sentence in the object language). An example is: "The table is brown". The second type of sentence is a syntactical sentence (sentence in the formal mode of speech). A word is talked about in the sentence rather than used in the sentence. An example is: "Table is a form of furniture". The third type of sentence is a pseudo-object sentence (sentence in the material mode of speech). An example is: "What is rightness?" The sentence looks like an object sentence but no sense can be made of it when it is interpreted as an object sentence. Carnap says that the use of this kind of sentence is an intellectual vice because no method is available to find answers to this kind of question. That is why it turns out to be a perennial question.

What if different people mean different things by the word 'right'? Before this question is dealt with, it must be pointed out that this question does not include words with equivalent meanings in other languages. Each language is an independent symbol system. The meanings of the symbols must be explored within the symbol system. For example, it does not make sense to ask the Chinese what they mean by the words 'right' and 'wrong'. They do not have the words 'right' and 'wrong' in their language. If anything, they only have synonyms for these words.

Two different kinds of definitions can be identified. First, and probably the most familiar kind, is the reportive definition. This is the lexical definition found in dictionaries. Second,

definitions are frequently stipulated. That is, a person will spell out explicitly how a particular word will be used. Theoretical treatises tend to have a large stipulative component.

The meaning of the word 'right' cannot be discovered by introspection but rather by determining how the word is used. The only alternative is to claim that the word 'right' cannot be defined. Sidgwick,<sup>9</sup> for example, maintains that 'right' cannot be defined but that 'good' can be defined. Sir W. David Ross<sup>10</sup> maintains that neither 'right' nor 'good' can be defined. Hastings Rashdall agrees with Ross. G.E. Moore<sup>11</sup> claims that 'good' is definable in a verbal sense although he regards such definitions as unimportant because they define only how a word is commonly used. Moore is interested in the real nature of the notion denoted by the word 'good'. In this sense, Moore maintains that 'good' is not definable. Philosophers who claim that at least one moral term cannot be defined are called intuitionists. The reason is this. If, for example, some claim that the word 'right' cannot be defined, they would claim that we can know whether something is right only by intuition.

Determining how a word is used offers an important check on theories about the meaning of 'right' and 'wrong'. Whatever theory is advanced about the meaning of 'right' and 'wrong', it must answer in the affirmative the key question: Does it conform to ordinary discourse? This is a necessary condition, though by no means a sufficient condition for determining the merit of theories about the meaning of 'right' and 'wrong'. If it does not conform to ordinary discourse, what is the point of advancing the theory? It may offer some insight into some important philosophic matters but not about the

meaning of 'right' and 'wrong' as these terms are normally used. Determining how a term is normally used in ordinary moral discourse also identifies the limitation of the use of stipulative definitions although this is not to suggest that there is no special use for stipulative definitions.

An appeal to ordinary moral discourse in determining the meaning of 'right' and 'wrong' must not be confused with an appeal to commonly accepted methods for determining the validity of an argument. Common usage is essential in determining the meaning of a term but it does not imply validity. The validity of an argument does not depend on common acceptance. If an ethical judgement entails formal logic, then it will be valid in whatever sense the logic is valid. If the judgement also entails empirical reasons, then it is valid in whatever sense the empirical methods used are valid. In short, the appeal to common usage is appropriate for an inquiry into the meaning of 'right' and 'wrong' but not for the validity of the methods used to win arguments.

How, then, are the words 'right' and 'wrong' used in moral discourse? Some theorists maintain that the meaning of 'right' and 'wrong' is given by any definition of the form

'X is right' = def. 'I approve of X'.

and mutatis mutandis for 'wrong'.

This is called the subjectivist theory of the meaning of 'right' and 'wrong'. The result of this interpretation is illustrated in a comparison of the following statement:

(a) John: Keeping promises is right.

(b) Peter: I approve of keeping promises.

John clearly stated a moral judgement. But, did Peter also state a

moral judgement? No. He stated a fact. In other words, the subjectivist theory turns a normative judgement into a factual statement by claiming that John's statement means the same as Peter's statement.

The critical question to ask about subjectivist theories is: Do they conform to ordinary moral discourse? One way of determining whether the subjectivist theory reflects ordinary moral discourse about the meaning of 'right' is to apply the theory to representative examples of moral discourse. Some of the results are as follows:

(a) Example one

Jack. It is wrong to dance.

Jane. How do you know it is wrong to dance? That is just your opinion. Other people don't think so.

Subjectivist interpretation

Jack. I disapprove of dancing.

Jane. How do you know that you disapprove of dancing? That is just your opinion. Other people don't think so.

Jane's reply does not make sense. "That is just your opinion" is no objection to what Jack said if Jack meant by it "I disapprove of dancing".

(b) Example two

Jack. Ideas of right and wrong have changed mostly in the last two thousand years.

Subjectivist interpretation

Jack. Ideas of what I approve of and what I disapprove of have changed vastly in the past two thousand years.

This would suggest that Jack approved and disapproved of certain ideas at least two thousand years ago. That is clearly impossible and therefore it is not likely that Jack intended a subjectivist interpretation.

(c) Example three

Baptists, of course, believe that drinking is wrong, but Roman Catholics disagree with them.

Subjectivist interpretation

Baptists, of course, believe that they disapprove of drinking, but Roman Catholics do not believe that the Baptists believe that they disapprove of drinking.

Why would Roman Catholics take issue with what Baptists claim they believe? Surely, that is not what is meant in this example of moral discourse.

(c) Example four

Jack. The church is the final authority on all matters of right and wrong.

Jane. I don't agree with you. I think that ultimately each man has to decide for himself what is right and wrong.

Subjectivist interpretation

Jack. The church is the final authority on all matters of what I approve of and disapprove of.

Jane. I don't agree with you. I think that ultimately each man has to decide for himself what he approves of and disapproves of.

The church's concern is not with what I approve of or disapprove of but

what I should or ought to approve of and disapprove of. In fact, the church is concerned about the frequent discrepancy between what I approve of and what I ought to approve of. Therefore, it is not likely that Jack meant a subjectivist interpretation of his statement.

These four examples of moral discourse would suggest that the subjectivist interpretation of how 'right' and 'wrong' are used in moral discourse does not match with the way these words are normally used, at least, in some moral discourse. These examples provide considerable reason to doubt the adequacy of the subjectivist theory about the meaning of 'right' and 'wrong'.

Several variations of the subjectivist theory have been advanced. One of them is the sociological theory which modified the form of the definition to:

X is right = def. 'Society approves of X'.

and mutatis mutandis for 'wrong'.

Several problems confront this theory. First, it is possible that a particular society approves of X, but nevertheless, that X is wrong. Social reformers certainly would take this position. Second, this theory also turns normative judgements into factual statements. It allows, for example, the question as to what is right and wrong to be answered by means of a Gallup poll. Finally, the sociological theory does not accommodate all moral discourse. The following are a few examples of moral discourse which are not accommodated by this theory:

(a) Example one

Jack. Baptists believe that dancing is wrong.

Jane. Yes, they are rather straight-laced, aren't they?

Sociological interpretation

Jack. Baptists believe that society disapproves of dancing.

Jane. Yes, they are rather straight-laced, aren't they?

Jane's reply is not appropriate for Jack's comment. Jack can be in error about Baptists' beliefs about society, but why would Baptists be considered straight-laced for making a factual statement about society?

(b) Example two

Jack. I know most people believe that suicide is wrong, but I have sometimes wondered whether it really is; what do you think?

Jane. Well, I myself think that suicide is wrong and I think that most people think that it is, because that's what they've been taught by their religion.

Sociological interpretation

Jack. I know that most people think that society disapproves of suicide, but I have sometimes wondered whether society really disapproves of it.

Jane. Well, I myself don't think that society disapproves of suicide and I think most people believe that society disapproves of it, because that's what they've been taught by their religion.

Why would religion teach people what society thinks about suicide or any other issue? Is that what religions normally do? Not really. In fact, religions frequently take strong issue with what society approves. It is doubtful that Jane really meant what is suggested by

the sociological interpretation of right and wrong.

(c) Example three

Jack. The church is the final authority on all matters of right and wrong.

Jane. I don't agree with you. I think that ultimately each man has to decide for himself what is right and wrong.

Sociological interpretation

Jack. The church is the final authority on all matters of what society approves of and disapproves of.

Jane. I don't agree with you. I think that ultimately each man has to decide for himself what society approves of and disapproves of.

What makes the church an authority of what society approves of or disapproves of? Is it the function of the church to gather this kind of empirical information? No, it is not. Therefore, it is not likely that Jack meant what is suggested by a sociological interpretation. Jane's reply to Jack does not make sense if 'right' means 'what society approves of'. To determine what society approves of or disapproves of is not a matter of a personal decision. It is a question best dealt with through empirical studies. Therefore, it is doubtful that Jane meant 'approved of by society' when she used the word 'right'.

In summary, the sociological interpretation creates the same confusion when applied to moral discourse as was the case with the application of the subjectivist theory to moral discourse. These examples suggest that the sociological theory does not conform to

ordinary moral discourse.

The theological theory is another subjectivist theory. In this theory the definition of 'right' takes the form:

X is right = def. 'X is approved of by God'.

This form should not be confused with:

X is right because it is approved of by God.

The former is a definition of 'right' whereas the latter identifies a standard of right action and does not offer a meaning for the word 'right'.

The definition of 'right' should also be distinguished from a statement of a criterion of right action, that is, any reason to believe that something is right. For example:

X is right for it is approved of by God.

'For' introduces a statement of evidence for the truth of a proposition. This particular statement requires that God is all good and omniscient.

The definition offered by theological theory does not reduce normative statements to factual statements because God is assumed to be an all-good being. Nor does this definition reduce a universalistic sentence to an egocentric sentence. However, it does present one serious limitation. It does not recognize that people who do not believe in God also make moral judgements. Atheists mean nothing different by moral judgements than do theists.

An application of a theological definition to moral discourse does not distort the meaning of the sentence as was the case with the application of the sociological theory. To illustrate this point, compare the following theological interpretations with the sociological

interpretations:

Jack. The church is the final authority on all matters of right and wrong.

Jane. I don't agree with you. I think that ultimately each man has to decide for himself what is right and wrong.

Theological interpretation

Jack. The church is the final authority on all matters of what God approves of or disapproves of.

Jane. I don't agree with you. I think that ultimately each man has to decide for himself what God approves of and disapproves of.

Jane's statement is quite compatible with Jack's statement. That was not the case with the application of the sociological interpretation to this example of moral discourse. It must be remembered, though, that compatibility with or conformity to moral discourse is only a necessary condition and not a sufficient condition for the soundness of moral theory.

A distinction must be made between subjectivist theories and emotivist theories. This distinction is sometimes blurred. The fundamental characteristic of ethical judgements, according to A.J. Ayer,<sup>12</sup> who represents probably the most radical view of emotivism (consistent with his radical empiricism), is that they only express certain feelings of the speaker. These are the feelings of moral approval or disapproval. Ethical judgements are not factual statements, not even statements about the speaker's state of mind. The speaker expresses feelings about certain objects but does not make assertions about them. It is impossible to establish a criterion

for determining the validity of ethical judgements because they have no objective validity. They do not have any cognitive meaning because they have no factual content, no truth value and they do not express any propositions. This is in contrast to subjectivists who claim that ethical statements are propositions about the speaker's feelings. Hence, they are empirically verifiable and capable of being true or false. The distinction between emotivism and subjectivism can be summarized as a distinction between expression and assertion. Emotivism claims that ethical judgements are expressions of feelings whereas subjectivism claims they are assertions of feelings. In moral judgements, the subjectivist claims that the speaker asserts he has certain feelings about some course of action. The emotivist claims that moral judgements are expressions of feelings just as a person who exclaims "oh!" expresses some personal feelings. Assertions of feelings include expressions of feelings but expressions of feeling do not necessarily include assertions of feeling.

Does Ayer's emotivism define ethical terms in accordance with ordinary moral discourse? He claims that moral arguments are disagreements about facts and not moral arguments at all. His position fails to recognize the 'value predicament' of man which is reflected in the use of ethical terms in moral judgements. In fact, Ayer's position would seem to weaken the credibility of his own argument against the cognitivism of moral judgements because he denies that evaluative judgements have any truth value. He denies that it is possible for anyone to make moral claims to the effect that one thing is better or more right than another. He cannot claim the superiority of his own philosophical position because he has denied himself the

right to make that value judgement.

Ayer developed an extreme ethical position which is consistent with logical positivism in the tradition of the Vienna Circle. This school of thought relied heavily on empirical verification. For them, a synthetic sentence has literal significance (cognitive meaning) only if it is capable of being verified by empirical means. Then it expresses a proposition which is capable of being true or false. Only two kinds of sentences have cognitive meaning; synthetic sentences which express an empirical proposition, and analytic sentences. All synthetic sentences that express empirical propositions are contingent. That is, in principle they can be falsified. There are no necessary synthetic propositions. Therefore, there are no a priori synthetic propositions. Only analytic propositions are necessary a priori.

It would seem fair to say that Ayer remained true to logical positivism. But, what is the point of this congruity between logical positivism and emotivism if ethical terms as described by Ayer are not in accord with the function of ethical terms in ordinary moral discourse? All it could possibly do is point out the limitations of logical positivism as a conceptual framework for the development of moral theory.

One more account of ethical terms should be mentioned because the express purpose of this account is to outline what different people say is actually meant when ethical terms are used. C.L. Stevenson<sup>13</sup> concluded that it is impossible to report accurately on how moral terms are used because they are elusive and used in confused ways. He ended up prescribing clear-cut meanings for ethical terms because he thought this would make moral discourse become clear and

intelligible. In other words, he thought that clear-cut definitions of moral terms should be stipulated. He felt that a prescriptivist theory of moral terms was necessary.

Stevenson's conclusion is not without its own set of problems. What is to guide philosophers, or anyone else, in establishing which prescription should be adopted? Any definition can pass for a stipulative definition. Suppose a specific definition was stipulated. How would the use of the word 'right' in accordance with a stipulative definition become common practice? How likely is it that the use of the word 'right' in accordance with a stipulative definition becomes common practice? If the usage does not become common practice, what is the purpose of making a stipulative definition? Third, what guarantee is there to ensure that a term stipulatively defined will still be a moral term? The answer to this question depends on what makes 'right' and other like terms moral terms. If it is their meaning that makes them moral terms, then to stipulate one or another meaning cannot ensure them as moral terms since any definition, moral or non-moral, can be stipulated as a definition for the term 'right'. For example, a stipulative definition of 'right' could mean that 51% of a sample must say that the action is right. But, in this case 'right' is not used as a moral term. Stipulative definitions do not necessarily define moral terms. Finally, what does 'moral term' itself mean? Stevenson does not offer a definition for it even though he uses the term constantly. This would suggest that it is assumed that people know the meaning of 'moral term'. If one ethical concept (i.e., 'moral term') does not require a stipulative definition, is it not possible that none of them require a stipulative definition?

Why not define other moral terms consistent with the definition of 'moral term' since that is one characteristic they all have in common?

In conclusion to this introduction to moral theory, several observations can be made. People need moral theory because moral codes cannot accommodate all possible experiences which a person might encounter. Hence, there is a need for people to acquire moral and ethical theory with which to resolve moral dilemmas not covered adequately by moral codes. This places a considerable burden on people because it requires that people know how to use moral terms to make moral judgements. This is evident in ordinary moral discourse. To do this effectively requires that people be able to make several basic distinctions. They need to be able to distinguish normative terms from descriptive terms. They must also be able to distinguish moral terms from other normative terms. They must know how to use the basic words 'good' and 'right' as well as the antonyms of each of the two terms. They must have some understanding of two fundamental moral questions. These are:

- (a) What is the standard of right and wrong?
- (b) What is the meaning of the words 'right' and 'wrong'?

It is the purpose of this Chapter to develop a normative conceptual framework which people can use to resolve ethical and moral problems.

### III. MORAL TERMS AND JUDGEMENTS

What moral terms and judgements should people use to resolve ethical and moral issues? How are they interrelated? These two questions will be answered through an analysis of five classes of moral

terms and judgements. The analysis develops the main part of the conceptual framework advocated in this study. It also serves as a basis for some understanding of the standard of right and wrong as well as the meaning of right and wrong.

#### A. Deontological Terms and Judgements

The first of the five classes of moral terms and judgements is the class of deontological terms and judgements. The representative terms of this class are 'duty' (and 'obligation') as well as 'right' and 'wrong'. The class of deontological terms includes:

duty, obligation, right, wrong, responsible, forbidden, ought, prescribed, should, permissible, must, may, bound, correct, sinful, moral, immoral, ethical, unethical.

Some of these terms, as well as judgements that involve the use of these terms, will be discussed in this section. It must be emphasized that any reference to terms in this Chapter must be considered in the moral sense, unless otherwise specified. Some of the terms can also be used in a non-moral sense. For example, the term 'wrong' is used in the moral sense in the sentence: "It is wrong for the children to pick on the new child in class." On the other hand, the term is used in a non-moral sense in the sentence: "He gave the wrong answer to that arithmetic question" (epistemic sense). Other examples include: 'responsible' means 'morally responsible', 'incumbent' means 'morally incumbent', 'permissible' means 'morally permissible' and so on.

'Right' and 'wrong' are representative terms of this class.

If it is a person's duty to do something then the act of doing it is morally right and it would be wrong not to do it. However, 'morally right action' does not necessarily mean that it is a person's duty to do the act. Suppose it is right to give a needy student one dollar to buy a lunch at noon. This does not mean that a specific staff member who offered the student some money, had a duty to give the money. He may have met his duty by giving to charity on other occasions.

Acts of supererogation also illustrate that 'right action' does not necessarily include doing one's duty. Acts of supererogation are acts which are done beyond the call of duty. That people consider such acts as right acts is evident from the fact that the military bestows honors, like the Victoria Cross, on personnel who perform heroic acts beyond the call of duty. This distinction between 'duty' and 'right' is denied by utilitarians who claim there are no acts of supererogation.

Doing one's duty may or may not be an object of interest or disinterest. It may be one's duty to pay taxes even though this is regarded as an object of disinterest by most taxpayers. On the other hand, it may be one's duty to support the inter-scholastic sports program at school. A person might meet this duty by coaching a group of boys in basketball. It is possible that this may also be an object of interest for a coach.

'Obligation' and 'duty' tend to have the same meaning but are used in different ways. A person can put someone under an obligation but not under a duty (e.g., "you have an obligation to keep your promise"). Obligations tend to be incurred as the result of something a person has done. The obligation 'to keep your promise' follows from

the fact that a person made a promise. On the other hand, a person has a duty in virtue of his situation and the person that he is. If Mr. Smith is a qualified teacher hired by a particular school board then he has a duty to teach in virtue of his situation of being a teacher who has been hired by a school board and the person that he is, namely, a qualified teacher. If he were not a qualified teacher, however 'qualified' is defined, he would not have an actual duty to teach because a person does not have a duty to do what he cannot do.

'Responsibility' is related to 'duty'. A responsibility is a duty which a person has in virtue of his particular position. A parent has a responsibility to provide his child with proper nutrition in virtue of the fact that he is the child's father. A teacher has a responsibility to teach his students in virtue of the fact that he is their teacher.

Some of the deontological terms have acquired a rather specialized meaning. For example, the term 'immoral' as used today seems to refer to sexual morality. This seems to be the meaning in expressions like "You cannot legislate morality". The expression means that the sexual life of the people of a nation cannot be governed or controlled through legislation.

The normative usage of the antonym of 'moral' must be differentiated from the descriptive usage. When 'moral' is used in the normative sense, then its antonym is 'immoral'. When it is used in the descriptive sense, then the antonym is "non-moral". The same applies to the antonym of the term "ethical".

"Morally forbidden" simply means that it is morally wrong to do an action.

Nouns referring to wrong acts include words like "crime", "moral transgression", and "offence". "Crimes" refers to acts which are more serious than "offences".

To say that an act is morally permissible means that the act is not wrong. It could be right or morally indifferent. For example, "It is morally permissible to detain a child after school" means that it is not morally wrong to detain a child after school. This might mean that it is morally indifferent or morally right to detain a child after school.

To say that a person may do a certain act is to say that it is not wrong to do the act. "Children may spend their noon hour as they wish" means that it is not wrong for them to spend their noon hour as they wish. Thus it could be shown how all deontological terms are used in deontological judgements.

Since "right" and "wrong" are representative terms of the class of deontological terms, it is important to be aware of certain problems that arise in the use of these terms in moral discourse. One of the problems is: "Are there degrees of rightness as well as degrees of wrongness?" There are no degrees of rightness. An action is either right or it is not right. For example, "It is right to be fair to children" cannot be "half right" or "partially right" or "very right". On the other hand, there are degrees of seriousness of wrongness. One act can be more seriously wrong than another act. For example, it is considered, by most people, to be a more seriously wrong to kill a person than to kill a dog. Both are considered wrong but not to the same degree. This distinction is reflected in ordinary

moral discourse as well as in the fact that a person would be punished more severely for killing a person than for killing a dog.

Another question regarding the use of the terms "right" and "wrong" is: "Does it follow from the fact that an action is right that not doing the action is wrong?" It may be wrong not to do the act but it need not be wrong. If it is a person's duty to support the interscholastic sports programs, then it is right to support them and wrong not to support them. On the other hand, it may be right to give a child a ride home from school but it does not follow that it is wrong not to give the child a ride home from school. What is more, some actions are neither right nor wrong. They are morally indifferent. For example, going to the washroom may be a morally indifferent act. It can simply be a physical necessity.

It is doubtful, however, that a utilitarian would recognize morally indifferent action. In utilitarian terms, that could mean action which has pain and happiness in equal proportions with no other alternative (action) available. The utilitarian probably would doubt the plausibility of this option. However, to argue that there are no morally indifferent actions seems contrary to common sense. This is apparent from the example cited above. Numerous other examples could be mentioned. Therefore "right" and "wrong" are not contradictory terms but contrary terms. For example, the statement, "I don't think that is right" means "It is wrong". However, "It is not the case that this action is right" leaves open the possibility that the action might be morally indifferent. "I don't think that's wrong" refers to an act being morally indifferent. For example, to say "I don't think it is wrong for a principal to dismiss the children early on a hot

day" is not saying that it is right to dismiss them early but that, whether principals dismiss children early on a hot day, is a morally indifferent issue. It should be noted that to judge an act to be morally indifferent is also a deontological judgement.

A third question to be raised concerning the use of the terms right and wrong is: "What conditions have to be fulfilled for an action to be right or wrong?" This question must not be confused with the question, "What is the standards of right and wrong?" One condition that has to be fulfilled for making a deontological judgement is that the person who made the judgement must be a moral agent. A moral agent is someone who can distinguish between right and wrong, who has the concepts of right and wrong, and who understands the meaning of right and wrong. A non-moral agent cannot do these things and therefore cannot judge the morality of an act. It has been suggested that a moral agent must be able to speak. However, this issue is difficult to resolve. The ability to enter into moral discourse helps to indicate whether a person has the concept of right and wrong, whether a person knows the meaning of right and wrong and can distinguish between them. It may be, however, that a person can demonstrate the distinction between right and wrong through his actions without using these words in moral discourse.

Animals are generally considered to be non-moral agents. It is also possible for a rational agent to be a non-moral agent. A rational agent may suffer from psycho-social pathologies so that he no longer has any concept of right and wrong. Children are considered to be potential rational moral agents. It is generally recognized that children are not capable of making certain moral judgements but it is

anticipated that, as they develop, they will become capable of making such moral judgements. Then they will have become moral agents.

"Non-moral agent" does not only refer to animals but also refers to imbeciles, manques, that is, agents who would have been moral agents if things had gone right in their development, and people who were brought up in total isolation. An a-moral agent is a fully developed and capable person who does not happen to have any concept of right and wrong.

Another issue to keep in mind about deontological judgements is: "Ought implies can". A person must be capable of what is morally expected of him. Without the capability, the "ought" simply does not apply to a person. An agent cannot be responsible for his actions unless he is in his right mind or capable of assuming the responsibility. What if the agent is not in his right mind because of some course of action he took, such as consuming too much alcohol? Suppose a student gets involved in a brawl at school as a result of his consumption of too much alcohol? Would his actions (i.e., getting involved in a brawl) be wrong due to negligence or due to some subsequent action or both? In other words, was his action wrong due to his consumption of too much alcohol or due to his irresponsible conversation or due to his getting involved in a brawl? Would it not have been wrong for him not to be in his right mind if he had consumed too much alcohol but had not been involved in the brawl? It is considered morally wrong for a person to put himself out of a state of being in his right mind.

What about a fit of anger brought on by special circumstances? The moral wrongness would depend on whether the person had any control

or influence over the special circumstances. If the fit of anger is brought on by failing grades due to lack of effort, then the person could have influenced the special circumstances and therefore he would be responsible. If, on the other hand, the fit of anger is brought on by a malfunctioning of a gland, the person would have no control over the special circumstances and therefore would not be responsible.

Are members of "youth gangs" who cause injury and destruction, moral agents? They could be, and probably are. A person can have the concepts of right and wrong but need not be influenced by them. Such a person is considered to be unscrupulous.

In summary, a moral agent is responsible for his action if:

(a) He is in his right mind, or

(b) He would have been in his right mind had he not done some action which he could have been expected to foresee would lead to a state of mental impairment or poor judgement. If he is mentally impaired as a result of some action he could have been expected to foresee would lead to his being mentally impaired, then he is still responsible for his action. However, under these circumstances his responsibility frequently is diminished to some degree.

Not only must an agent be a moral agent and be in his right mind so that he is capable of assuming responsibility for his action, but it is often claimed he must have freedom of the will if deontological judgements are to be made about his actions. Without this freedom he could not be responsible for what he does because he would not have the ability to choose freely to perform or not to perform the act. This raises the problem of "freedom of the will" vs. "determinism". "Determinism" means that all events have causes.

"Indeterminism" means that some events do not (or may not) have causes. "Causes" is a metaphysical term. However, are "freedom of the will" and "determinism" really all that different? The difficulty of this question becomes apparent in the question "Is 'choosing' determined or does it have a cause?" If 'choosing' is not caused it would be like a "bolt from the blue". If that were so, how can a person who chooses be considered responsible for what he chooses? If "choices" have no causes they would be inexplicable. It might seem then that freedom of the will does not exclude determinism. Freedom of the will seems to refer to choices determined by reasons rather than by causes. But, reasons may be just another set of causes. Even if the distinction between "causes" and "reason" were established, it is not sure that the problem of "freedom of the will" vs. "determinism" would be solved. This seems to be an intractable problem. Since this has remained an unsolved problem, it will be assumed in this study, that most people are responsible for their actions. Therefore, it will be assumed that deontological judgements can be properly made about the actions of people. In other words, it will be assumed that people do not only use deontological terms but they actually make judgements of right and wrong or about the rightness or wrongness of action and that people assume duties and obligations.

The conditions for an act to be right or wrong raise further questions of which only two more will be discussed briefly. First, "Can a person have a conflict of duties?" A person can have a prima facie conflict of duties but not an actual conflict of duties. A prima facie conflict of duties is a conflict at first glance or an apparent conflict. However, since a person cannot perform both

apparent duties, he does not have an actual conflict of duties.

The final question to be raised is: "What may be proper objects of deontological judgements?" What sorts of things could be judged to be right or wrong? It must be something a person can refrain from doing. Can beliefs, attitudes, feelings, and emotions be judged to be right or wrong? Insofar as they are mental states, they cannot be judged to be right or wrong because a person cannot cease to have a particular mental state such as a particular feeling or emotion by choosing not to have them. Similarly, a person cannot arbitrarily cease to have a certain attitude although a person can cultivate certain attitudes. It could be wrong for a person to fail to cultivate certain attitudes. For example, it would be wrong for a person to fail to cultivate an unprejudiced attitude. The same applies to thinking certain thoughts and have certain beliefs. A person cannot prevent a certain thought from crossing his mind. However, it would be wrong for a person not to cultivate the practice of carefully reviewing evidence. If a person could not be reasonable concerning the evidence, then there would be no question of right and wrong. In summary, it is dangerous to judge thoughts, beliefs, attitudes, feelings, and emotions as being morally right or wrong.

This concludes a brief outline of the class of deontological terms and judgements (See Chart 3). Questions of right and wrong as well as questions of duties and obligations frequently appear in situations where necessary discretionary judgements are made. Deontological judgements are a class of moral judgements which can help to confine, structure and check the exercise of discretion to promote individualized justice. Deontological judgements are made

## CHART 3

## DEONTOLOGICAL TERMS AND JUDGEMENTS

Terms

Duty	Immoral
Right	Morally forbidden
Wrong	Morally permissible
Obligation	May
Responsibility	

Judgements: Right or Wrong Action

1. Duty means doing the right act because it is the right thing to do.
2. A duty is the right thing to do independent of a person's motives or interest.
3. An action is morally right or wrong independent of a person's likes or dislikes.
4. One can put someone under an obligation but not under duty.
5. If it is a person's duty to do something, then the action of doing it is morally right and it would be wrong not to do it.
6. A person is not necessarily obligated to do every morally right act (e.g., acts of supererogation).
7. Doing one's duty may or may not be an object of interest.
8. Immoral must be distinguished from non-moral and a-moral.
9. Nouns referring to immoral acts include: crime, moral transaction, offence.
10. A morally permissible act is not morally wrong; it could be morally right or morally indifferent.
11. When a person may do an act, then it is not wrong to do it.
12. Are there degrees of rightness? No

## CHART 3 (cont'd)

13. Are there degrees of wrongness? Yes, there are degrees of seriousness of wrongness.
14. Does it follow from the fact that an act is right that not doing it is wrong? It may be wrong but it need not be wrong.
15. Are there morally indifferent acts? Yes.
16. What conditions have to be fulfilled for an act to be right or wrong? The act requires a moral agent.
17. What is a moral agent? A moral agent can distinguish between right and wrong, has a concept of right and wrong, and understands the meaning of right and wrong.
18. Ought implies can.
19. Are people's acts 'determined' or do people act from a free will?
20. Is 'choosing' determined or does it have a cause?
21. Can a person have a conflict of duties? A person can have a prima facie conflict of duties but not an actual conflict of duties.
22. What may be proper objects of deontological judgements? It has to be something a person can do or refrain from doing.
23. It is difficult to make moral judgements about beliefs, attitudes, feeling, emotions and thoughts.

about the action--morally right action. Such action is right whether one likes it or not. A person may have a duty or obligation to do the action even though he does not like to do it. The action is right quite independently of a person's motives or interests. If it is right to keep one's promises, then it is right for John or Jane or anyone else even if none of them is motivated to keep his or her promises or interested in keeping promises.

"Moral rights" identify another aspect of making moral judgements. The class of aeteological terms and judgements deal with the rights of people about which moral judgements are made. The next section will describe this class of moral terms and judgements.

#### B. Aeteological Terms and Judgements

The aeteological<sup>14</sup> sense of the term "right" introduces the notion of someone having a right to do something or having a right to something. This sense of the word "right" makes reference to objects of interest that people have. "Object of interest" refers to everything a person would like to have, prefer, wish for or want. On the other hand, "object of disinterest" refers to anything a person might be averse to, not want, avoid, escape from or not wish. It is to this notion of objects of interest to which the aeteological sense of right refers that distinguishes this class of terms from the class of deontological terms. Reference to objects of interest introduces an element of motives to the class of aeteological terms and judgements.

In the statement form "John has a right to do X" the word "right" is used in the aeteological sense. This is the sense in

which the word "right" is used in statements about human rights in various documents like the Canadian Bill of Rights, the American Constitution, and the United Nations Declaration of the Rights of Man. These documents have been drafted to identify, advocate, and protect the rights of people or what are regarded as due objects of interest.

To have a right to an object of interest means that it is not wrong for a person to pursue that object of interest. Nor would it be wrong for the person not to pursue the object of interest. In fact, it would be wrong for someone else to prevent the person from pursuing his object of interest if he had a right to do so. For example, if John has the right to read detective stories then it is not wrong for him to read them. John would be free to read detective stories or leave them. However, it would be wrong for someone to prevent John from reading detective stories. Everyone else would have a duty not to prevent John from reading this kind of literature. If, however, reading detective stories was not an object of interest for John, then it would not be a right for John. However, it might be subsumed under a more general right--the right to read any book whatever.

Reference to objects of interest seem to offer a clear and precise distinction between deontological and aeteological terms and judgements. However, that does not seem to be the case with all statements because objects of interest raise the question, "What objects of interest for whom?" For example, Plato's statement, "Every man has a right to be punished" seems to present a problem. How can punishment be a right when it is clearly regarded as an object of disinterest? However, for Plato, punishment is a cure for vice

which is an illness of the soul. Plato seems to assume that punishment would be regarded as an object of interest by those who understood its true function of curing the soul. In this sense, Plato's concept of right is consistent with the aeteological sense of the word "right". Plato's statement draws attention to a distinction between actual objects of interest and potential objects of interest. Actual objects of interest refer to what a person would wish for, want, or desire if he understood the nature of the object. For example, it is often said that "Every child has a right to an education" even though it is commonly recognized some children do not care to continue their education. How can a good education be a right for someone who does not regard it as an object of interest? The argument is as follows. Whereas education is not an actual object of interest for some children, it is, nevertheless, a potential object of interest because children would desire a good education if they understood the nature or value of it.

In summary, for X to be a right, it must be an object of interest, either actual or potential, for the agent. It would be paradoxical to say that an agent has a right to do X where X is an object of disinterest (as illustrated by the previous reference to Plato). Agents demand rights. Agents are frequently willing to protect and defend their right. An infringement of rights frequently results in anger. Why would agents be willing to do all these things for objects of disinterest? Clearly, for John to have a right to do X, X must be an object of interest, either actual or potential.

It should be noted though, that it does not follow at all that

a person has a right to do all his objects of interests. Rights are those objects of interest which it would be wrong for anyone to prevent a person from having or enjoying. For example, suppose it would be wrong for anyone to prevent a person from exercising freedom of speech. Then it could be said that a person has a right to exercise freedom of speech. On the other hand, suppose it would be wrong not to interfere when several children hassle a new child in school. The children would not have a right to hassle the new child in school, even if that happened to be an object of interest for them.

A distinction is frequently made between moral rights and legal rights. When a right is claimed to be a moral right, it is a right which people claim they have as human beings. Hence, the term "human rights". Legal rights refers to rights which, it is felt, people should have or actually have in law. A human right can be enshrined in law and so also become a legal right. However, a human right is regarded as a right even when it is not established as a legal right. For example, suppose "freedom of speech" were regarded as a human right. It would continue to be a human right whether or not it was legislated as a legal right. If it became a legal right in a particular country, it would be both a human right and a legal right.

Rights must be distinguished from duties, which is a representative term of the class of deontological terms. People are more enthusiastic about rights than they are about duties. In fact, ordinarily there seems to be a contrast between right and duties. Duties are regarded as being burdensome or onerous. Rights are sought and defended. This distinction is reflected in the fact that a person is sometimes deprived of his rights (for example, through the use of

the War Measures Act in Canada) but relieved of his duties,<sup>15</sup> when he is no longer required to do his duties. Finally, a person may have a right as well as a duty to do a certain act. For example, a journalist has the human right of freedom of speech, and as a social critic for a newspaper syndicate, he may also have a duty to exercise his freedom of speech. The human right does not establish that he has a duty to exercise this right. However, if he has a duty to exercise freedom of speech, then he also has a right to exercise it.

The class of aeteological terms, of which the word "right" is a representative term, includes many other terms which have a meaning similar to the aeteological sense of the word "right". Some of these terms are:

claim, prerogative, justified, warrant, entitled, give, bestow, lend, own, belong, have, own, his, hers, yours, mine, property, sell, purchase, buy, ownership, inherit, confer, legitimate, illegitimate, earn authority.

To say that 'John has a claim to X' is to say that there are some reasons to believe that John has a right to X. There may be several people who maintain that they have a claim to X. However, only one may have a right to it. For example, several people may have a claim to a missing book which was found but only one can have a right to it.

Whereas "to have a claim to X" is to say that there are some reasons to believe that the person has a right to X, "to justify an act" is to say that there are sufficient reasons to show or demonstrate that a person has a right to do that act. Hence, a justifiable act is an act which a person has a right to do. Conversely, an

unjustifiable act is a wrong act because it is an act which cannot be justified with sufficient reasons. For example, if freedom of speech is, indeed, a human right, then John must produce a justification (sufficient reasons) for depriving Jane of the right. If John cannot justify his action, then his action would be wrong.

"To be entitled to" and "to be warranted in" basically have the same meaning. To say that John is entitled to an award is to say that John has a right to the award. To say that a reward was not warranted for John's performance, is to say that John does not have a right to receive the award.

A person with "authority" has the right to issue commands. In the formal institutional sense, it is used to refer to Parliament's right to make laws, the judge's right to pronounce a sentence, or a general's right to command his army. In an informal sense, the word is used in non-moral statements like "He is a man of authority on many things". The word "authority", in this case, is used to refer to a person who is regarded as being rather knowledgeable. Some people have the authority to confer a right to do something on others. For example, a principal can authorize a secretary to open his mail or confer upon the secretary the right to open the mail.

"Legitimate" is also used in a moral sense although it is more often used in a legal sense. To say that "John set up a legitimate research centre" is to say that John had a right to set up the centre. That right was conferred on John upon completion of his medical training. On the other hand, to say that "John's activities are illegitimate" means that John did not have the legal right or moral right (or both) to do them.

Many other commonly used terms also have a moral sense like the class of aetiological terms discussed above. One of the basic terms, at least in the Western culture, is "ownership" which means the right to use, enjoy or dispose of something which a person owns. The meaning of this word becomes more clear when it is contrasted with the term "possession". To say that "John possesses X" is to say that John has the actual power to use, enjoy, and dispose of X. For example, a robber who has stolen a car is in possession of a stolen vehicle and therefore is in a position to use the vehicle for whatever purpose he chooses. He might choose to use it to leave the country or to sell it for some quick cash or for some other purpose. However, people would not say that he owns the car or that it belongs to him. Should the true owner of the car accidentally meet up with the robber and the stolen vehicle, the owner, no doubt, would say to the robber, "The car belongs to me!" or "That is my car and not yours!"

The above example introduces a few more terms belonging to the class of aetiological terms. The word "belong" was used in terms of ownership. Possessive pronominal adjectives (e.g., "my", "yours") were used to identify ownership. Suppose the owner of the car reported the stolen vehicle to the police, and suppose the police apprehended the robber, then he would have to appear in court to face the criminal charge of theft under Section 283 of the Criminal Code. He would be charged with depriving the true owner of his personal property. Implicit in the reference to property, is the meaning that the car is owned by a certain person even though he may temporarily have lost possession of the car. Although the robber possesses the car he does not own it. Upon further questioning by the judge, the

owner would report that he had not given the car to the alleged robber. In other words, the owner had not transferred his right to the car to the alleged robber, which means that the owner had not agreed to or arranged for a temporary transfer of his right to possess the car to the alleged robber. The owner would further claim that he had not sold the car to the alleged robber, which means that the owner had not relinquished his rights to the car to the alleged robber in return for a mutually acceptable sum of money. Nor had he traded it off to the alleged robber in exchange for something else which the alleged robber may have possessed and which may have been an object of interest to the owner. Such an exchange would have involved a mutual transfer of rights.

Should the judge have enquired into how the owner came to acquire ownership of the vehicle in question, the owner may have claimed, and produced the necessary documents to support the claim, that he bought the car from a certain car dealer. This means that the owner acquired the right to the car in return for a certain sum of money. On the other hand, the owner might claim that he inherited the car which means that he acquired the right to it by virtue of the fact that it was left to him by someone who had died.

Should the alleged robber be a teenager, he might claim that there is no cause for the legal hassle because he meant to do no harm. All he intended to do was to go for a pleasant evening ride and he certainly did no damage to the car, so he claims. The owner probably would retort, with indignation, that as the true owner of the car, he should have the prerogative of determining who may drive his car. The owner would be making the claim that he should have the sole right of

determining who drives his car in virtue of the fact that he occupies the position of being the owner of the car.

These terms of the class of aeteological terms have been illustrated by way of a legal case to point out that they are frequently used in a legal sense as well as in a moral sense. These terms are used to make strong moral, and frequently legal, claims.

A few additional common words can be added to this list. To say "I give you a book" is to say that I transfer my right of possessing the book to you. The word "have" can be used in different ways. "I have a car" can mean that I own a car or simply I possess a car. "I have a brownish complexion" does not really refer to ownership or possession but describes certain personal features. The word "earn" also takes on different meanings in different statements. It can be used descriptively in a factual statement like "He earns \$100.00 per week." It can also mean acquiring a right to a particular position by working for it as in "he really earned that position".

This concludes a fairly comprehensive list of terms in the class of aeteological terms. It is interesting to observe that many common words which are usually not regarded as moral terms, clearly have a moral sense similar to that of aeteological terms.

Brief reference was made earlier to the distinction between "having rights" and "having a duty". The relationship between these two concepts raises several problems. The first problem is "Do rights and duties correspond?" This question means:

1. Is it the case that if John has a duty then in virtue of his having that duty he would have a certain right?
2. Is it the case that if John has a right then in virtue of

his having that right he would have a certain duty?

At first glance, it would seem that to every right there is a corresponding duty. For example, it has been argued that people must or should exercise their rights so that they will not jeopardize them for lack of use. But this example confuses human rights with civil rights. It is recognized by many that children have rights (though not necessarily civil rights) but they do not have corresponding duties. It could be argued that children have potential corresponding duties. In other words, children will have to assume certain duties as soon as they have acquired maturity. It would seem, though, that certain rights have corresponding duties. For example, a person who has the right to marry and procreate children would seem to have the corresponding duty of looking after those children. However, even this corresponding duty has exceptions. In a number of societies, arrangements have been made for social institutions to assist in looking after the children or even to assume the full responsibility of looking after children. In summary, the correspondence between rights and duties does not seem to be clear cut at all.

Is it true that for every duty a person has a corresponding right? The right would have to be something other than that which it is the person's duty to do. For example, if it is your duty to keep promises, then you have a right to expect it of others. Does a person have a right to expect it of all others, including young children who may not be able to keep promises in all circumstances? If you have the duty to obey, what corresponding right do you have? Some people might argue that the obedient person has a right to expect recognition or reward. It would seem, however, that recognition or reward are

given only in situations where a person was obedient under exceptional circumstances. What are the corresponding rights to the duty referred to in the statement, "We have a duty to work for the benefit of mankind?" Suppose it could be said that this was the duty that prompted Schweitzer to provide medical services in the jungles of Africa without the conveniences of a fully equipped and staffed hospital. What would be Schweitzer's corresponding right? The answer is not immediately clear. Suppose a city councilor assumed the duty of working for the benefit of the residents of the city of Winnipeg. In this case it might be argued that he had a right to share in the benefits of living in Winnipeg. However, would he have a right to enjoy these benefits in a manner or to an extent that other residents of Winnipeg do not? Surely not, because that would be regarded as political favoritism. For example, suppose the councilor was able to persuade an airline to introduce an economy fare for flights between Winnipeg and Toronto. If the councilor had privileged access to the economy rates in that he could pre-empt anyone else in obtaining a reservation, he would be censured for misuse of his office as councilor. It would seem, therefore, that the councilor's right to enjoy the benefit or economy fares between Winnipeg and Toronto is not related to his duty to work for the benefit of the city of Winnipeg. Every resident of Winnipeg would have the right to enjoy those fares, including those who have not assumed the duty to work for the benefit of Winnipeg.

In conclusion, it cannot be established at the present time whether duties and rights correspond. Some plausible correspondence is conceivable.

The second major problem raised by the relationship between rights and duties is, "Are rights and duties correlative?" This question means:

1. Is it the case that if John has a certain duty then in virtue of his having that duty someone else, Jane, would have a certain right?

2. Is it the case that if John has a certain right, then in virtue of his having that certain right someone else, Jane, would have a certain duty?

The answer to the first of these two questions is as uncertain as were the answers to the questions raised concerning the correspondence of rights and duties. In other words, it is not clear whether to every duty there is a correlative right. For example, it is probably true that if a person has a duty to keep his promises, someone else has a right to expect that person to keep his promise. It is not clear, however, why there must be a necessary connection between the duty and the right in this example. Suppose it is John's duty to help the poor. It does not follow, however, that a poor person would have the right to go up to John to demand some financial assistance. The rich person, John, may have elected to meet his duty to help the poor through donations to somebody else and therefore the poor person has no 'automatic' right to obtain help from this particular rich person. Third, in general, people have a duty to treat animals humanely. However, do animals have rights? Many people would claim that animals do not have rights but that they should still be treated humanely. Fourth, does a fetus have a right? Again people would disagree on this question even though most people probably would

agree that people have a duty (within limits, such as consideration for the health of the mother) to protect and nurture a human fetus so that it can develop into a child.

These issues raise the question: "For someone to have a right must it/(s)he be a moral agent, or a potential moral agent?" This question has been explored at some length with regard to the rights that animals might have. The most basic right of animals, if they have any, would no doubt be the right to live. Some of the questions that have been raised regarding an animal's right to live are:

(a) Would it be wrong to kill a tiger for the sake of its fur?

(b) Would it be right if the fur was required to keep people warm in primitive circumstances?

(c) Would it be right for someone to kill a tiger to obtain a decorative rug (i.e., for aesthetic reasons)?

(d) Would it be wrong to kill an animal which is on the verge of becoming extinct?

(e) Would it be wrong to kill baby seals?

(f) Would it be more seriously wrong to kill some members of the animal kingdom than others? If so, how should the following be categorized: mosquito, pheasant, calf, alligator, buffalo, rabbit?

It must be emphasized, at this point, that these questions were raised in terms of having rights and not in the sense of deontological terms and judgements. The motives of an action, including the pursuit of objects of interest, has nothing to do with whether the action is right or wrong in a deontological sense. Natural motives, for example, are psychological states which are not something which people choose to do or refrain from doing.

What about plants? Do they have rights? In other words, do plants have objects of interest? Most people would say that plants do not have any desires or preferences nor aversions to objects. Most recently, however, some scientists have claimed that plants have an elementary nervous system and therefore plants can and do respond as having preferences for some people (who treat plants with care) and aversion towards others (who mutilate or cut plants). Generally, plants are not regarded as having rights.

It has been suggested that works of art have rights and therefore should not be destroyed. However, it is generally understood that the right does not reside in the art but in man's right to enjoy art. In conclusion it would seem that no clear cut answer is available as to whether to every duty there is a correlative right.

Finally, the last question is, "Is it the case that to every right there is a correlative duty"? The answer to this question is contained in the meaning of the concept of "having a right" discussed earlier in this section. It was pointed out that to every right a person has, there is someone else who has a duty. For John to have a right to X, it is the duty of everyone not to deny John this right. The duty of everyone else towards the person who has a right is a part of the meaning of the concept of "having a right". Therefore, "To every right there is a correlative duty" is analytically true. To deny it would be self-contradictory.

In summary, it would appear that only one of the four questions raised concerning the relationship between having a "right" and "duty" can be answered conclusively. That is the question concerning the

correlativity of rights and duties. The other three questions require more than analytic propositions. This concludes an account of the uses of aeteological terms and judgements. It is an important class of terms and judgements because so many every day situations involve their usage.

A moral judgement must not only take into account whether an act is right or wrong (deontological judgement) and whether a person has a right to something (aeteological judgement), but it must also take into account the motive of the person who contemplated or consummated an act because moral judgements are also made about the motive of a person. The next section will review a class of terms and judgements related to the motives of people for doing right and/or wrong acts.

### C. Aretological Terms and Judgements

The class of aretological<sup>16</sup> terms is related to the class of deontological terms but with an important difference. As was pointed out in a previous section, deontological terms and judgements refer to judgements of right and wrong without any consideration of motives. The action is judged to be right (or wrong, as the case may be) without any regard for the motive of the person who did the act. Aretological judgements also consider whether an act is right or wrong but add another consideration. This class of judgements also takes into account the motive of the person who contemplated or consummated the act. Therefore this class of terms adds an important dimension to the deontological judgements people make.

The representative terms of this class are "morally good" and

## CHART 4

## AETEOLOGICAL TERMS AND JUDGEMENTS

Terms

Rights	Belong	Purchase
Claim	Have	Buy
Prerogative	Own	Ownership
Justified	His	Inherit
Warrant	Her	Confer
Entitled	Your	Legitimate
Give	Mine	Illegitimate
Bestow	Property	Earn
Lend	Sell	Authority

Judgements: Rights of Actor

1. One has a right to do something.
2. One has a right to something.
3. An object of interest is anything a person would like to have, prefer, want, or wish.
4. An object of disinterest is anything a person may be averse to, not want, avoid, escape from, or not wish.
5. Sample statement "A has a right to do X".
6. To have a right to an object of interest means that it is not wrong for a person to pursue that object of interest, nor would it be wrong not to pursue it.
7. What is an object of interest for whom? Distinguish actual from potential objects of interest.
8. A person does not have a right to all his objects of interest.
9. Distinguish legal rights from moral rights. A right can be both or either.



"virtue" as well as their converse "morally bad" and "vice". Included in this class of terms are the following moral terms:

moral excellence, evil, sinful, wicked, (nasty),<sup>17</sup> wanton, nice, morally cleansed, (ill repute), awful, corrupt, terrible, decadent, effete, criminal, ethical, unethical, moral, immoral, heinous, atrocious, (gross), depraved, nefarious, iniquity, odious, hideous, (repugnant), vile, foul, degenerate, degraded, dastardly, defiled, (demonic), (unholy), debased, debauched, angelic, upright, upstanding, noble, righteous, and dutiful.

People who have the pejorative characteristics are called:

scoundrel, wretch, blackguard, cad, villain, heel, rat.

The terms "morally good" and "morally bad" can be used to explain the meaning of these terms.

The term "morally good" is applied to people, character, actions as well as motives. These applications will be illustrated in this section.

What conditions must be fulfilled for an act to be morally good? As has been pointed out earlier, the action must be right. If John does an act which is clearly wrong, then the act is not a morally good act. For example, prejudicial employment practices would not be morally good acts because the acts would be wrong in the deontological sense. The second condition to be met is that the action must be done from a morally good motive. Suppose John says that he helped a blind man cross the street so that the blind man would not have an accident. The reason given for helping the blind man would be a morally good motive. The act would also strike most

people as being the right action to take with respect to blind people on the street. Hence, this course of action would be a morally good act.

What if a man does an act which is actually wrong but he believes it to be right and he does it from good motives? For example, suppose a principal refuses to allow a student to be promoted because he believes that it is his duty to prevent the student from being promoted. Many people today believe that it is, in fact, wrong to require a person to repeat a whole year of school work. At the same time there are people who honestly believe that it is necessary to require some students to repeat a grade. Would the principal's action in this example be morally good? It could not be morally good if the action itself is wrong because one of the conditions of a morally good act would not be satisfied. Similarly, an act is not a morally good act when a person does an act which is right but he does not believe it to be right and his motives are not good.

Since morally good motives are a necessary condition for morally good acts, the question must be asked: "What is a morally good motive?" A morally good motive must meet two conditions. A person who has a morally good motive must believe that a certain act is right and he must have a desire to do what is right or his duty. Just believing something is not a motive. "He did it just because he believed it was right" really means that he believed it and he wanted to do what is the right thing to do. "He did the right thing from a sense of duty" means that he believed it to be the right thing to do and he wanted to do the right thing. "Wanting to do one's duty" must be distinguished from "wanting to do what it is one's duty to do". A

person need not want to do what he recognizes as being his duty, such as killing people in military combat. However, that same person may want to do his duty, such as defending his country in time of war. On the other hand, "wanting to do what it is one's duty to do" refers to a situation where a person has a certain duty to do and he wants to do it, regardless of the fact that it is his duty. For example, a physical education teacher may feel that it is his duty to coach hockey at the local community club. At the same time he may also want to coach hockey because he happens to enjoy the game.

Another way of approaching the question, "What makes a motive morally good?", is to observe a cynic's reaction to a person who claims that he acted from a morally good motive. The cynic does not believe that people ever act from morally good motives but that they act purely from the motive of self-interest. To act from self-interest, he implies, is not to act from a morally good motive. For example, when a teacher stays after school day after day to help a student with his arithmetic, the cynic would reply that the teacher does it from the ulterior motive of self-interest and not from compassion for the student. When John visits his ailing father regularly in hospital, the cynic would suspect that John is protecting his interests in an inheritance which he expects to receive from his father. The cynic would claim that John does not make those regular visits just because he loves his father. When someone performs his duty faithfully, the cynic would argue that he does so for any number of ulterior motives. He probably wants the approval of others, or avoid the disapproval of others, or he fears punishment. However, the cynic would not say that someone acted from ulterior motives if the cynic could be persuaded

that the person acted from a desire to do his duty. This would seem to be the only motive acceptable to a cynic as being a morally good motive. This is precisely the motive that, according to the cynic, is absent when people claim they act from morally good motives. It is this motive which he feels people appeal to in order to cover the ulterior motives from which people really act most of the time. In short, even the cynic would agree that what makes a motive morally good is the desire to do what is right.

There are other good motives besides the desire to do what is right or to do one's duty but those other motives are not morally good motives. For example, 'compassion' and 'love' are good motives. The difference between a morally good motive and a good motive can be analyzed as follows:

(a) Morally good motive:

A's duty is to do X

A wants to do his duty

A does not want to do X but he will do it because he wants to do his duty.

(b) Good motive:

A's duty is to do X

A wants to do X

A does not want to do X from a sense of duty but rather because he wants to do X.

What about the situation where a teacher is acting out of love for his or her students when he helps them after school day after day? Is he or she acting from a morally good motive? Love is a motive from which a non-moral agent could act. Insofar as a moral agent acts from

this motive he is no different from a non-moral agent. If a non-moral agent acted from the motive of love, the motive could not be regarded as a morally good motive because the non-moral agent is not capable of distinguishing right from wrong, nor does he have the concepts of right and wrong, nor does he understand the meaning of right and wrong. But, if love cannot be judged to be a morally good motive for non-moral agents then it cannot be judged to be a morally good motive for a moral agent. In short, love can be a good motive but not a morally good motive. It would seem that it cannot really be one's duty to love someone but it may be one's duty to act in a loving way. What is more, a person probably cannot choose to love someone but, up to a certain point, a person can choose to act in a certain way. That people cannot choose to love probably is the reason for the expression "falling in love". It still leaves open the question whether a person can act in a "loving way" towards a person whom he does not love. The answer to this question would depend on what is meant by "acting in a loving way" and "love". It would seem that the word "loving" and "love" in these two situations would not mean the same thing.

The comparison between the moral and non-moral agent in the above example requires a qualification. Since a moral agent is someone who can distinguish right from wrong, he is capable of acting out of love as well as from a desire to do what is right or from a sense of duty. In the case of the teacher who helped the students after school day after day, the teacher, as a moral agent, might well help the students because of love and/or because he wants to do the right thing or his duty towards his students. If he did it also out

of a sense of duty he would be acting from morally good motives.

In summary, there is only one morally good motive. It is the desire to do right or one's duty. Incidentally, this is not a definition of "morally good" motive. To say that a motive is morally good when the motive is the desire to do what is right because it is right, is to identify the property a motive must have in order to have the further property of moral goodness.

There are a variety of good motives which must be distinguished from morally good motives. Some of these are compassion, love, generosity, kindness, and friendship. They are sometimes referred to as naturally good motives to distinguish them from morally good motives..

The second representative term of the class of aretological terms is "moral virtue". It should be noted that not all virtues are moral virtues. For example, wit (i.e., quickness of thought) is regarded as an intellectual virtue and not a moral virtue. On the other hand, some virtues, like truthfulness, are regarded as moral virtues. Of course, it can be regarded as a moral virtue only if telling the truth is the right thing to do. It is regarded a moral virtue because it refers to a propensity, tendency, or disposition to do what is the right thing to do. In short, a moral virtue is a disposition to do what is right from morally good motives. A virtuous act is a manifestation of this propensity.

"Morally good" and "virtuous" are not only applied to action and motives, they are also applied to people and the character of people. A morally good person is one who has a disposition to do what he believes is right. This is not the same as to say that he must

always do the right thing. In fact, all that is expected is that he normally and regularly tries to do what is right from a morally good motive. What if he is often mistaken about what he believes to be right but he pursues it from a morally good motive? Clearly such action would not be morally good but the person would not be considered morally bad but he would be considered to be misguided. It might be said about such a person "He means well but he is misguided". The extent of the mistake would affect one's judgement about such a person. The degree of wrongness will be discussed later when degrees of moral goodness and badness are discussed.

Is a virtuous person the same as a morally good person? The distinction is reflected in the emphasis on disposition instead of actually doing something. As was pointed out before, "morally good person" refers to the disposition of the person. "Virtuous" refers to a person who is actually doing what is right. A virtuous person must be endowed with a preponderance of moral virtues. He or she must have a consistent inclination to do certain virtuous acts like telling the truth, being friendly, or being generous from morally good motives. Conversely, a virtuous person would resist, with persistence, the temptation to do what is wrong. A virtuous person would resist the temptation to degrade other people, commit odious acts or dastardly deeds, or live a degenerate life.

So much for the morally good person and the virtuous person. What about morally bad acts and morally bad people? Is "morally bad" simply the converse of "morally good"? Is it the case that an act is morally bad if it is wrong and done from a desire to do wrong just as an act is morally good if it is right and done from a desire to do

right? It is true that people frequently do morally bad acts. These are acts which are wrong such as murdering an innocent person or committing a bank robbery. Are they done from a bad motive? Are they done from a desire to do wrong for the sake of doing wrong? This is doubtful because it is difficult, if not impossible, to cite a definite specific case of a person who committed a wrong act because he desired to do wrong for the sake of doing wrong. For example, a student who is truant would seem to act from a desire to be absent from school or a desire to be somewhere else and not from a desire to do wrong for wrong's sake. Why would he take the risk of being caught and subsequently punished if there was nothing in it for him? Surely he considered the relative weight of objects of interest and objects of disinterest in the prospective truancy. What would the object of interest be in the desire to do wrong for wrong's sake? It is much more plausible to assume that his object of interest was the possibility of being somewhere else or doing something else. Why does a student who is truant take the risk of the object of disinterest of being caught when he knows that truancy usually draws a severe punishment? It would seem most plausible that he was truant out of a desire to do something else. None of these motives are the same as saying that he was truant from a desire to do wrong for wrong's sake. Ironically, it would seem that when a person does a wrong act, invariably he seems to do it from motives which, in themselves, are not morally bad. This might even apply to the person who persistently asserts his will against others. It is reasonable to say that there is nothing wrong with a desire to assert one's will although there might be occasions when a person should not insist upon his own will.

Sometimes it is argued that people do wrong acts for wrong's

sake in small matters. Some people say that young people sometimes get involved in petty theft "just for kicks" thereby suggesting that they did what was wrong for wrong's sake. In other words, it is suggested that they do not pursue an object of interest in doing the wrong act. That would seem to be a dubious interpretation. "Just for kicks" can just as well mean "test the system" or "for the fun of it" or "to show that one can do it". These motives are not analogous to doing something for wrong's sake. In short, it is doubtful that there is such a thing as a desire to do wrong for wrong's sake. There is no reason to believe that such a desire is an object of interest for people other than those who suffer from a pathological condition.

What could be the bad motive which makes a wrong act a morally bad act? It reflects the absence of a certain sort of motive, namely, the desire to do right (or refrain from doing wrong). In fact, if a person does something which is not wrong but he does it in spite of his belief that it is wrong, he has acted immorally. This simply means that he acted in a way in which an immoral man would act. His manner of action shared a certain property with a morally bad action. That property was his indifference to the wrongness of the action. On the other hand, if a man did what was wrong but he believed it to be right and he did it from a desire to do the right thing, he would have acted morally. He would have acted in a way in which a moral man would have acted.

In summary, what makes an act morally bad is that it is wrong and the agent is not deterred by its wrongness. When an act is very bad, morally, it is judged to be evil, atrocious, wicked, iniquitous, nefarious, fiendish, or demonic. "Wicked" applies to both the act and

the agent. "Nefarious" applies only to the act. "Heinous" expresses a strong disapproval of both act and the agent. "Vile" or "foul" expresses a strong feeling of disgust. What makes an act morally worse is the degree of the seriousness of the wrong done by the act. For example, it is more seriously wrong to murder a person than to steal a pen.

Just as "morally good" can apply to people (as well as to acts and motives) so also "morally bad" can apply to people. What, then, is a morally bad agent or person? He is quite prepared to do a wrong act if it suits his purpose. It should be noted that he need not actually do the act. In fact, doing a morally wrong act does not necessarily make a person a morally bad agent. If a person does a wrong act reluctantly he might be regarded as being a morally weak person instead of a morally bad person. The act would be regarded as yielding to temptation. To be considered a morally weak agent, a person would have to yield to temptation somewhat frequently. He would have to succumb to temptation in some areas of activity. On the other hand, a person who feels no reluctance about doing a wrong action would be regarded as an unscrupulous or unprincipled person. What would make a person thoroughly bad is when he is thoroughly unscrupulous. He would lack all scruples, which is to say that he would not be deterred by any sense of wrong. This situation could be brought on by certain naturally bad motives like hatred, revenge, jealousy, envy, greed, lust, or malice. These are motives which can overcome people when they do not make continuous efforts to deter the influence of naturally bad motives. When these naturally bad motives become strong enough in a person, they can blur the person's sense of

right and wrong and so the person can become unscrupulous.

A review of moral goodness and moral badness suggests that there seem to be stages of moral goodness and moral badness. At the highest level of moral goodness would be the person who would never do anything which is wrong and who would always do his duty or do the right act because it is the right thing to do. This, no doubt, would have to serve as a hypothetical ideal since nobody is perfect. The next stage is the average moral goodness of the ordinary decent person. This is probably the level most people are at most of the time. Third, some people frequently mistakenly believe something to be right when it is, in fact, wrong. When such a person is deterred from doing wrong acts and he has the desire to do what is right, he would be considered to be misguided. For example, a student who allows other students to copy his answers may be misguided as to what is the right thing for him to do. A teacher who takes this position about the student would maintain that there is no reason to believe that he did not want to do what is right. Fourth, some people seem to have a moral blind spot. Persistently they fail to see what they do wrong in certain facets of their lives. For example, some students tend to get involved in fights to help the underdog from a sense of duty. They apparently fail to see that it was not their duty to engage in fights to help the underdog. There is no reason to believe that they suffer from a pathological condition. They simply have a moral blind spot with regard to certain activities.

Fifth, sometimes a person commits such dastardly acts that it is felt that the person is not in his right mind. For example, suppose a student thought that it was his duty to kill a teacher and

suppose he acted in conformity with this notion. He would be regarded a pathological case and therefore his motives would not be viewed in terms of moral goodness or moral badness. In this case, the student would probably be considered a moral agent who was not in his right mind.

Finally, there is the person who is totally undeterred by the wrongness of an act and not motivated to do what is right. Such a person is regarded as an unscrupulous person.

The stages of moral goodness and moral badness raise the question "What are morally good-making characteristics and morally bad-making characteristics?" Scrupulousness and being principled have been discussed already. A third characteristic should be added, namely, conscientiousness. It implies that people have a special faculty called a conscience which tells them what is right and wrong. It also motivates them to do what is right and deters them from doing what is wrong.

Two more problems should be mentioned which come up in aretological judgements. First, sometimes the stages of moral goodness and moral badness are not applicable. For example, what about the person who is not indifferent to the wrongness of an act and who desires to do his duty but who is careless? He is characterized by negligent behavior. It is frequently said of such a person that "he meant no harm". The person might, in fact, frequently act like an unscrupulous person would act. His action certainly is not morally good. Such a person is regarded as being irresponsible. Should he committ some rather seriously wrong act, he would be regarded as being a grossly irresponsible person.

A second problem arises from the fact that the words "ought" and "duty" can be used in two different moral senses. Although they usually have a deontological sense (see section on Deontological Terms and Judgements) they are sometimes used in the aretological sense.

This problem is illustrated in the following example:

Suppose John believes that he ought to do X.

But in fact it is not the case that he ought to do X.

Ought he then to do X?

This dilemma frequently evokes the following response: "A man ought to do what he believes he ought to do" or "Since he thought it was the right thing to do, he ought to have done it". At first glance, these responses seem to imply that one's duty is determined by what one thinks to be one's duty. However, this is a case where "ought" is used in two moral senses. In the saying "A man ought<sub>1</sub> to do what he believes he ought<sub>2</sub> to do", the term "ought"<sub>1</sub> is used to say that the act would be morally good if he did it and that it would be morally bad if he did not do it. "Ought"<sub>1</sub> is used in an aretological sense. In "what he believes he ought<sub>2</sub> to do", the term "ought"<sub>2</sub> is used to say that he believes that it would be the right thing for him to do X and the wrong thing for him not to do X. In this case "ought" is used in a deontological sense. Therefore to say "A man ought to do what he believes he ought to do" is not to say that one's duty is determined by what one thinks to be one's duty.

In conclusion, at least three observations should be emphasized. First, it is apparent from the analysis of the usage of "ought" that some moral terms can be used in more than one sense. This requires that people become more sensitive to being able to determine the moral

senses not only from the choice of moral terms but also from the context in which the terms are used. Secondly, with each additional class of moral terms and judgements, a greater variety of moral judgements can be made. Moral judgements affect the lives of people and therefore it is important that moral judgements be articulated and differentiated as much as possible.

Third, the moral judgements of the class of aretological judgements must be explained in part in terms of "right" in its deontological sense. For an act to be morally good it must also be right. But for an act to be morally good it must also be done from morally good motives. For an act to be morally good, it must be done from a desire to do right for right's sake. Implicit in this condition, which must be fulfilled for an action to be morally good, is the assumption that "to do right for right's sake" is an object of interest which people have a right to do. Having a right to this particular object of interest incorporates or builds an axiological sense of moral terms into aretological terms and judgements. The axiological sense seems to be a part of the aretological sense of moral terms but only a part of it.

Moral judgements are not only made of the act, the actor and the interrelationship of the two. Moral judgements are also made about the consequences of the moral or immoral act. For example, moral judgements are made to answer the question: "Did he deserve the reward (punishment)?" or "Can an action be right when a recipient did not deserve the reward or punishment?" An analysis of the class of axiological terms and judgements, presented in the next section, will identify the terms and judgements to answer questions of desert.

## CHART 5

## ARETOLOGICAL TERMS AND JUDGEMENTS

Terms

Morally good	Wanton	Criminal	Nefarious
Virtue	Nice	Ethical	Iniquity
Morally bad	Morally cleansed	Unethical	Odious
Vice	(Ill Repute)	Moral	Hideous
Moral Excellence	Awful	Immoral	(Repugnant)
Evil	Corrupt	Heinous	Vile
Sinful	Terrible	Atrocious	Foul
Wicked	Decadent	(Gross)	Degenerate
(Nasty)	Effete	Depraved	Degraded
Dastardly	Defiled		

Judgements: Morally good person, act or motive

1. What conditions must be fulfilled for an act to be morally good?
  - The action must be right?
  - The action must be done from a morally good motive.
2. What if a person does an act which is actually wrong but he believes it to be right and he does it from a morally good motive? The act is not morally good.
3. What if a person does an act which is right but he does not believe it to be right and his motives are not good? The act is not morally good.
4. What is a morally good motive?
  - The person must believe that the act is right.
  - The person must desire to do what is right or his duty.
5. "Wanting to do one's duty" must be distinguished from "Wanting to do what it is one's duty to do".

## CHART 5 (cont'd)

6. Cynics assume that people act only from self-interest.
7. "Morally good motives" must be distinguished from "good motives" like compassion and love.
8. "Moral virtues" must be distinguished from "non-moral virtues"
  - Moral virtue - disposition to do what is right from a morally good motive.
  - Non-moral virtues - intellectual virtue like "wit".
9. Is "morally bad" simply the converse of "morally good"? Does "morally bad" refer to the desire to do wrong for the sake of doing wrong? No.
10. Morally bad: absence of a desire to do right or indifference as to the rightness of the act. The act must be wrong.
11. Morally weak person must be distinguished from morally bad person.
12. Naturally bad motives include: hatred, revenge, jealousy, envy, greed, lust, malice.
13. Stages of moral goodness and moral badness:
  - hypothetically perfect stage
  - decent person
  - misguided
  - moral blind spot
  - not in his right mind
  - unscrupulous

} principled conscientious person
14. What about the person who is careless? (Not indifferent and desires to do his duty)
  - Not morally good
  - negligent behavior, irresponsible, grossly irresponsible
15. Two moral senses of the word "ought"
  - One's duty is not determined by what one thing one ought to do.

#### D. Axiological Terms and Judgements

The class of axiological terms and judgements is made up of the representative term "deserve" plus at least three other terms: "worthy", "merit", and "demerit". "Deserve" is most commonly used. "Worthy" is used mainly with reference to motives and character. For example, "He deserves to be punished" refers to the act of inflicting an object of disinterest on a person. On the other hand, "The teacher's character was worthy of approval" refers to an attitude of approval towards the character of the teacher. "Merit" is used to refer to the quality of the action as well as actors.

Before the use of these terms can be understood properly, it is essential to determine how the representative term "deserve" is used. Although this study is focused on the use of terms in the moral sense, it should be pointed out that "deserve" can be, and frequently is used in a non-moral sense. An example of the latter is: "The good teacher deserves the attention of the class". An example of the former is: "The boy who stole the lunch deserves to be punished".

Judgements about whether a person deserves something usually take the following form:

A (moral agent) deserves X on account of Y.

A is the logical subject even though it is not always the grammatical subject. Sentences in which A is not the grammatical subject, like "The boy's action deserves blame because some of his playmates could have been hurt", can be restated so that the logical subject also becomes the grammatical subject (without changing the meaning of the sentence). The above example can be restated as follows: "A boy, who plays in a manner which could injure his

playmates, deserves blame".

X is an object of interest or disinterest.<sup>18</sup> In the example cited above, X is an object of disinterest, namely, blame. When X is an object of disinterest, it is an expression of disapproval or punishment which is inflicted by some agent. When X is an object of interest, it is an expression of approval or a reward which is bestowed by someone.

Y provides the reason(s) for stating that A deserves an object of interest. In the example of the boy who deserved blame, it was claimed that he deserved the blame because his action could have been the cause of injury to his playmates. When a person claims that a certain person deserves punishment or reward but does not offer a reason for the judgement, people usually retort by saying "Why?". This kind of typical response suggests that a person is expected to offer reasons, implicitly or explicitly, for making the claim that someone deserves a punishment or reward. People frequently take issue with the reasons offered. If A disagrees with the reasons offered by B for stating that C deserves a particular punishment (or reward), then A might also disagree with B as to whether C deserves any punishment at all. On the other hand, A might agree with B that C deserves punishment but for a different reason. Or, A might agree with B that C deserves punishment but might maintain that the punishment should be different (i.e., different form of punishment, less severe, or more severe). In short, Y is an important aspect of determining whether a person deserves punishment or reward and what form it should take.

It has already been stated that when A says that B deserves something, A means that B deserves either an object of interest or an

object of disinterest. What are the objects of interest and objects of disinterest which a person might deserve? Objects of interest can take one of two forms. A mild form, as well as the most common form, is approval. The approval can be in the form of a nod, words of praise, or a pat on the back. When approval is expressed in stronger terms, such as gifts or money, it is usually referred to as a reward. Rewards clearly include approval but they take on a more substantial form such as gifts. Mild forms of approval are commonly expressed about a person who has done his duty. However, rewards are usually deserved for two kinds of occasions. A person frequently deserves a reward when he has completed a difficult task which many people will not even try or which they frequently fail to complete. For example, a young person might receive a reward for rescuing a drowning child from a river. Secondly, a person is frequently rewarded for doing something which is beyond the call of duty. For example, a physical education teacher may reward a student for staying after school regularly to clean up the equipment. To keep up this kind of schedule most people would consider as going beyond the call of duty.

There is one more important distinction between approval and reward. Awards can be given or withheld at will but approvals are not wilful. An attitude of approval is a psychological state. One either has it or does not have it. A person may choose to try to hide it so that other people will not detect it or a person may choose to give expression to it through words of praise or some other form.

Objects of disinterest can also take one of two forms. Disapproval is a mild form of an object of disinterest. It is frequently expressed in the form of a frown, words of disappointment,

mild censure, or mild criticism. The attitude of disapproval is not something one has wilfully, but a normal person can choose what form the feeling of disapproval should take. When disapproval is expressed in a stronger form then it is usually referred to as punishment. In other words, punishment includes a feeling of disapproval whereas a feeling of disapproval does not necessarily involve inflicting a punishment on someone.

It would seem, though, that "punishment" is sometimes used in a somewhat wider sense. People are sometimes punished when they do not deserve to be punished. For example, a frustrated parent may inflict a harsh object of disinterest on a child due to frustration and not because the child deserves the punishment for doing a wrong act. The parent might call it punishment even though the child did not deserve the object of disinterest. Sometimes it is said that a thing can also take a punishment. For example, a person might say "The boat took a real punishment in the rough waters". Whereas a teacher might wrongly feel, due to his own frustrations, that a child deserves punishment, the person who claims that the boat took a real punishment is not suggesting that the boat deserved the beating from the waves. It is just a way of talking about the treatment the boat underwent in the rough waters. These two examples of the use of the term "punishment" do not include a moral sense.

On account of what things judged morally is a person deserving of approval? As was pointed out earlier, a person probably deserves some approval for doing his duty from a sense of duty or for doing what is right for right's sake. People deserve approval for having done morally good acts, acting from morally good motives, deliberately

refraining from doing wrong acts and being morally good agents.

More, however, is required for a person to deserve a reward. Ordinarily, a person does not deserve a reward for having done a morally good act, that is, for an act which is right and was done from morally good motives or from a desire to do one's duty. For example, a person normally does not deserve a reward for helping a student spell a word correctly. Second, a person does not deserve a reward for acting from morally good motives alone. Third, a person does not deserve a reward for deliberately not doing something which is a wrong act. For example, a child is not rewarded for not throwing snowballs at cars on the street. Fourth, a person does not deserve a reward for being a morally good agent, that is a person who has a disposition to do what is right. For example, a person is not rewarded for having a disposition to assist first graders button up their coats. Finally, a person does not deserve a reward simply for doing his duty. If he did his duty from a sense of duty instead of from fear of punishment, then he might deserve approval but, normally, not a reward. Consequently, people seem to deserve rewards only for the two kinds of occasions mentioned earlier, namely, when a person performs a difficult duty which many people frequently fail to perform and when a person does something which is beyond the call of duty. In summary, it would seem that in most situations people do not deserve anything more than approval.

On account of what things judged morally does an agent deserve disapproval or an informal expression of disapproval? A person deserves disapproval for willingly doing a wrong act. This should not be confused with saying that sometimes people do wrong for wrong's

sake. Second, a person deserves disapproval for doing a morally wrong act, that is, an act which is wrong and which is done in spite of its being wrong or with indifference to the possibility of its being wrong. Third, a person deserves disapproval if he is a morally bad agent, that is, a person who is indifferent to the wrongness of an act. A morally bad agent could do right acts but he is a person who avoids doing wrong acts only out of fear of being punished or who would do wrong acts if it suited him.

On account of what does a person deserve punishment? This question should be distinguished from the following two questions. First, on account of what do agents punish people? Many reasons come to mind: (1) breaking the law; (2) agent is frustrated; (3) bad motives; (4) intent to harm; (5) fear; (6) illness of the agent or the punished person; (7) sadism. The second question that might be asked is: "On account of what ought a person be punished?" A person should be punished for doing a wrong act with indifference as its wrongness. For example, a person who snatches a purse from a woman should be punished because the purse-snatcher has committed a wrong act with indifference as its wrongness.

It would seem that the answer to the second of the two questions provides the answer to the question: "On account of what does a person deserve punishment?" A person deserves punishment on account of doing a morally bad act, that is, doing a wrong act with indifference as to its wrongness. The infliction of an object of disinterest on a person must be restricted to people who do wrong acts with indifference as to their wrongness.

Do all morally bad acts deserve the same degree of

punishment? They do not, for the magnitude of the object of disinterest inflicted upon a person should be in proportion to the seriousness of the wrong act committed by the wrong-doer. The more seriously wrong an act is, the morally worse it is and the more severe the punishment should be.

Does a person deserve punishment for willing to do wrong? Normally such a person would only deserve an expression of disapproval. It should be noted, though, that conspiracy is not just a matter of willing to do wrong. It is an act of planning and organizing the infliction of objects of disinterest on other people.

What if a person planned to commit a wrong act, such as a bank robbery, tried to execute the robbery, but failed to rob the bank? Does he deserve punishment? The person would deserve some punishment, because he acted in a manner designed to inflict objects of disinterest on other people.

Does a person deserve punishment for "sins of omission" or failure to do his duty? Possibly, for it is wrong not to do one's duty. Of course, it would have to be established clearly that the person had a duty to do the act in question. In some instances, that is easy to do. For example, if John has a duty to delivery a message, it probably can be established whether or not John has done his duty. In other situations it is much more difficult to determine one's duty. For example, just what is the principal's duty when a working single parent is unable to get his or her son to come to school on time? It is frequently very difficult to identify sins of omission. At the same time, that difficulty does not make the question concerning "sins of omission" irrelevant.

It is apparent from a study of the class of axiological terms and judgements, that there is a direct connection between axiological judgements and aretological judgements. It has been said in different ways throughout this section that a person deserves approval or rewards for doing morally good acts and a person deserves disapproval or punishment for doing morally bad acts. The degree of the severity of a punishment is determined by the seriousness of the wrong act. In other words, axiological judgements do take into account the motives of the person as well as the rightness or wrongness of the act. As was pointed out in the previous section, judgements which consider the rightness of the act as well as the motives which prompted it are aretological judgements. This kind of judgement serves as the basis for the judgement as to whether a person deserves an object of interest or an object of disinterest. For example, suppose a teacher has to decide whether a young boy deserves punishment for throwing a snowball across the street when a car was passing by. The teacher must consider whether throwing snowballs toward moving vehicles is a wrong act. The wrongness of the act can be established by checking with the Highway Traffic Act as well as by considering the possible consequences of startling a driver by hitting the car with a snowball. Second, the teacher would have to consider the boy's motives. Did the boy intend to throw the snowball at the car or was he throwing it at a friend, or an object located on the other side of the street? If it could be established that the boy intended to hit the moving vehicle, then he would have thrown it for the wrong motive. In that case, since the act in question was a wrong act and since he did it for morally wrong motives, he committed a morally bad act. This

conclusion would be arrived at by making an aretological judgement. Once it has been established that the boy committed a morally bad act, the teacher must decide whether the boy deserves to be punished or whether he should only get an expression of disapproval. This involves making an axiological judgement which is by no means easy. People frequently disagree on the seriousness of the wrong act and subsequently on the moral badness of the act. The implications of this disagreement can be quite significant. For example, different teachers have different opinions about the seriousness of throwing snowballs towards moving cars. Some consider it from the possibility of causing the driver to lose control of the vehicle and consequently getting involved in an accident. A teacher with this viewpoint would consider the act as being seriously wrong and therefore morally very bad. Undoubtedly only a serious punishment would be considered appropriate for the boy. Another teacher might view the snowball throwing as little more than an annoying incident to any driver. The wrong would not be considered very serious and therefore it would not be regarded as morally very bad. A mild form of punishment probably would be considered appropriate.

The connection between axiological judgements and the other judgements (deontological and aeteological judgements) besides aretological judgements are less direct. In fact, the connection seems to be indirectly through aretological judgements. That does not make deontological and aeteological judgements inconsequential for axiological judgements since there is an important and direct connection between aretological judgements and axiological judgements.

That the question of desert is taken very seriously by people

of all ages is evidenced by the fact that people have strong feelings about awards and punishment. This is apparent in the day to day interaction at home, at school, in the community and at work. The importance of this question is also apparent in the debates of the members of the legislative body of a government which determines what punishments and/or rewards should be established by law as well as in the deliberations of the court of law as it attempts to determine whether a person deserves to be punished. It is also a major question for administrators because they must frequently make discretionary judgements as to what a staff member or student deserves by way of punishments or rewards.

#### E. Dikaiological Terms and Judgements

The class of dikaiological<sup>19</sup> terms and judgements includes the terms, "just", "fair", and "equitable", as well as their antonyms, "unjust", "unfair", and "inequitable". Included are also some grammatical variances of the representative term, "just", such as "justice", and "injustice" which are important and frequently used terms in moral and legal philosophy.

People judge many things to be just or unjust. They judge actions to be just when they say, "That was the only just thing to do". Specific laws are frequently judged to be unjust. This applies to legal codes but not to moral codes. When a person is judged to have been punished excessively, people say that the person got an unjust punishment. Sometimes it is said of a person that "He received his just deserts" which is to say that he got what he had coming, be it an object of interest or disinterest. Judges are sometimes accused of

## CHART 6

## AXIOLOGICAL TERMS AND JUDGEMENTS

Terms

Deserve	Commendable	Reprehensible
Worth	Laudable	Contemptible
Merit	Praiseworthy	Meritorious
Deserts	Blameworthy	
Worthy	Culpable	

Judgements: Deserts of a Recipient

1. Standard statement:  
"A" (moral agent) deserves "X" on account of "Y".
2. "X" may be an object of interest or disinterest for "A".
3. An object of disinterest may be an act of disapproval or punishment.
4. An object of interest by be an act of approval or reward.
5. "Y" provides the reasons for allocating an object of interest or inflicting an object of disinterest. A person is expected to give reasons for inflicting an object of disinterest.
6. Awards can be given or withheld at will.
7. Approvals are not wilful. They are psychological states of being.
8. Acts of disapproval include a frown, words of disappointment, mild censure, mild criticism.
9. Acts of approval include a smile, words of praise, a nod, slap on the back.
10. For what does a person deserve approval? For doing his duty, and for doing a morally good action from a morally good motive.

## CHART 6 (cont'd)

11. A person is rewarded for:
  - performing a difficult task.
  - doing something beyond the call of duty (act of supererogation).
12. A person is not rewarded for:
  - morally good action
  - morally good motive
  - not doing something that is wrong
  - being a moral agent
  - doing one's duty
13. A person deserves disapproval for:
  - willingly doing a wrong act
  - doing a morally wrong act
  - being a morally bad agent
14. On account of what does a person deserve punishment?
  - for doing a morally bad act
15. Question No. 14 should not be confused with:
  - Why do agents punish people?
  - On account of what ought a person be punished?
16. Do all bad acts deserve the same degree of punishment? No. The punishment should be in relation to the seriousness of the wrong act.
17. Does a person deserve punishment for the willingness to do wrong? He probably deserves only an act of disapproval.
18. What if a person planned to commit a wrong act but failed to execute it? He probably deserves some form of punishment.
19. Does a person deserve punishment for failure to do his duty? Possibly.

pronouncing unjust judgements. Members of a family sometimes feel that the disbursement of the family estate was unjust. Reformers frequently argue that the economic system or social system of a country is unjust to the poor. Historically churches have made a distinction between just and unjust wars. Politicians have claimed that, if elected, they will usher in the just society. Governments are sometimes accused of being unjust to certain segments of the population. Leaders of reform movements sometimes claim that their just cause warrants their interference in the orderly flow of business. Appeals are sometimes made for a just distribution of the limited resources of a nation. People sometimes say of a particular judge that he is a just person.

The last example of the uses of "just" introduces a usage of this term that is different from all the other examples. "Just" as applied to a person does not refer to the same thing as applied to an action, law, or sentence. "Just" as applied to a person makes reference to his motivation. This subjective sense of the term "just" applies only to agents. When "just" is used in this way, it is used in a way analogous to the way in which "good" or "virtuous" are used in their aretological sense. It should be recalled that aretological terms take into account the motive of the person. In other words, for a person to be considered a good person it is not sufficient that he make just decisions or just distributions of goods. If he did so out of fear or self-interest, he would not be regarded as a just person. He must do so for a morally good motive.

All the other uses of the term "just" listed above do not make any reference to motivation but only to the objective characteristics

of that which is judged to be just. The objective sense of "just" makes reference to the rightness of an act. When "just" is used with reference to the distribution of goods, for example, it is used in a way analogous to the way in which "right" is used in its deontological sense. Hence, "just" is frequently treated as being interchangeable with the term "right". However, that usage fails to do justice to the distinctive characteristics of the term "just". Usually "just" is used in the more narrow sense where it refers to the decisions and actions of people who possess some kind of authority or the right to supervise the activities of other people. This usage is reflected in the reference to just laws, just punishments, just distributions, and so on. For example, the sentence pronounced by a judge on a person who has been accused and convicted of theft may be just or unjust.

Not all right acts are also considered just. For example, the deontological sense of the term "right" can be illustrated with the following example. It may be right to lend a child one dollar to buy lunch but it does not follow that it is wrong not to lend the child one dollar to buy lunch. The person might choose to meet his duty in some other way. Even though it may be right to lend one dollar to a child to buy lunch, the just thing to do may be to send the child home to have lunch or to pick up one dollar even if the child would be late for some afternoon classes. The relationship between "right" and "just" as well as "wrong" and "unjust" can be summarized as follows:

(a) Not all right acts are just but all just acts are right.

(b) Not all wrong acts are unjust but all unjust acts are

wrong.

It would seem confusing for a person to claim that a certain distribution of goods is just but nevertheless wrong. For example, a teacher sometimes is accused of being inconsistent or irresponsible by his colleagues when he fails to punish a student for committing a wrong act (such as stealing) for which children are normally punished in certain conventional ways. The accusation may not be applicable to the teacher because he may argue with his colleagues that the policy governing theft is right but he may have felt that this policy did not apply to the specific case because of the special circumstances surrounding the case. For example, the child's home condition may have been such that he did not have anything to eat for two days and so was desperately hungry. The teacher may well argue in this case that although it is wrong to steal, it could not be said that it was unjust of him not to punish the child who had committed a wrong act. The teacher might also argue that he did the right thing even though in the strict sense of the word "just", the policy governing theft should apply to everyone in order to be just to everyone.

Two other terms were also listed as belonging to the class of dikaiological terms. "Fair" may be used in an objective sense or a subjective sense as was the case with "just". The former sense is reflected in the statement "He did the only fair thing to do". The later sense is meant when it is said of a person that he is a fair person. The only difference between the usage of the two words is in the context in which they are used. "Just" commonly seems to be used with reference to the decisions and acts of people in authority such as government officials and judges. "Fair" seems to be used in situations that involve fewer people. For example, it is often said

that a parent or a teacher is not fair with a certain child. Sometimes it is said of a referee of a hockey game that he was not fair to the visiting team because he wanted the home team to win. "Fair" also seems to be used in situations where the person who is making the judgement is involved in the distribution of objects in trust. The term equitable is used only in the objective sense. It seems to be used most commonly for the distribution of objects of interest or disinterest. Essentially, "equitable" seems to describe the distribution.

This study focuses on the objective sense of the class of dikaiological terms where they refer to the distribution or allocation of objects of interest or disinterest. For example, a disbursement of funds is just or unjust depending on how the money (object of interest) is distributed or allocated. Laws are just or unjust depending on how they distribute or allocate legal obligations (objects of disinterest) and legal rights (objects of interest). Wars are just or unjust depending on how they affect the redistribution of objects of interest or disinterest. Governments are just or unjust depending on whether they legislate and execute just or unjust laws. Societies are just or unjust depending on how the objects of interest (property, services) and objects of disinterest (taxes, military services) are allocated or distributed. Courts make judgements for the purpose of distributing or allocating objects of interest or disinterest.

What additional elements besides a distribution or allocation of objects of interest and disinterest must be present in a situation which requires a dikaiological judgement? First, there has to be a

distributor or allocator of objects of interest or disinterest. When a judge pronounces a sentence on a criminal, the judge is the allocator of an object of disinterest. The distributor or agent must be a moral agent because, in order to make a just distribution, a person must make a right distribution. However, in order to make a morally right distribution, a person must be able to distinguish right from wrong, have the concepts of right and wrong, and understand the meaning of "right" and "wrong".

Second, a dikaiological judgement requires a recipient. For example, the criminal on whom the sentence is imposed, is the recipient of the object of disinterest. It would seem that the recipient need not be a moral agent although he would have to have objects of interest and disinterest. The recipient would be a potential moral agent. Although children are sometimes admonished to be fair to animals, it has not been established whether one can be fair to animals. If the recipient must be an actual or potential moral agent then the notion of fairness would not apply to animals. To say that animals can and should be treated fairly also suggests that animals have rights. A discussion of the question whether animals have rights was pursued in the section on aeteological terms and judgements. No conclusive answer to this question seemed to be available.

Third, there is the distribution. From what point of view is the distribution of an object of interest or disinterest just or unjust? First, several objections can be raised to suggesting that the distribution of an object of interest or disinterest is just based on what the recipient deserves. How would that apply to little

children in a family? Does a taxpayer deserve to pay taxes (which are regarded by most people as objects of disinterest)? Generally, the justness of a distribution is not determined only, or at all, on the basis of what the recipient deserves.

Second, is an act of distributing or allocating fair from the point of view of its utility? This is sometimes suggested because many people believe that justice has utility. For example, it is felt that promoting justice through the courts brings with it the utility of law and order for a society. However, this apparent correlation between justice and utility does not provide any insight into what it means to be just.

Is a distribution considered just or unjust from the point of view of the needs of the recipient? Objects of needs are objects of interest, but not all objects of interests are needed. Sometimes what is distributed is something people want but do not need. Sometimes the distribution involves objects of disinterest.

Is a distribution considered just or unjust from the point of view of the rights of the recipient? Although the rights of the recipient are considered, it does not seem to offer a sufficient explanation. For example, it would sound awkward for someone to suggest that Mr. Smith has a right to be assigned more hours of instruction than Mr. Jones.

Is a distribution considered just or unjust from the point of view of the motives of the distributor? That could not be the case because any reference to motives would clearly be a reference to the distribution and not to that which is distributed and therefore a reference to motives could not determine whether a distribution is

just.

A distribution seems to be just or unjust from the point of view of the way in which it affects the interests of the recipients relative to one another. How may the distribution affect the interests and needs of the recipients (including those who should be considered as recipients) relative to one another? It can affect the recipients in one of three ways. First, it might be possible for a distribution not to favor one or some recipients over others. Second, the distribution might favor one or some recipients over others on the basis of sound principles or reasons. Third, the distribution might favor one or some recipients over others without a basis of sound principles or reasons. Which of these characteristics must a distribution have in order for the distribution to be just? The first possibility (i.e., the distribution does not favor one or some recipients over others) does not involve the issue of justice or just distribution but involves the impartiality of the distributor which will be discussed later. The next two possibilities involve the issue of justice because a decision must be made as to whom to favor for what principles or reasons. A distribution must have the second characteristic for the distribution to be just. In other words, a distribution must favor the needs or interests of one or some recipients over others on the basis of sound principles or reasons. A distribution is unjust if it favors one or some recipients over others without sound principles or reasons. Whether, in fact, a distribution affects recipients as anticipated is a different matter. It should be kept in mind that what in fact happens must not be confused with anticipations.

For a distribution to be just, a second condition must be met. The distribution must be made by a distributor who is impartial. It should be noted that "impartiality", in the primary sense, applies to the agent of the distribution and "just" refers to the distribution itself. To say that a distributor is impartial is to say that the distributor does not favor one or some recipients over others. That a distribution must be done with impartiality in order for it to be a just distribution, raises the question: "Is it the case that all distributions done with impartiality are just?" No. Although justice involves an impartial agent, impartiality does not necessarily ensure justice. An impartial agent or distributor is required to make a distribution which does not favor one or some recipients over others without sound principles or reasons. But, impartiality on the part of the agent does not necessarily lead to justice. An agent may be impartial and yet a distribution can favor one or some recipients without sound principles or reasons. People use the reference to impartial agents as evidence to support a contention that a distribution is just. Conversely, people also support their claims that a distribution is unjust by claiming that the distributor was unfair. There are no general rules for determining whether an agent is impartial. Each case must be considered by itself. Statements about whether a distributor is impartial are descriptive and not normative.

For a distribution to be just, several conditions must be met. The distributor must have the right to make the distributions. It is wrong of someone to distribute something if he does not have the right to do so. The distributor must have a duty to make a

distribution. Since only moral agents can have a duty to make an impartial judgement, the distributor must be a moral agent.

There are situations when the granting of a reward (i.e., object of interest) would be just, namely, if an agent deserved a reward. So also, if an agent deserved to be punished, it would be just to inflict punishment on him. The allocation of a reward or the infliction of punishment must take into account the way in which the distribution of objects of interest and disinterest affect the interests and needs of the recipients relative to one another. This account of the relationship between what a recipient deserves and what is the just thing to do points out the relationship between axiological judgements and dikaiological judgements. Dikaiological judgements take into account what a person deserves but put it in the larger perspective of the interests and needs of the recipients relative to one another.

Some cases of discriminatory distribution are neither just nor unjust. Discrimination is unjust when a person has a duty not to discriminate or when it is wrong to discriminate. For example, if it is true that it is wrong to discriminate against a person on the basis of the color of his skin, then it is also unjust. However, not every discrimination is wrong. In fact, it may be wrong in some situations not to discriminate. For example, suppose A and B both arrive at the doctor's office with different ailments. A wants a check-up because he cannot get rid of a cold and B has just cut off his hand with an electric saw. It would be wrong for the doctor not to discriminate against A, even if he had an appointment and B did not, to attend to

B's much more serious injury.

Is it possible for a just act ever to be wrong? No, it would be self-contradictory to say that a just act is wrong. Every act that is just is also right and every act that is unjust is also wrong. A just act is an act of impartiality which it is one's duty to perform. If it is one's duty to perform it, it could not be wrong. It must be right.

The issue of desert focuses the matter of just distributions on the recipient. It was concluded that it is just to allocate to a person that which he deserves. However, it must be remembered that a dikaiological judgement also requires an allocator or distributor. Therefore, it is possible for an agent to deserve punishment and yet for it not to be just for an existing agent to mete out the punishment. For example, suppose that the school children of a rural school gather at their one-room school one morning when the teacher is too sick to come to school. Suppose further that one of the older boys starts to pick on one of the younger children by calling him names. The older boy deserves punishment even though there is nobody around who has the right to punish him. In this case the dikaiological judgement is made in terms of conceiving of an agent who would have the right to punish the older boys. In fact, in most situations in which people find themselves they do not have the right to punish others and in many situations, for both children and adults, there is nobody present who has the right to punish someone in the group. Locke argues that in a state of nature everyone would have the right to punish but many would not have the power to do so. Giving an agent what he deserves would then be a matter of who has

the power to do so and not a matter of justice. It is important or essential that people leave the state of nature to make possible the administration of retributive justice, which means giving an agent what he deserves.

The term "retributive" and its grammatical variants requires some explanations. "Retributive" does not mean retribution. "Retribution" means inflicting a deserved punishment on an agent. "Retributive justice" refers to the allocation to someone of an object of interest (i.e., reward) or the infliction of an object of disinterest (i.e., punishment).

The main idea of this section can be summarized as follows: For an act to be just it must be done with impartiality and it must not favor one party over some other without principle or reason. Since "just" was defined in terms of two or more people (that the interest of one person is not satisfied to a greater degree than another), the following question is raised, "How is it possible for the allocation of an object of interest or disinterest to one individual to be just?" A reply to this question might begin with the following analytically true statement, "To say that someone deserves something is to say that it would be just to allocate it to that person on the part of some conceivable agent". On account of what does a person deserve an object of disinterest? It was pointed out in the section on axiological judgements that a person deserves an object of disinterest (i.e., punishment) for doing a morally bad action. A morally bad action is an action which is wrong and which is done from morally bad motives. The more seriously wrong the action is, the greater the punishment should be if the action is also morally bad

(i.e., done from a morally bad motive). Ultimately the person deserves to be punished for doing a wrong act, because in doing a morally bad act a person has done wrong. But, if he deserves to be punished, it would be just to punish him (by someone or other, real or hypothetical, who has the right to punish him). However, any just act is an act of impartiality. Therefore, if a person has done something wrong provided it was done with indifference to its wrongness, it would be an act of impartiality to allocate to him an object of disinterest. If he deserves punishment it would be just to punish him and if he were not punished, that would be unjust.

#### F. Summary

The analysis of the five classes of moral terms and judgements provides the main part of the normative conceptual framework developed in this study. It identifies the terms available in the English language used for making moral statements. It outlines the kinds of judgements that are involved in making moral judgements. It attempts to describe the interrelationship of the five classes of moral terms and judgements. The interrelationship shows that the four classes of terms and judgements--duty, rights, motive and desert--are needed to make judgements about the justice or fairness of a decision or an action. The process of moral justification must draw on all five classes of moral terms and judgements. This interrelationship has been outlined in Chart 8.

The examples used to illustrate the numerous moral terms and judgements suggest that they are applicable to everyday experiences in life.

## CHART 7

## DIKIOLOGICAL TERMS AND JUDGEMENTS

Terms

Just	Unjust
Fair	Unfair
Equitable	Inequitable

Judgements: Justice or Fairness

1. Justice refers to the decisions or actions of distributing or allocating objects of interest or disinterest.
2. Just usually used with reference to decisions and actions of people who exercise authority.
3. Not all right acts are considered just:
  - not all right acts are just but all just acts are right.
  - not all wrong acts are unjust but all unjust acts are wrong.
4. From what point of view is the distribution of objects of interest or disinterest just or unjust?
  - not the recipient's deserts
  - not its utility
  - not the needs of the recipient
  - not the rights of the recipient
  - not the motive of the distributor
5. The distribution is just or unjust on the basis of how it affects the interests and needs of the recipients relative to each other.
6. Just refers to the distribution itself of the objects of interest or disinterest.
7. Impartiality refers to the agent. Impartiality does not ensure justice.

## CHART 7 (cont'd)

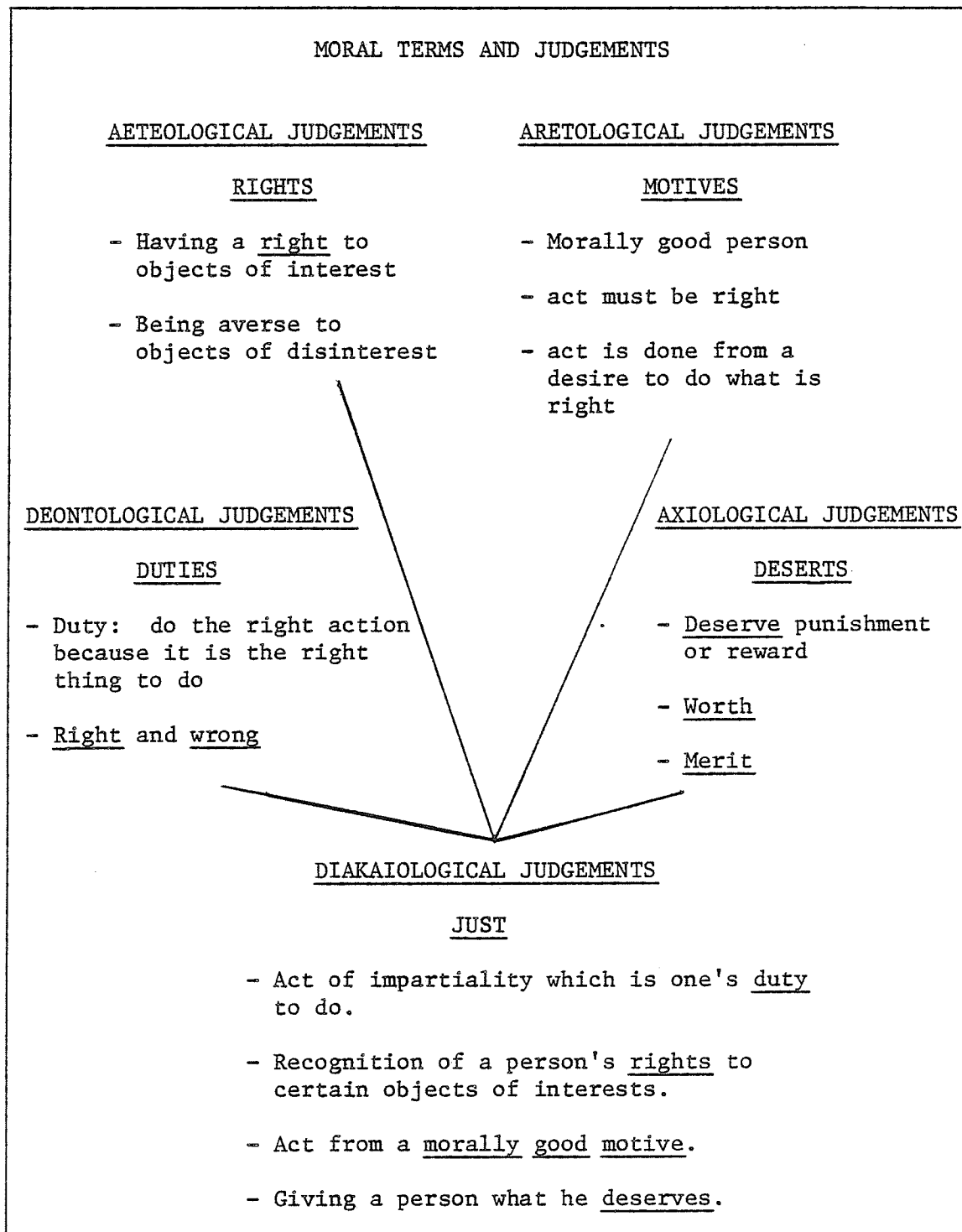
8. A just act is an act of impartiality which it is one's duty to do.
9. The issue of justice applies to the following situation:  
     Distributor - Object of Interest or Disinterest - Recipient
10. For an agent to be impartial he must not favor one recipient over the other.
11. A distribution which is made with impartiality may be either just or unjust.
12. It may be wrong in some cases not to discriminate. A just distribution may require discrimination in favor of the underdog.
13. For a distribution to be just, the following conditions must be met:
  - the distributor must have a right to make the distribution
  - the distributor must have a duty to make the distribution
  - the distributor must be a moral agent.
14. Some discriminations are neither just nor unjust.
15. Is it possible for a just act ever to be wrong? *Yes*
16. Is it possible for an agent to deserve punishment and yet for it not to be just for any existing agent to punish the person?
17. Retribution - inflicting a just punishment on a person.
18. Retributive justice - allocation of object of interest or inflicting an object of disinterest.
19. How is it possible for the allocation of an object of interest or disinterest to one person to be an act of impartiality? The person does a morally bad action.

## CHART 7 (cont'd)

## 20. Summary of Justice:

- act of impartiality which it is one's duty to do.
- recognition of a person's rights to certain objects of interests.
- act from a morally good motive.
- act of giving a person what he deserves.

CHART 8



An analysis of the five classes of moral terms has led up to but left unanswered three important questions. These are:

1. What must an agent have done in doing wrong such that it would be an act of impartiality to inflict on him an object of disinterest (i.e., to punish him)?

2. What is it that for doing a right act impartiality of treatment does not require that the agent be given an object of interest?

3. If an agent does an action above and beyond the call of duty, it would be an act of impartiality to give a reward. Why?

Answers to these questions would reveal part of the standard of right and wrong action or what makes an action right or wrong. It is the purpose of the next section of this study to explore these three questions and consequently to discover part of the standard of right and wrong.

#### IV. TWO FUNDAMENTAL MORAL QUESTIONS

The two fundamental moral problems of ethical and moral theory introduced in this Chapter are:

1. What is the standard of right and wrong acts?
2. What is the meaning of right and wrong?

This section will provide a partial answer to the first problem. The second problem will be discussed in a subsequent section. Both problems will be discussed in the light of the five classes of moral terms and judgements developed in this Chapter. A clear understanding of both problems is necessary for an understanding of the normative conceptual framework. In fact, the analysis of the

two problems is part of the framework.

A. What is the Standard of Right and Wrong?

What characteristics must an act have in order to have the further characteristic of being right or wrong? Some of the characteristics have been outlined in the analysis of the five classes of moral terms and judgements discussed in the previous sections. A brief review of the five classes will identify the characteristics.

The first class of moral terms, the class of deontological terms, includes the representative terms "duty", "right" and "wrong". It points out that people have a duty to do what is morally right as well as a duty not to do what is morally wrong. The second class of moral terms, the class of aeteological terms, introduces the notion of having a right to do something or having a right to something. This sense of the word "right" makes reference to objects of interest that people have. The third class of moral terms, the class of aretological terms, makes reference to the motive of a person to do morally good or bad acts. It points out that a person who acts from a morally good motive must believe that a certain act is right and must have a desire to do what is right or his duty. However, people do not seem to do morally bad acts from a desire to do wrong for wrong's sake. When people do not act from morally good motives they seem to do wrong acts in spite of their wrongness or with indifference as to the possibility of their wrongness. The fourth class of moral terms, the class of axiological terms, is represented by the term "deserve". A person may deserve an object of interest (e.g., approval or reward)

or an object of disinterest (e.g., disapproval or punishment). The direct connection between the class of axiological and the class of aretological terms is emphasized. The fifth class, the class of dikaiological terms, is represented by the terms "just", "fair" or "equitable". This class of terms connects the concept of "wrong" from the first class of terms to the concept of "justice" with the aid of all the intermediate classes of terms. The interrelationships of moral terms and judgements through these terms leads to the following fundamental main idea of moral theory:

For an act to be just the distributor must act with impartiality and the distribution must be just in that it must not favor one person over some others without sound principles or reasons.

The previous section on the class of dikaiological terms explains how this main idea applies to individuals as well as to two or more people.

A further explanation of the question "What is the standard of right and wrong?" requires some understanding of the human condition. It must be understood that the human condition is characterized by the existence of conflicts of interest among individuals and groups. To say that there is a conflict of interest between A and B is to say that there is some object that is of interest to A and B but this object is such that if A gets it, then B cannot have it and if B gets it, then A cannot have it. For example, if there is only one ticket to a hockey game available, and both A and B want the ticket, they will experience a conflict of interest. If A gets the ticket by flipping a coin to determine who

gets it, then B cannot have it and if B gets it then A cannot have it. The conflict can be caused by a variety of factors, though, scarcity seems to be a common factor.

The existence of a conflict of interest may lead to an effort, by both parties, to obtain the same object of interest. When both parties try to get it, we can say that they compete over the object of interest. In other words, a conflict of interest may give rise to competition. If the parties to the conflict of interest were in a state of nature, the competition might become violent in that they might resort to the use of force to resolve the conflict of interest. However, when the competition becomes violent, the result may be that the competition could become so violent that each competitor would suffer a greater object of disinterest than he would have suffered by failing to gain the object of interest for which each was competing. For example, suppose two boys, John and Jim, both wanted the same soccer ball. Suppose the competition for the ball led from an exchange of words to a fight in which John received a sprained ankle and Jim received a broken arm. The fight which resulted from the competition caused each boy to suffer much more than they might have suffered from failing to gain possession of the soccer ball. This situation raises the question "What would a reasonable person do?"

The reasonable person could consider several strategies. He could try to negotiate a compromise. He could appeal to a third party to arbitrate a settlement. This is frequently done in contract disputes in labor-management relations. The rational person could also establish different sets of rules to govern different conflict of interest situations. In fact, human relations are governed in our

society by many sets of rules--marriage regulations, sales contracts, employment agreements, laws, and many others. Whereas compromise and arbitration may be applied in situations where a conflict of interest has risen, the adoption of different sets of rules governing different competitive situations can actually prevent competition. For example, most married men and women do not compete for the marital favors of people who are not their spouses. They have accepted the set of rules governing marriage relationships, and so avoid the competition that might otherwise occur. They have accepted rules outlining what may or may not be done either by voluntary agreement or by imposed arrangement. In short, they have learned to conform to a set of rules governing the competition for objects of interest.

What characteristics should such a set of rules have? The set of rules must be just. If, for example, the set of rules governing a lottery favors some contestants in the lottery by giving some contestants two tickets for the price of one, without sound principles or reasons, then the set of rules would discriminate unjustly against those who did not receive two tickets for the price of one.

Suppose the lottery is governed by a set of just rules which are known to everyone, and suppose further that everyone conforms to the just set of rules, then violence will not occur. Since violence is regarded as an object of disinterest by most people, they are inclined to conform to just rules governing the competition for objects of interest. In fact, bank robbers try to avoid violence if at all possible even when they rob a bank.

However, although people try to avoid violence, they sometimes choose to violate just rules to gain an advantage over others in

obtaining an object of interest. For example, suppose A found a dozen lottery tickets. He might be tempted to enter them in the lottery without paying for the tickets. This would give him an advantage over others who had to pay for every ticket they entered.

It was pointed out earlier that sometimes people choose to violate a just rule in order to gain an advantage over others. What must be done to restore justice in such a situation? Suppose A entered stolen tickets, which belong to C, and B purchased the tickets he entered in the lottery. How could justice be restored between A and B? Would justice be restored by disqualifying A from the lottery? If that were enough, then A had nothing to lose in entering stolen tickets. But, he did gain the chance of obtaining the object of interest of winning the lottery! Furthermore, he deprived someone else, C, of a chance to win the lottery. Therefore, it would seem that more is required to restore justice than to simply disqualify A from the lottery. It may be necessary to impose an object of disinterest on A. Suppose A not only stole C's tickets but injured C in the robbery, then it may be just that someone, who has a right to punish A, inflict an object of disinterest on A. In short, a person who violates a set of just rules gives himself a chance to gain an object of interest which others do not have because they do not violate the rules. What may be required to restore justice is to inflict an object of disinterest.

What must a person have done in doing wrong such that it would be an act of justice to allocate to him an object of disinterest (e.g., punishment)? How could it be an act of justice to allocate or inflict an object of disinterest? For example, what must a person

have done in doing wrong such that it would be an act of justice to chastize, imprison, impose a fine, or ostracize a person? The discussion above about just rules would suggest that the person must have violated a just rule (e.g., the rules governing the lottery). But, how is it possible that an allocation of an object of disinterest to an individual could possibly be just? It is possible to restore justice in a situation where an individual has violated a just rule because it has already been pointed out that it can be an act of justice to allocate an object of disinterest to a person who has violated a just rule.

The discussion in this section up to this point provides a partial answer to the question "What is it that makes an act wrong?" The answer can be summarized as follows:

an act is wrong when it violates a just rule governing the competition for objects of interest.

This conclusion was arrived at by tracing the connection between wrongness and justice, i.e., between the class of deontological terms and judgements and the class of dikaiological terms and judgements. A chain was worked out between these two opposite ends with the use of the other three classes of terms as intermediate links. The connection were established between one and two, two and three, three and four, and four and five. Through this chain of connections a connection was established between one and five thus establishing a connection between "wrong" and the concept of "justice".

The same chain of connections provides a partial answer to the question "What is it that makes an act right?" An act is right insofar as it conforms to just rules governing the competition for

objects of interests. For example, in the lottery case cited above, B's action was right because he complied with the just rules governing the lottery. The chain of connections also answers the further question, "Why is it that ordinarily, right acts are not rewarded?" Most right acts do not give anyone a particular advantage or disadvantage. For example, justice was maintained by B when he conformed to the just rules of the lottery by paying for his lottery tickets. No reward was required to restore justice after B had purchased his ticket. This is in stark contrast to the situation where A entered a series of stolen tickets. A's action made the lottery unjust whereas B's action did not.

Suppose, however, that D bought ten lottery tickets and donated them to the community hospital. Suppose, further, that the hospital won one million dollars through the lottery. The hospital directors might decide to honour D for the generous gesture by inscribing his name on a bronze plate and posting it on the door of the operating room which was refurnished with the million dollars. D's act would be regarded by most people as an act of supererogation for which he deserves a reward. Most people would hold this view because the donation exceeded the requirements for the rules governing the competition. By donating the lottery tickets to the hospital, D did an act which exceeded expectations. Had he not donated the tickets to the hospital, he would have won one million dollars for himself. By donating the tickets he placed himself at a disadvantage in that he bought lottery tickets like everyone else but he did not have a chance to win the lottery because he donated the tickets to the hospital.

Why are there cases when a person deserves a reward for doing his duty? In most situations when a person does his duty he simply does a right act for which he is normally not rewarded. When, however, a person performs a duty which most people fail to perform, he makes special or unusual expectations of himself. For example, suppose a tornado destroyed many of the houses and places of business in Fargo, North Dakota. Suppose, further, that a group of volunteers from Winnipeg took a week from their holidays to go to Fargo to help to rebuild that part of Fargo which had been destroyed. These men considered it their duty to help the unfortunate residents of Fargo. Most people, no doubt, would agree with the volunteers that they had done the proper thing with a portion of their holiday time. However, many people would not have taken the week to help the people in Fargo. In short, the men from Winnipeg who went to Fargo to help to restore the destroyed buildings performed a duty which many, if not most people, would fail to perform. This places the volunteers at a disadvantage over those who did not take off a week from their holidays. To encourage people to pursue justice beyond the call of duty, an object of interest may be advanced to those who have done acts of supererogation.

In summary, the partial answer to the standard of right and wrong outlined in this section has also answered the three questions raised at the end of the previous section. In fact, the following issues have now been resolved:

- (a) When it is just to punish a person;
- (b) Why it is not just to reward a person for doing his duty;
- (c) How there can be acts of supererogation;

(d) Why a person deserves a reward for an act of super-erogation;

(e) Why a person might deserve a reward for doing certain duties.

However, an understanding of the chain of connections from "right" and "wrong" to the concept of "justice" as well as an understanding of the human conditions does not provide a full statement of the right-making and wrong-making characteristics of right and wrong acts. A further characteristic, which is required to provide an answer for the question as to what the standard of right and wrong is can be illustrated with the following example. Suppose A did a historical study of a lottery. Suppose he discovered that the rules governing the lottery had changed as follows:

1970 - The winner of the lottery has to run a mile to qualify for the money.

1972 - The winner has to run half a mile to qualify for the money.

1974 - The winner has to run a quarter mile to qualify for the money.

1976 - The winner has to walk or run the length of the auditorium in which the winning ticket was drawn.

It must be said that all of these regulations apply equally to everyone who might win the lottery. Everyone is required to do the same thing to gain his or her object of interest. However, the rules are quite different from each other. The greatest difference is evident between the rules governing the lottery in 1970 and the rule in 1976. What is the difference? The rule in 1970 demands a much

greater object of disinterest than the rule in 1976. The former is harsher than the latter. The former rule is more repressive and the later rule is more liberal. A repressive rule makes people suffer more objects of disinterest as compared to a liberal rule. Lottery ticket holders, undoubtedly, would prefer the more liberal rules of 1976 to the harsher rules of 1970. The people responsible for preparing a just set of rules for the lottery changed the rules so that they would be as liberal as possible and yet prevent the pursuit of objects of interest from becoming unjust. Therefore, another characteristic of the standard of right and wrong can be summarized as follows: Just rules must enable the competitors to satisfy their interests to the maximum degree and make them suffer the fewest possible objects of disinterest. In short, a right act must be just and as liberal as possible.

In various settings different sets of just rules are non-repressive. Suppose the people in country A insist on exercising personal revenge whenever a person commits a crime. A non-repressive criminal code for the country might include capital punishment as an object of disinterest to discourage people from pursuing personal revenge. Suppose, on the other hand, the people in country B have accepted due process in court as a proper way of resolving civil and criminal disputes. The people in country B may not need the use of capital punishment to maintain law and order. If that were the case, then capital punishment would be unduly harsh on the people. A non-repressive rule for country B would exclude capital punishment and rely on less harsh rules to maintain law and order.

The people of countries, like Canada, expect the law of the

land to be just and non-repressive. Most people expect the rules to be just and non-repressive in promoting the common good. This is the standard of right and wrong that people expect a government to adhere to. People have the same expectation of each other. People express an attitude of approval for acts which are just and non-repressive. Moral codes are sometimes revised because it is felt they should be less repressive. Mistakes are sometimes made as to how repressive a rule should be. For example, sometimes children are punished too severely. Sometimes circumstances change so that a severe punishment which was needed at one time is no longer needed. For example, the use of the strap as punishment may be suitable for little children but not for adolescents due to the cognitive and psycho-social changes that take place in adolescents.

In conclusion, for an act to be right, it must have the following characteristics:

1. The act must conform to a set of rules which are just.
2. The act must conform to a set of rules which are non-repressive.

It is significant to observe that the standard of right and wrong action conforms with the common sense of mankind. The standard developed in this study is only a more precise formulation of the principles of morality that determine whether an act is right or wrong. Laymen refer to the standard as the Golden Rule. The major religions of the world all endorse this rule. It is also implicit in Kent's Categorical Imperative: Act on that maxim which you can will be a universal law. It is the standard of right and wrong which administrators should use when they exercise discretion in pursuit

## CHART 9

## STANDARD OF RIGHT AND WRONG

What makes an action right or wrong?

I. The five classes of moral terms and judgements provide a partial answer:

1. People have a duty to do what is morally right.
2. People have a right to do some things.
3. Morally good people are motivated to do what is right.
4. People may deserve an object of interest or disinterest.
5. The distribution of objects of interest and disinterest must be just and the distributor must act with impartiality.
6. The concept of 'right' and 'wrong' is connected to the concept of justice with the aid of all the intermediary classes. This leads to the following main idea of moral theory:

"For an act to be morally right, it must be just".

II. An understanding of what makes an action right or wrong requires an understanding of the Human Condition.

1. Characterized by conflicts of interests.
2. Conflict may lead to competition.
3. Competition may lead to:
  - violence
  - negotiating a compromise
  - arbitrating a settlement
  - establishing a set of rules to govern the conflict.

III. Rules must be just.

1. Sometimes people choose to violate rules to gain an advantage over others in obtaining an object of interest.

## CHART 9 (cont'd)

2. What must be done to restore justice when people choose to violate a just rule? An object of disinterest might be imposed on the violator.
3. What must a person have done in doing wrong so that it would be a just act to allocate to him an object of disinterest? Violate a just rule.
4. What is it that makes an act wrong? The violation of a just rule governing the competition for objects of interest. This is established by tracing the connection between 'wrongness' and 'justice'.
5. What is it that makes an act right? An act is right insofar as it conforms to just rules governing the competition for objects of interest.
6. Why are right acts ordinarily not rewarded? They do not give anyone a particular advantage.
7. Why are acts of supererogation rewarded? To acknowledge a disadvantage.
8. Why does a person sometimes deserve a reward for doing his duty?  
  - A person may do a duty which most people fail to perform.

IV. Rules must be as non-repressive as possible. Rules must enable the competitors to satisfy their interests to the maximum degree and make them suffer the fewest possible objects of disinterests. In other words, rules must be as liberal as possible or as unrepressive as possible without becoming unjust.

V. Conclusion about the standard of right and wrong.

1. Golden Rule: Do unto others as you would have them do unto you.
2. Major religions enforce standard of right and wrong.
3. Kant's Categorical Imperative: Act on that maxim which you can will to be a universal law.

of justice.

B. What is the Meaning of Right and Wrong?

The second of the two fundamental problems identified in the introduction is:

What is the mean of "right" and "wrong"?

This question can now be restated as follows:

What does it mean to say that an act is right when we say that it conforms to the rules which are just, non-repressive and implemented with impartiality?

What do people mean when they say that an act is right?

When people wonder what the reason is for a person's behavior, they sometimes attempt to explain it by identifying the person's beliefs or absence of beliefs in some moral judgement. In other words, whether a person believes in some moral judgement can explain why a person behaves in a certain way. For example, suppose a teacher observes an older boy pounding a younger and smaller boy who is unable to defend himself against the older boy. Suppose the teacher believes that it is morally wrong for older boys to beat up younger and weaker boys and that it is the teacher's duty to break up the fight and deal with the boys. The teacher's belief that these moral judgements are right could explain why he went up to the boys, broke up the fight and led the boys to his classroom to deal with them. In other words, beliefs can have an influence on a person's behavior.

Can a mere belief in a matter of fact influence behavior?

Was the teacher, in the above scenario, influenced to act only by the fact that an older boy beat up a younger boy? Not really. The

teacher must also have had a certain desire, wish, or commitment. For a belief to have effect on behavior, it must be relevant to some motive. Beliefs may be relevant to motives in two ways. Suppose a teacher believes that his students would get a better understanding of how parliament works by visiting the House of Commons in session in Ottawa. Suppose the teacher is motivated to help students develop an understanding of the parliamentary system. The teacher might try to take his class to Ottawa to see the House of Commons in session because of his belief and his motive. In this case the belief appealed to one of his motives.

Suppose that the students in his class could not afford to pay the cost of going to Ottawa. The teacher might decide to organize fund-raising activities with the students to enable them to go to Ottawa. The teacher is not really interested in organizing fund-raising activities. This course of action is taken to overcome an obstacle which would interfere with the teacher's attempt to pursue his belief and primary motive. The secondary motive guided the teacher to overcome the obstacle. The belief that students would get a better understanding of the parliamentary system by visiting the House of Commons in session appealed to the teacher's motive that he wants to help students develop an understanding of the parliamentary system.

Is there any motive to which a belief that something is right appeals? The desire to do right is such a motive. It also appeals to the desire not to do what is wrong. Therefore, it is not mysterious that moral judgements are practical in that they can and do influence behavior. They influence behavior because they are

relevant to certain characteristics which motivate or move people. For example, the teacher who caught the older boy beating up a younger boy was motivated by a desire to do what is the right thing to do. The teacher is also motivated not to do what is wrong. It is not at all mysterious that moral judgements are practical.

If it is a fact that "telling a lie is wrong", why should it have an influence on a person's behavior? A belief in moral judgements influences behavior because such beliefs appeal to a desire to do what is right and avoid what is wrong. When people wonder why a person acted the way he did they wonder whether the person's behavior was influenced by moral considerations. To be influenced by moral considerations is to say that a person is not moved by particular passions, even the passions of benevolence, kindness or generosity.<sup>20</sup>

Moral judgements do not influence everyone's behavior. Unscrupulous people are not influenced by moral judgements. Why do moral judgements not influence everyone? What would count as not being influenced by moral considerations? There are several possible alternative influences. One of them is self-interest. When a person is motivated only by actions which are in one's own interest and when a person is indifferent as to whether an action is wrong, then the person is not motivated by the statement "telling a lie is wrong". The person might, upon occasion, choose not to tell lies but not because he is motivated by the moral judgement that "telling lies is wrong".

Second, a person who is not motivated by moral considerations may be influenced by post-hypnotic suggestions. The post-hypnotic suggestion might even be the suggestion "every time someone says it is

your duty to do it, you do it". Such a person would not be influenced by moral considerations. Third, a person might do one's duty from habit. In this case the person is no longer taking moral considerations into account when he does the particular duty from habit. He does it without deliberations. Fourth, a person might do one's duty as a conditioned reaction. For example, a person may do one's duty in order to win the approval of someone important. But, this is not acting out of moral considerations. A person can also be conditioned to certain words and actions to avoid disapproval. But, responding to conditioned responses is not analogous to responding to moral considerations.

In summary, to be influenced by moral considerations two conditions must be fulfilled:

- (a) The person must have a desire to do what is right.
- (b) The person must believe an act to be right.

That people are influenced by moral considerations raises a number of questions:

- (a) What is it that a person believes about an act when he believes that it is right?
- (b) What is rightness such that a person should have a desire to do what is right?
- (c) What is there about the wrongness of an act such that if an act is wrong a person should have a feeling that he should not do it?
- (d) What is it about an act such that when it is a person's duty, the person has a feeling of compulsion to do it?

These questions must be considered from the perspective of making

moral judgements about the actions of others and about oneself.

First, transitive moral reactions refers to reactions to some agent other than oneself as a result of one's making a moral judgement about his behavior. What is the reaction when a person thinks someone has done what he believes to be right from a sense of duty? The reaction would be one of approval or respect.

What is approval? It is an attitude manifested in ways such as 'words of approval' or 'pat on the back'. The feeling or attitude of approval is characterized by a sense of acceptance, attitude of goodwill and possibly an attitude of respect. The sense of acceptance might be expressed with respect to acceptance in a family, peer group, school, city, country, or society at large. The attitude of good-will is expressed in the form of expression like "We wish him well" or "We cannot help but wish him well". If a person has performed a particularly honourous duty, then people might have an attitude of respect for the person.

What if someone has done something people believe to be wrong and that the person had reason to believe it to be wrong but he did it without any scruples? This situation would generate a feeling of ill-will or even solicit a hostile reaction. Certainly it would generate a feeling of disapproval. The greater the seriousness of the wrong, the greater the hostility. On some occasions it may even generate a feeling of anger. Anger as a result of a moral judgement is called moral indignation. It should be noted, parenthetically, that a feeling of anger at a person or a thing can also be generated without making a moral judgement. For example, a person can be angry when he is struck in the face by a rake which was left lying in the grass. A

person can be angry when he sees his girlfriend dancing with another person. People may be stimulated to anger when they encounter something which stands in the way of their gaining some object of interest as a result of someone who is believed to have done something wrong deliberately. When the wrong has been done to others we sympathize with the injured party.

The feeling of good-will is also based on the capacity to sympathize with others. Sympathy refers to the capacity to share the joys and sorrows of others. Anger in the moral sense is a feeling of sympathy towards those who suffer from wrong actions and the feeling of good-will is a feeling of sympathy with those who benefit from the action of others.

Reflexive moral reactions refers to reactions to oneself as the result of making some moral judgement about one's own behavior. How do people feel about themselves when they judge their actions as being right or wrong? Suppose a person did something which he believed to be wrong. He would have a feeling of guilt, regret, remorse, or shame. The feeling of shame, for example, is a feeling of being sensitive to reactions of others to one's own actions. It is a feeling of anticipating disapproval from which a person wants to hide. It may only be hypothetical others who might disapprove.

Suppose a person has done what he believes to be right and yet he knows that most people will disagree and disapprove of his action? The person would not have a feeling of shame nor wish to hide from other people's disapproval. The person would have a feeling of self-respect for having done his duty. The feeling of self-respect is reinforced if a person ordinarily or usually does his duty. Such a

person is not afraid to look anyone in the eyes. He is not afraid of the disapproval of others because he believes that if others had understood what he had done, they would approve.

What is the basis for approval? Peter Glassen<sup>21</sup> points out that a statement of approval has a subjective and an objective basis. For example, the statement "He approves of firm discipline in schools because he believes that firm discipline promotes character development in young people" asserts a fact or characteristic as an objective basis for approval. The basis for approval is in the object of the person's approval. The person could be in error about what he believes about good discipline and therefore it is important to note that the characteristic is attributed to the object. If it were established that a person's belief about the results of firm discipline were in error then the person would presumably change his attitude. A change in the objective base would then have changed the person's attitude.

It is quite possible for two people to have the same beliefs about an object and yet one of the two might approve of it and the other might not approve of it. This suggests to Glassen that there must be more than just an objective basis for an attitude of approval or disapproval. In the above example, the objective basis for approving firm discipline lies in his belief that firm discipline promotes character development in young people. The subjective basis lies in his attitude that to develop young people is a morally desirable thing to do. It would be unlikely that, if the person were indifferent to the development of character in young people, he would approve of firm discipline. Hence, there seems to be an implicit subjective

basis alongside of the objective basis (i.e., verifiable information).

In summary, an attitude of approval or disapproval seems to be the result of two factors:

1. A person's knowledge or beliefs about the characteristics of an object.
2. A person's personal reactions to the object.

Disagreement between two people can be as a result of either or both conditions. The two people may hold the same attitude because the subjective factors determining their attitude are the same and they hold the same beliefs. They may hold different attitudes because the subjective factors determining their attitudes are not the same but they may hold the same beliefs. Their beliefs may be the same but the subjective factors determining their attitudes might not be the same. They might not hold the same beliefs nor attitudes.

Glassen points out that the objective basis consists of knowledge and/or perceptions of the qualities of an object. These are cognitive conditions for approval. The subjective basis consists of feelings, emotions or sentiments such as wanting, desiring, or liking. These are emotional, motivational or affective conditions affecting attitudes of approval.

Various sorts of evaluative judgements are expressions of approval or disapproval. These include aesthetic judgements, prudential judgements, and moral judgements just to mention some. Since the basis for approval or disapproval is the result of two factors, the objective and subjective conditions, the difference in the different judgements must reside in both or either factor. There frequently is a difference in the objective conditions differentiating

forms of judgements (i.e., moral judgement, aesthetic judgement, etc.), but there seem to be occasions when there are no objective differences. For example, in the case of moral approval and prudential approval, the objective basis are often indistinguishable. Two people might both hold the same belief about, for example, keeping promises, and yet one person might approve of it on moral grounds and the other person on prudential grounds. This would suggest that the difference in the judgements is located in the subjective basis.

Glassen provides further support for his contention that moral judgements seem to be characterized by a certain subjective condition. In ordinary discourse, people do not accept just any sort of subjective condition as a basis for moral approval or disapproval. Suppose, for example, that John says of his brother Jack, "He is a crooked person". Suppose also that Jack has just defeated John in a fair competition in a game of chess. In this situation John's comment is not treated as a moral judgement because it is suspected that the comment was prompted by the subjective basis of frustrated ambition or disappointment.

Glassen identifies three attitudes which support his contention that moral judgements reflect a particular kind of subjective basis. These are hypocrisy, rationalization and cynicism. Hypocrisy is described as the practice of deceiving others by encouraging them to believe that one approves or disapproves of something morally, when, in fact, one has no attitude of approval or disapproval or one's basis is some selfish desire, fear or hatred rather than the particular subjective basis of a moral judgement.<sup>22</sup> Rationalization is described as the practice of deceiving oneself by persuading oneself that one's

approval or disapproval are based on moral considerations when, in fact, their subjective basis is something quite different from moral considerations.<sup>23</sup> Cynicism is described as the tendency to suspect others of being guilty of either hypocrisy or rationalization.<sup>24</sup>

Glassen concludes that for an attitude of approval or disapproval to be a moral attitude it must have a special sort of subjective basis. Hume suggests that the subjective basis is an attitude of benevolence or a sentiment of humanity.<sup>25</sup> He claims that if the sentiment of humanity were absent, then there would be no such thing as moral judgements or moral codes. In other words, he claims that if people acted only from self-interest then there would be no such thing as morals.

Although Hume does not establish by argument that there is such a thing as human sentiment (fellow feeling, or sympathy), he describes what it means to say that a person expresses his approval on the basis of the sentiment of humanity.<sup>26</sup> Hume suggests that if there is a person who is so selfish that he is not affected by the happiness or misery of other people such a person must also be indifferent to vice and virtue.<sup>27</sup> He claims that no person is so completely indifferent to other people that he is entirely indifferent to the interests of his fellow man and that he does not perceive any difference of good and evil in the consequences of action and principles. Hume goes on to say that the "notion of morals implies some sentiment common to all mankind, which recommends the same object to general approbation, and makes every man, or most men, agree in the same opinion and decision concerning it. It also implies some sentiment, so universal and comprehensive as to extend to all mankind,

and render the actions and conduct even of the persons the most remote, an object of applause or censure".<sup>28</sup>

How is the sentiment of humanity reflected in ordinary discourse? When A refers to another person, B, as his enemy, his rival, his antagonist, or his adversary, Hume claims, that it is understood that A is speaking the language of self-love. A is making reference to his particular situation and expressing his personal sentiments about himself in his particular situation. Sometimes, however, A talks about B in very different terms. Then A refers to B as being vicious, odious or depraved. In this case A uses words which express a sentiment which suggests that A expects other people to agree with him, if there is agreement in fact. He is appealing to some universal principle of mankind.

Hume differentiates the sentiment of humanity from passion as follows. The former are the origin or foundation of morals because "whatever conduct gains my approbation, by touching my humanity, procures also the applause of all mankind, by affecting the same principles in them, but that which serves my avarice or ambition places these passions on me alone."<sup>29</sup> The distinctions between these two sentiments has brought about the development of a language to give expression to the universal sentiments of censure and approbation.

Hume stressed the sentiment of humanity hypothesis to place reason in proper perspective in moral issues. He fully recognizes that reason enters into making moral decisions. Reason helps to identify the pernicious or useful tendency of qualities and actions but reason alone cannot determine moral blame or approbation. To establish that a particular action is good, as opposed to being

pernicious, points out a tendency towards a certain end. If a person were indifferent towards that end, then he would also be indifferent towards the means towards that end. A sentiment or feeling of preference for the good as opposed to the pernicious is required. This sentiment according to Hume can only be a feeling for happiness of mankind and a resentment of their misery because these are the ends which are promoted by virtue and vice respectively. In short, reason helps to identify the various tendencies of actions and the sentiment of humanity helps to establish a preference for those tendencies which are good and beneficial. Hume points out the ends for the sentiment of humanity hypothesis by exploring several considerations which are based on the assumption that reason is the sole source of morals.

First, he considers the situation where the discussion of morals is conducted only in terms of generalized comparisons instead of also considering specific instances. He claims that philosophers who "ascribe the discernment of all moral distinctions to reason"<sup>30</sup> have a tendency to stay with generalizations. Hume explores this position by examining the crime of ingratitude. He points out that reason judges either the matter of fact or of relations. Hume points out that the crime is not any particular individual fact but it "arises from a complication of circumstances, which, being presented to the spectator, excites the sentiment of blame".<sup>31</sup> The philosophers who claim that reason is the sole source of morals might then argue that crime consists in certain moral relations which are discovered by reason. Hume points out that the relation between good-will and ill-will is a relation of contrariety. But, suppose A expressed ill-

will towards B but B was indifferent towards A or even expressed goodwill towards A. Again, this is a relation of contrariness. But B's conduct would not be regarded as being criminal. Hume, therefore, maintains that this issue cannot be resolved by reason but requires the sentiment of humanity.

The philosophers who maintain that reason is the sole source of morals might argue that morality consists in the relation of actions to the rule of right. Hence, actions are judged to be morally good or bad to the degree that they agree with the rule of right. They go on to argue that the rule of right is determined by reason which examines the moral relations of actions. This turns out to be a circular argument which cannot be persuasive at all. Hume considers that morality is determined by sentiment. He defines virtue to be "whatever mental action or quality gives to a spectator the pleasing sentiment of approbation, and vice the contrary".<sup>32</sup>

Second, Hume considers the similarity and difference between making a moral decision (i.e., whether he should help his brother or a benefactor) and determining the proportions of lines in a triangle. In determining the relationship which the several parts of the triangle have to each other, a person must consider the several known and given relations of the parts of the triangle and from them infer some unknown relations. Not in moral deliberations, says Hume. In moral deliberations, he says "we must be acquainted beforehand with all the objects, and all their relations to each other and from a comparison of the whole, fix our choice or approbation".<sup>33</sup> All moral decisions must be suspended till all facts and relations relevant to the moral issue have been determined. If any information is unknown

or doubtful, reason must be solicited to clear up the doubt before any moral decision can be made. For example, how can it be determined whether A is a criminal before it is established whether A was the aggressor? However, once all the facts and relations have been established, reason cannot be employed for anything else to make a moral decision. The approbation or blame that follows the determination of the facts and relation cannot be an act of reason but must be an act of feeling or sentiment.

Third, Hume considers the relation between beauty and natural beauty. He points out that natural beauty does not consist entirely in the perception of relations, proportions and position of parts. Once these have been established, a person begins "to feel a sentiment of complacency or disgust according to the nature of the object and the disposition of our organs".<sup>34</sup> The beauty does not lie in the object but it is the effect that the object of beauty produces on the mind to elicit the sentiment of beauty. Hence, moral beauty and natural beauty are analogous.

Fourth, Hume compares the relations among inanimate objects to those of moral agents. He points out that the relations as such are similar. A young tree can outgrow and destroy its parent tree just as a young man can kill his father. If morality consisted only of relations, Hume argues, then both acts would be equally criminal. However, the former is not judged to be a criminal act whereas the latter is considered a criminal act.

Fifth, Hume argues that "ultimate ends of human actions can never, in any case, be accounted for by reason, but recommend themselves entirely to the sentiments and affections of mankind,

without any dependence on the intellectual faculties".<sup>35</sup> He illustrates this point with the following example:

Example I

A: Why do you exercise?

B: I desire to keep my health.

A: Why do you desire to keep your health?

B: Sickness is painful.

A: Why do you hate pain?

B would claim at this point that it is impossible for him to give any further reasons.

In reply to the question "Why do you desire to keep your health?", B could have replied:

B: It is necessary for the exercise of my calling.

A: Why are you anxious about your calling?

B: I desire to make money.

A: Why?

B: It is my instrument of pleasure.

Hume claims that this line of questioning leads to an expression of a desire on its own account which is in accord with human sentiment. No reasons can be offered beyond this point because sentiment has taken over where reason left off.

In conclusion, Hume states that there are distinct boundaries between reason and taste (i.e., sentiment). The distinctions are summarized in Chart 10.

Glassen's analysis of the concept of moral approval and Hume's analysis of the relationship between reason and human sentiment point to the following definition of the meaning of right and wrong:

CHART 10

REASON AND SENTIMENT	
<u>Reason</u>	<u>Taste or Sentiment</u>
Conveys knowledge of truth and falsehood.	Gives sentiment of beauty and deformity, vice and virtue.
Discovers objects as they really stand in nature.	Colors natural objects with human sentiment thus creating.
Cool and disengaged, is no motive to action, shows the means of attaining happiness or avoiding misery.	Gives pleasure or pain, happiness or misery, becomes a motive to action, provides an impulse to desire and volition.
Leads from the known to a discovery of the concealed and the unknown.	Makes us feel from the whole a new sentiment of blame or approbation.
The standard is eternal and inflexible.	Standard is derived from the "will" which makes each person peculiar in nature.

X is right means, anyone who has fellow-feeling with his kind and who knows the nature of X, would approve of X on the basis of that fellow-feeling.

This definition is based on a particular subjective basis for moral approval. However, the definition includes an objective basis-- "knows the nature of X". The inclusion of the epistemic normative term "knows" ensures that the definition describes a normative judgement.

On the basis of this definition, Glassen defines moral discourse, moral problems and moral dilemma. Moral discourse is defined as a language developed by those who have fellow-feeling with one another for the purpose of evaluating from the point of view of that fellow-feeling their conduct and character in situations involving conflicts of interests among them. Moral problem is defined as a problem of how to act in a situation involving actual or potential conflicts of interests in such a way as would be approved by anyone who has fellow-feeling with his kind. Moral dilemma is defined as a situation involving a conflict of interest such that no matter which way the conflict of interest is resolved, it would cause stress to anyone who had fellow-feeling with his kind although all things considered such a person, provided that he was fully rational, would feel compelled to approve of one resolution of the conflict rather than another.

#### V. CONCLUSION

The normative conceptual framework developed in this study identifies the moral terms and judgements for moral action. Five

## CHART 11

## THE MEANING OF RIGHT AND WRONG

Problem: What does it mean to say that an act is right when people say that it conforms to rules which are just and non-repressive.

1. Whether a person believes some moral judgement to be right can explain why a person behaves in a certain way.
2. Can a mere belief in a matter of fact influence behavior? No, a person must also have a certain desire, wish, commitment, or motive.
3. Beliefs may be relevant to motives in two ways:
  - a belief can appeal to a person's motive.
  - a belief can be guided by a person's motive.
4. Are there any motives to which a belief that something is right appeals?
  - The desire to do what is right.
  - The desire not to do what is wrong.
5. Moral judgements do not influence everyone's behavior. Unscrupulous people are not influenced by moral judgements.
6. What would count as not being influenced by moral behavior?
  - motivated by self-interest.
  - influenced by post-hypnotic suggestion.
  - acting from habit.
  - influenced by conditioned reaction.
7. In summary, to be influenced by moral considerations, two conditions must be filled:
  - The person must have a desire to do what is right.
  - The person must believe the action to be right.

## CHART 11 (cont'd)

8. Moral judgements are made about the action of others and about oneself
  - Transitive moral reactions.
  - Reflexive moral reactions.
9. Transitive moral reactions refers to reactions to some agent other than oneself of one's making a moral judgement about his behavior.
10. What is the reaction when a person thinks someone has done what he believes to be right from a sense of duty?
  - one of approval or respect.
11. What is approval? The feeling or attitude of approval as characterized by:
  - sense of acceptance.
  - attitude of good-will.
  - possibly an attitude of respect.
12. What if someone has done something people believe to be wrong and that he has reason to believe it to be wrong but he did it without any scruples?
  - feeling of ill-will.
  - feeling of disapproval.
  - feeling of anger.
  - feeling of moral indignation.
13. Sympathy refers to the capacity to share the joys and sorrows of others.
  - Anger is a feeling of sympathy towards those who suffer from wrong action.
  - The feeling of good-will is a feeling of sympathy with those who benefit from the actions of others.
14. Reflexive moral reaction refers to a reaction towards oneself as the result of making a moral judgement about one's own behavior.

## CHART 11 (cont'd)

15. How do people feel about themselves when they judge their action as being right or wrong?
16. When a moral person does something wrong he has a feeling of guilt, regret, remorse, or shame.
17. Feeling of shame - being sensitive to the anticipated feelings of disapproval from others.
18. Suppose a person has done what he believes to be right and yet he knows that most people would disagree or disapprove of his actions?
  - The person would have a feeling of self-respect for having done his duty.
19. What is the basis for approval?
  - An objective basis - a person's knowledge or beliefs about an object.
  - A subjective basis - a person's personal reactions to the object.
20. The objective basis is based on cognitive conditions.
21. The subjective basis consists of feeling, emotion or sentiment.
22. Various sorts of evaluative judgements are expressions of approval or disapproval:
  - aesthetic judgements
  - prudential judgements
  - moral judgements
  - others
23. It is quite possible for two people to have the same beliefs about one object and yet one of the two might approve of it and the other might not. Therefore, approval or disapproval may be based on more than just an objective basis.
24. Moral judgements seem to be characterized by a certain subjective condition.

## CHART 11 (cont'd)

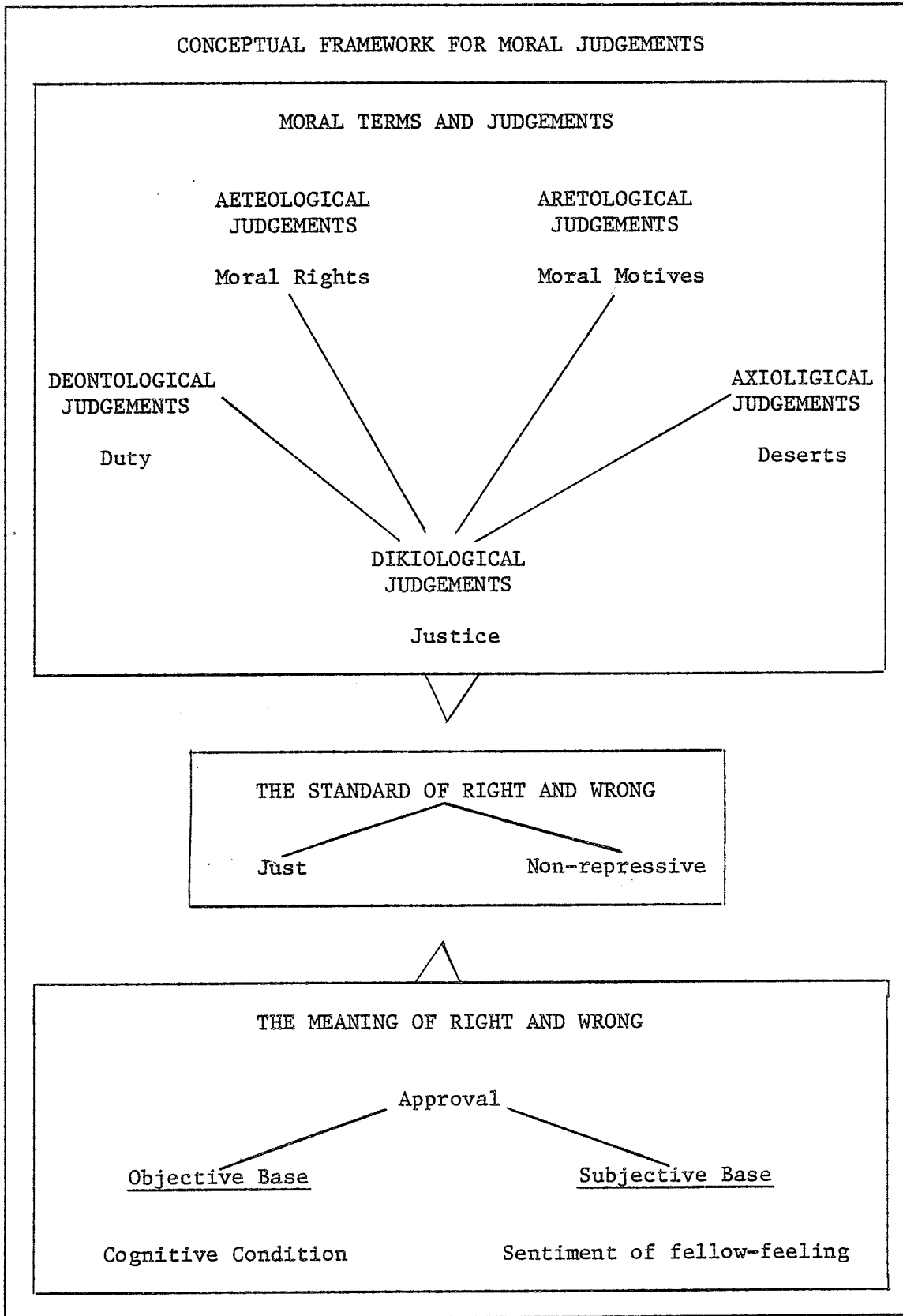
25. Attitudes which do not reflect moral judgement:
- Hypocrisy
  - Rationalization
  - Cynicism
26. The specific subjective basis for moral judgements is an attitude of benevolence or a sentiment of humanity (Hume).
27. If there were no sentiment of humanity, then there would be no such thing as morals, moral judgements, or moral codes.
28. Definition of the meaning of right and wrong:
- X is right means anyone, who has fellow-feeling with his kind and who knows the nature of X, would approve of X on the basis of that fellow-feeling.
- a particular subjective basis: sentiment of fellow-feeling.
  - objective basis - knows the nature of X.
29. Definition provides definition for moral discourse.
30. Definition provides definition of moral problem.
31. Definition provides definition of moral dilemma.

classes of moral terms and judgements were outlined for making moral judgements. The five classes were duty, rights, motives, desert, and justice. Moral action was dealt with in terms of the distributor, the distribution and the recipient. It was argued that the distributor must act with impartiality; the distribution must be just in that it must not favor one recipient over some other without sound reasons or principles. These conclusions were all drawn from an analysis of the five classes of moral terms and judgements.

Several conclusions were drawn from an analysis of two fundamental moral problems which are: "What is the standard of right and wrong action?" and "What is the meaning of right and wrong?" With regards to the former problem, it was concluded that rules, which are used to govern conflicts of interests, should be just and non-repressive. It was pointed out that this conclusion concerning rules conforms with the Golden Rule, most major religions and Kant's Categorical Imperative. The analysis of the later problem revealed that the meaning of right and wrong has a subjective and objective basis. In other words, 'X is right' means 'anyone who has fellow-feeling with his kind and who knows the nature of X, would approve of X on the basis of that fellow-feeling and his knowledge of X'. The particular subjective basis is the sentiment of fellow-feeling. The objective basis is the knowledge of the nature of X.

The normative conceptual framework is summarized in Chart 12. It must be recalled that the purpose of the study was to identify a conceptual framework which would help school administrators exercise discretion in pursuit of justice. Therefore, the five classes

CHART 12



of moral terms and judgements are most important for this study. The five classes can help administrators resolve ethical and moral problems when they exercise discretion so as to improve the quality of justice and reduce injustice. As for the analysis of the two fundamental moral problems, it helps to identify important assumptions underlying moral action. It is maintained that these assumptions are essential for moral action.

## FOOTNOTES

<sup>1</sup>The analysis of moral terms and judgements in this Chapter is based on the discussions which took place in a graduate seminar in moral philosophy conducted by Professor Peter Glassen at the University of Manitoba. The writer acknowledges Professor Glassen's insightful guidance in the discussions and his invaluable contribution to the writing of this Chapter.

<sup>2</sup>W.D. Ross, Foundations of Ethics, p. 1.

<sup>3</sup>A.I. Meldon, Ethical Theories, p. 13.

<sup>4</sup>W. Frankena, Ethics, p. 4.

<sup>5</sup>P. Glassen, "Charientic Judgements", *Philosophy*, 33:125 (April, 1958), 138-46.

<sup>6</sup>A.I. Meldon, *Ibid.*, p. 414.

<sup>7</sup>Ibid., p. 414.

<sup>8</sup>R. Carnap, Philosophy and Logical Syntax (London: Routledge and Kegan Paul, 1935).

<sup>9</sup>H. Sidgwick, The Methods of Ethics (London: Mcmillan & Co., 1893).

<sup>10</sup>W.D. Ross, The Right and the Good (London: Oxford University Press, 1931).

<sup>11</sup>G.E. Moore, Principia Ethics.

<sup>12</sup>A.J. Ayer, The Problem of Knowledge (New York: St. Martin's Press, 1956).

<sup>13</sup>C.L. Stevenson, Ethics and Language (New Haven: Yale University Press, 1958).

<sup>14</sup>"Aeteological" is derived from the Greek term aiteo which means "I demand".

<sup>15</sup>"Relieved of his duties" has also taken on another meaning. It is sometimes used to refer to a dismissal or demotion in business or in government.

<sup>16</sup>"Aretological" is derived from the Greek word aretá which means "virtue".

<sup>17</sup>The brackets indicate terms which occasionally take on the meaning of aretological terms.

<sup>18</sup>It should be noted that whereas aeteological terms are used to refer only to objects of interest, axiological terms may refer to either objects of interest or disinterest.

<sup>19</sup>"Dikaiological" is derived from the Greek term dikios which means "just". Actually, the Greek term was used for both "just" and "right".

<sup>20</sup>These are examples of naturally good motives. People who act from naturally good motives are amiable. People who act from moral considerations may not be amiable but are worthy of approval.

<sup>21</sup>Peter Glassen, "Are there unresolvable moral disputes?" Dialogue, 1:1 (1962), 36-50.

<sup>22</sup>Ibid., p. 46.

<sup>23</sup>Ibid., p. 46.

<sup>24</sup>Ibid., p. 47.

<sup>25</sup>Ibid., p. 47, footnote #3.

<sup>26</sup>D. Hume, Enquiries: Concerning Human Understanding and Concerning the Principles of Morals (Oxford: Clarendon Press, 1975).

<sup>27</sup>A.J. Meldon, Ethical Theories, p. 296.

<sup>28</sup>Ibid., p. 303.

<sup>29</sup>Ibid., p. 304.

<sup>30</sup>Ibid., p. 307.

<sup>31</sup>Ibid., p. 308.

<sup>32</sup>Ibid., p. 309.

<sup>33</sup>Ibid., p. 309.

<sup>34</sup>Ibid., p. 310.

<sup>35</sup>Ibid., p. 311.

## CHAPTER IV

### APPLICATION OF THE FRAMEWORK TO THE EXERCISE OF DISCRETION BY SCHOOL ADMINISTRATORS

The normative conceptual framework outlined in the previous Chapter identifies, explains and illustrates the various model judgements which should be used to resolve moral problems. Not all moral judgements need to be used to resolve each moral problem. A person who is committed to act in a morally responsible manner in a particular situation must be able to identify and understand the moral judgements involved in the moral problems presented by the situation. It is the purpose of the conceptual framework to help people identify and use the various moral judgements that must be used to resolve moral problems in each situation.

The purpose of this Chapter is to apply the normative conceptual framework to situations involving the exercise of discretion by school administrators. In this application, it will be noted that the conceptual framework eliminates some use of discretion. Further, the conceptual framework helps to confine, structure and check the necessary use of discretion. Also, it will be pointed out that the exercise of discretion requires administrators to make moral judgements. Finally, and most important, the framework will seem to enable administrators to exercise discretion in pursuit of justice.

Two different approaches will be used in applying the conceptual framework. First, hypothetical examples will be used to

illustrate how the conceptual framework can eliminate unnecessary use of discretion as well as control the necessary use of discretion. Second, the framework will be applied to an actual case study in which an administrator is faced with a number of difficult ethical and moral problems. This application of the framework will illustrate how the framework can help to make necessary moral judgements and how to scrutinize moral judgements made by others.

## I. ELIMINATING AND CONTROLLING DISCRETION

It was argued in Chapter II that much discretion should be eliminated and much more should be done to control necessary discretion by confining, structuring and checking it. Numerous strategies were suggested to eliminate unnecessary discretion and to control necessary discretion. The purpose of using these strategies was to improve the quality of individualized justice and to reduce injustice. How can the normative conceptual framework help to eliminate unnecessary discretion in order to promote justice?

### A. Eliminating Unnecessary Discretion

It should be recalled that exercising discretion was defined as a situation where the effective limits of an administrator's discretion leave him free to make a choice among possible courses of action. The normative conceptual framework does not necessarily eliminate that choice but reduces it by identifying the moral judgements which a morally responsible administrator must make in order to exercise discretion in pursuit of justice. For example, suppose a principal is debating whether it is his duty or moral

obligation to require that every student pay student fees. The principal, upon considering this question from the perspective of division policy, would realize that he will have to exercise discretion on this issue. Presumably that leaves him free to decide as he pleases. Not so if he considers the moral implications of this issue because "duty" and "moral obligation" raise questions like:

(a) Does ought imply can?

(b) Can a person have a conflict of duties?

(c) What conditions have to be fulfilled for an action to be right or wrong?

(d) Are there morally indifferent actions and is this one of them?

(e) Does it follow from the fact that an action is right that not doing it is wrong?

(f) Are there degrees of rightness as well as degrees of wrongness?

(g) Is everyone necessarily obligated to do every morally right act?

(h) If a person has a duty to do something, is the action of doing it morally right and would it be morally wrong not to do it?

The answers to these questions provided by the conceptual framework eliminates much of the discretion implied by the policy on the issue faced by the principal. The following examples illustrate the point.

(a) Ought implies can. If a student cannot pay, how can an administrator have a moral obligation to make the student pay?

(b) A person cannot have an actual conflict of duties. The principal cannot have the duty of requiring every student to pay

school fees and a duty to levy a late fee on those who cannot pay these fees.

(c) Are there morally indifferent actions? Yes. The issue facing the principal is a moral issue. The issue that some students cannot afford to pay student fees is not a moral issue. Therefore, for students who cannot pay, it is not morally wrong not to pay even though it is the principal's duty to collect student fees.

(d) Does it follow from the fact that an action is right that not doing it is wrong? It may be wrong but it need not be wrong. The action of collecting student fees probably is the right thing to do for principals. It would be wrong of a principal to collect the fee from some students but not others on an arbitrary basis. However, it would not be wrong for the principal not to collect the fees from students who cannot afford to pay it.

(e) Are there degrees of rightness? No, it is either right or wrong for a principal to collect the student fee from students who cannot afford it. It is not 'nearly right', 'slightly right' or 'very right'. However, a wrong action can be more or less seriously wrong. It would be more seriously wrong to insist upon the fee from a student who is self supporting than from a student who has financial support from parents (other things being the same).

(f) Is everyone necessarily obligated to do every morally right act? No, people are not obligated to perform acts of supererogation. For example, the principal is not obligated to pay student fees out of his personal funds for fifty students. That would be an act which is also beyond the call of duty.

(g) If a person has a duty to do something, is the act of

doing it morally right and is it morally wrong not to do it? The answer to both parts of the question is 'yes'. If a principal has a duty to collect student fees from every student who can afford to pay the fee, then the act of doing it is morally right and it is morally wrong for him not to do it. If that were not the case, he would be free to collect the fee from some students but not others on an arbitrary basis. That would not be fair to the students who had to pay the fee. In short, the answers to these questions which belong to the class of deontological judgements eliminates much of the discretion implicit in the policy.

Each class of judgements identifies a set of questions for which there are moral answers. The morally responsible administrator cannot answer these questions any way he wants to answer them. Frequently, all classes of judgements apply to a particular situation in which an administrator is expected to exercise discretion. For example, suppose two boys got into a fight after school dismissal in which one boy, John, ended up with a bloody nose and a pair of broken glasses, and nothing happened to the other boy, Jim, who was bigger and stronger than John. Suppose the fight was prompted by John, who is a bright student, calling Jim a "dumb ox". Suppose the problem was brought to the attention of the principal because he has the general responsibility for disciplining students. The principal will have to exercise his discretion in resolving this problem. The normative conceptual framework eliminates much of the discretion for the morally responsible principal because he must take into account the following moral issues. He has to establish what is morally right and wrong action for both boys. He must remember that an act

is not morally right or wrong independent on whether people like or dislike to do the action. He must establish what obligations the two students (and their parents) have to each other and what obligations the principal may have in the matter. He has to establish the degrees of wrongness of the action of each boy. He must explain to the boys that their actions are not morally indifferent. The principal must establish whether the boys are morally responsible for their action or whether they suffer some pathological condition or whether they acted from a fit of anger.

The boys may well defend their action by claiming that they had a right to do what they did. Consequently, they would argue that what they did was not wrong because they had a right to do it. The principal must establish whether each boy had a right to do what he did recognizing that people do not have a right to all their objects of interests. The principal must distinguish between legal rights and moral rights and consider both. Rights must be distinguished from duties. The boys may not have had a right to do what they did but they may have a duty to absorb the cost of the repairs for the broken glasses. A person can have a right as well as a duty to do a certain act. The principal must recognize that he has a duty and a right to resolve the fight. He has a right to resolve the fight because he has a duty to do it.

What do the boys deserve for being involved in the fight? Undoubtedly, the principal will conclude that the boys deserve some object of disinterest--punishment, pay for the glasses, bring parents to school. However, the principal must offer reasons for deciding that an object of disinterest would be appropriate and for selecting

one or more specific objects of disinterest. The principal could have chosen a form of disapproval (frown, words of disappointment, mild censure, mild criticism) instead of different forms of punishment. In determining the severity of the object of disinterest the principal must take into account the seriousness of the wrong acts. Did the principal establish that both boys or either of them willingly did a wrong act? Was the act itself morally wrong? Are the boys morally bad agents (i.e., consistently act with indifference as to whether an act is right or wrong)? The principal must be careful not to confuse the three questions:

- (a) On account of what do the boys deserve punishment?
- (b) Why do principals punish boys who fight at school?
- (c) On account of what ought a person be punished?

He must remember that people deserve punishment for doing a morally bad act. However, do all bad acts deserve the same degree of punishment? Punishment should be established on the basis of the seriousness of the bad act.

Suppose, in the discussion with the boys, the principal discovers that Jim planned to beat up John but that John almost got away on him. Had John been able to get away, the principal probably would have had to express only a feeling of disapproval or a mild form of punishment to Jim for being willing to plan the confrontation.

The principal must consider other factors as well. The question comes to mind, "Are these boys morally good boys?" or "Was the action really morally bad?" The principal might consider "morally bad" in the light of "morally good". He asks himself "What conditions must be fulfilled for an action to be morally good?" He

recalls two conditions. First, the action must be the right thing to do and, second, the action must be done from a morally good motive. But, what if a person does an act which is actually wrong but the person believes it to be right and he does it from a morally good motive? Is that a morally good act? Suppose Jim really thought that John needed some form of punishment for name-calling, would that make Jim's act right? Not really. What if a person does an act which is right but he does not believe it to be right and his motives are not good? Suppose John's friend, Jack, observes that Jim is holding a chain in one hand. Jack grabs the chain with the intention of using it on Jim. Jack took the chain away from Jim so that Jim would not hurt John with the chain. However, Jack's motives were not good and therefore his action was not morally good even though it was right to take the chain away from Jim. That raises the question "What is a morally good motive?" Two conditions must be met. The person must believe that a certain act is right and must have a desire to do what is right or his duty. Did these two conditions characterize the motives of all the boys?

The principal must also be careful to distinguish morally good motives from naturally good motives such as love, compassion, generosity, kindness, and friendship. He must be careful not to allow his compassion for the small boy who ended up with a broken nose get in the way of considering the moral motives. He must also be careful not to confuse moral virtue with non-moral virtues like intelligence or wit. He must not assume that just because John is rather bright and witty that he also possesses moral virtue, i.e., a

disposition to do what is right from good motives.

Most important of all, the principal must consider whether morally bad really is the converse of morally good. In other words, does "morally bad" refer to a desire to do wrong for the sake of doing wrong? Did John and Jim fight because either or both decided to do wrong for the sake of doing wrong? If they did, what would be in it for them to fight for that motive? Upon reflection, the principal concludes that morally bad probably refers to an absence of a desire to do right or to act with indifference as to the rightness of the act. That really puts a very different light on the incident. The boys, it is now assumed, did not fight simply because they desired to do what is wrong. They did it for some other reasons which must now be established. They may have been motivated by some naturally bad motives such as hatred, revenge, jealousy, envy, greed, lust, or malice.

The principal has to make a judgement as to the moral goodness or moral badness of the boys involved. The incident could have been a somewhat unique and misguided incident for the boys in that they rarely ever get involved in this kind of confrontation. In that case, the principal would not be too concerned that it will happen again and therefore would be relatively at ease. The principal might conclude that Jim seems to have a blind spot when it comes to resolving differences with peers. He tends to get involved in fights. The principal would be concerned about this tendency and ponder how he might help Jim overcome the blind spot. On the other hand, the principal would be very concerned if he was convinced that Jim gets so enraged when someone calls him a "dumb ox" that he is not in his

right mind and so seems prone to go into some pretty violent fits. He seems to have a pathological condition and therefore should be referred to a psychologist for some therapy. The principal would also be very concerned if he had to conclude that Jim and Jack had no scruples. In that case strong actions would have to be taken because they seem to have no sense of right and wrong. They do not distinguish between right and wrong, they do not have the concepts of right and wrong, and they do not understand the meaning of right and wrong. The principal had been unable to pursue a moral discourse with them.

The principal would not be nearly as concerned if he concluded that the boys had simply been careless. They had not been indifferent as to the wrongness of the act and they had a desire to do what is right. This might be evidenced by the fact that they chose to apologize to each other and promised not to repeat the performance.

Finally, the principal has the onerous responsibility of deciding what is the just, fair or equitable thing to do with the boys. That would, of course, depend in part on the conclusions the principal arrived at with regards to all the questions raised so far. But, additional questions come to mind when the issue of justice is raised. He recognizes that questions of justice are usually referred to someone in a position of authority. The person in authority has to decide on the distribution or allocation of objects of interest or disinterest. For example, did the boys receive their just deserts? The principal must recognize that not all right acts are just but all just acts are right. It was right for Jack to take the chain away from Jim but it was not a just act because Jack did not act from a morally good motive. All just acts are right because an act must be

right for it to be just. If the just thing to do for the principal is to call in the parents of the offenders then it is also a right act. Second, not all wrong acts are unjust but all unjust acts are wrong. A wrong act may be wrong because it is too oppressive even though it may apply equally to everyone. For example, the principal may have a rule that anyone who gets involved in a fight is automatically suspended from school for two weeks. The rule might be applied equally to everyone but it might be considered wrong because it is too oppressive. However, all unjust acts are wrong. If an act is unjust then it is also wrong to do it. If, for example, the principal treated John unjustly, then the principal's action would be wrong.

The principal must review carefully from what point of view a distribution of objects of interests and disinterests is just or unjust. Clearly it cannot be only from the point of view of what the recipient deserves. John deserves to be punished for calling Jim a "dumb ox". But, John has already suffered a broken nose and a broken pair of glasses. Would it be just for the principal to punish him? Not necessarily, because John has already received a number of objects of disinterest. Justice is not determined only by what a recipient deserves. Second, is an act of distribution or allocation fair from the point of view of its utility? Suppose the principal felt that if he suspended all three boys for a week then they would never get involved in a fight at school again because their parents would be very upset with them. Would the utility of the principal's action make it just? Should all three boys be treated the same way just because suspension will deter them from future fights at school? Third, is the action just from the point of view of the needs of the

recipient as perceived by the recipient? That would be tantamount to saying that the recipient's objects of interest should determine what is the just thing to do. In other words, the boys should decide what the principal should do with them. That would not necessarily make the principal's action just. Fourth, is the action right from the point of view of the rights of the recipient? It sounds awkward to suggest that Jim has a right to be punished more severely than John. Finally, should the distribution of objects of disinterest (i.e., punishment) be determined on the basis of the motives of the distributor? The motives of the principal should not establish the justness of the distribution except to say that the principal should act from a morally good motive. The fairness of the distribution should be determined with reference to that which is distributed.

The principal must recognize that the distribution of punishment must be considered just or unjust from the point of view of the way in which the distribution effects the interest of the actual or hypothetical recipients relative to one another. The principal must keep in mind that he should be impartial so that the distribution of the punishment can be just. The distribution would be unjust when it favors one or two of the boys relative to the others without sound reason or principle.

The principal must also check carefully to make sure that, as the distributor of the punishment, he meets the following conditions. He must have a right to punish the boys; he must have a duty to punish them; and he must be a moral agent (i.e., distinguish between right and wrong, have the concepts of right and wrong, and understand the meaning of right and wrong). If the principal does not meet all

three conditions, then the distribution of punishment to the boys still would not be just.

In fact, the principal must remember that, in some cases it may be wrong not to discriminate. The principal might decide not to punish John who received a broken nose but to punish Jim on the grounds that John has already received some forms of objects of disinterest but Jim has not received any.

The principal can be confident that a just act can never be wrong. It would be self-contradictory for a just act to be wrong.

In summary, the principal must remember that his decisions as to what to do with the boys must meet the following conditions. The principal's act must be an act of impartiality which it is his duty to do. He must act from a morally good motive, from a desire to do what is right. He must give each boy what he deserves. Finally, he must act as a morally good person (i.e., do what is right from a desire to do what is right). If his act meets all four conditions then he has exercised discretion in pursuit of justice. The fact that a morally responsible principal must consider all these moral issues eliminates a great deal of discretion but does not eliminate all discretion.

### B. Controlling Discretion

It was pointed out in Chapter II that administrators must exercise necessary discretion but that it must be confined, structured and checked. Several strategies were outlined. The use of the normative conceptual framework further helps to control the use of necessary discretion. This is apparent from the examples cited for

the elimination of discretionary powers. The examples serve equally well to illustrate how the moral judgements, which a morally responsible principal must take into account, control him in the way he exercises discretion. He is not free to decide and act as he pleases within the broad parameters of policy statements. He is obligated to make all of the moral judgements raised by each situation in which he is faced with the responsibility of exercising discretion.

The principal's use of discretion is also controlled by his approach to two fundamental issues in moral theory: (1) What is the standard of right and wrong? and (2) What is the meaning of right and wrong?

First, how does the standard of right and wrong help to control the use of discretion? The principal realizes from his experience that people do get into situations of conflict of interest because they all have objects of interest and disinterest. Therefore, he can understand the boys who got involved in a fight. John was bright but small whereas Jim was not so bright but big and strong. They had different and similar objects of interests and disinterests. John no doubt liked to be big and strong just as Jim liked to be bright. Consequently, conflicts developed. One of the principal's jobs was to resolve the conflicts fairly. What standard of right and wrong should he use to resolve the conflicts fairly?

The analysis of the five classes of moral terms and judgements has identified one condition which the standard of right and wrong must meet. The distributor, i.e., the principal, must act with impartiality. As was pointed out earlier, suppose the principal was partial to John, the bright lad, by sympathizing with him and not paying any attention to the fact that John called Jim a "dumb ox". That would not have

been fair to Jim and Jack because that would require more of Jim and Jack than it would of John. John would have gained an advantage over his peers in that he would have been allowed to bug them verbally but they would not have been allowed to bug him physically.

A second condition which must be met is that the distribution must be just. It would have been unfair for John to assume the full cost of repairing his pair of glasses. To pay for the repairs was an object of disinterest because nobody would gain by the repairs. John simply would have got the use of his glasses. To maintain fairness would require that Jim and John both share in absorbing the cost of the repairs.

An understanding of the standard of right and wrong would have helped the principal understand why it is just to punish a person. It would also have helped the principal understand why it is not just to reward a person for doing his duty. If a school patrol had witnessed the fighting incident and reported it to the principal, the patrol would not have been rewarded because it was part of his regular duty to report irregularities in student deportment to the principal. The principal would also understand why a person deserves a reward for an act of supererogation. If, for example, the patrol had seen Jim use the chain to choke John and the patrol had come to John's rescue at the risk of being injured by Jim who had gone into a fit of anger, then the patrol might have deserved a reward. He had performed a duty which many people would have failed to do. In so doing he placed himself at a disadvantage by exceeding what was expected of him. For the same reasons, the principal would understand why a person might deserve a reward for doing certain

duties which most people would fail to perform.

Suppose the principal had decided to adopt a form of punishment which, he believes, will deter the boys from ever getting involved in another fight. Suppose he felt that a two week suspension would be an effective deterrence and so he suspended all three boys for two weeks. That would have been the wrong thing to do because it would have been repressive. Did it really require a two week suspension to dissuade John from calling Jim a "dumb ox"? Did Jack require a two-week suspension for pulling the chain away from John even though Jack took the chain with the intention of possibly using it himself in the fight? Did Jim require a two-week suspension if, for example, he rarely ever gets into a fight? Most important, could this matter have been resolved with a more liberal form of punishment? Suppose Jim and Jack both had difficulties with their lessons at school. A more liberal form of punishment such as a visit with the parents, some detentions after school, and close supervision at school by the staff and at home by the parents might have served the same purpose as a two-week suspension without the repressive side effect of requiring the students to make up two weeks of classes on their own.

Suppose the principal realized that the boys were entitled to a resolution of the conflict which is as reasonable (i.e., liberal) as possible. He must always keep in mind that people have a right to maximum satisfaction and minimum dissatisfaction. In fact, the principal constantly reviews his forms of punishments to see whether they are still needed. As circumstances change so also should the severity of the punishment change.

In conclusion, the principal realized that the two conditions

of the standard of right and wrong are the following. The act must be just and as liberal as possible. Once the principal was satisfied that he had met these two conditions in dealing with the boys, he was confident that he had done the right thing. He knew that he had followed the Golden Rule as well as the standard of right and wrong endorsed by his own religion. He vaguely recalled that Kant referred to it as the Categorical Imperative.

A principal who is sensitive to the standard of right and wrong is greatly constrained in exercising discretion. At every point in the decision as to what is the right thing to do with the boys, he is faced with a number of important moral judgements which control his use of discretion.

The meaning of right and wrong also constrains the use of discretion of a morally responsible principal. Such a principal ponders the question: What does it mean to say that an act is right?

When a person wonders for what reasons a person behaves a certain way, he sometimes attempts to explain it by identifying the person's beliefs or absence of beliefs in some moral judgement. Suppose, the principal and parents of a community argue that their community school should remain open even though it is experiencing a substantial decline in enrolment. Suppose, the Superintendent argues in favor of closing the school and busing the remaining students to a nearby school on the grounds that busing a few students is not nearly as expensive as it is to keep the school open. After some heated discussions, the principal and parents may wonder whether the Superintendent has abandoned a belief in the students' rights to attend a community school. It would seem to the principal that the

Superintendent could stick to the economic argument (reasons) only if he had abandoned a belief in the students' right to a community school. Whether or not the students have this "right" is a moral judgement. Apparently, the Superintendent's motive to abandon the belief in this particular moral judgement was prompted by a particular motive--the desire to make the school division as economically efficient as possible.

The principal asked himself, "Is there any motive to which a belief that something is right appeals?" He realized that sometimes people do a certain act because they know it is right and they desire to do what is right. 'The desire to do right' is such a motive. Therefore, the principal continued to try to convince the Superintendent that it is right (deontological sense) that the students have a right to attend a community school. The principal persisted on the assumption that the Superintendent was also motivated by a desire to do what is right. The principal proceeded with considerable confidence on this assumption because he knew that the Superintendent does not desire to do what is wrong nor is he morally indifferent.

The principal would have been concerned if he had had a Superintendent who is unscrupulous, that is, a person who acts only from self-interest, habit or conditioned reactions. A Superintendent who would act only from a feeling of self-interest, from habit or from a certain conditioned response, need not take parental concerns nor the students' welfare into account. That would make the Superintendent's actions morally irresponsible.

The principal must remain aware of the fact that he must make

moral judgements not only about the action of others (i.e., the Superintendent) but also of his own actions. In fact, both moral agents, the principal and the Superintendent should be seeking the moral approval of others as they try to do the right thing for the students in the school with declining enrolment. Both, should be concerned about the moral acceptability of their courses of actions and their own as well as those of others. People will respect them if they meet this onerous task with a commitment to do what is right from a sense of duty.

The Superintendent would be very concerned about the principal if the Superintendent believed that the principal did something wrong even though he had reason to believe it to be wrong but he did it without any scruples. Suppose the principal submitted false records of actual and projected attendance of the school in question. This would generate a feeling of ill-will and maybe even a hostile reaction. Certainly it would generate a feeling of disapproval and in severe cases a feeling of moral indignation.

If the principal was prepared to judge his own action of submitting false and mis-leading information he would recognize that it was morally wrong. This would generate a feeling of regret, remorse, or shame. He would know that he must anticipate a feeling of disapproval when he would meet with the Superintendent. This would not be the case if the principal had done what he believed to be right and yet would know that most people would disagree and disapprove of his action.

From time to time the principal would ask himself, "What is the real or actual basis for moral approval?" He recognized that it must

have at least a factual or objective basis. If the decline in the enrolment was so dramatic that the school could no longer offer a 'good education' to the children attending it, then it may not be right to keep the school open. Consequently, the principal (and likewise the Superintendent) must check out the objective basis for their moral positions with great care. However, the principal also realized that the objective factors do not resolve moral issues. For example, the fact that the school could not offer a 'good education' might get the same response from two people who are making different kinds of judgements. One person might argue that it was prudent to close the school and another person might argue that it was morally wrong to condone unequal opportunity by keeping the school open. This would suggest that there must be some other factors besides the objective factors involved in making moral judgements. Different subjective perspectives seem to influence these two people. The principal often wondered what the subjective factor might be which urges a person to make a moral judgement instead of some other judgement such as pragmatic or aesthetic.

The principal was certainly wary of the hypocrite who 'pretends' to make a moral judgement. He also suspects the person who offers rationalizations for every action. Such a person seems to deceive primarily himself. He certainly fails to see how he could work with a cynic. Somehow these kinds of people lack the specific subjective factor which characterizes moral judgements.

The principal concluded that the specific subjective factor must be some kind of fellow-feeling. He recalled that when (he, the Superintendent, and the parents) began to try to understand and

appreciate the concerns of others (including the needs of children), the discussions and deliberations suddenly improved. In fact, he was certain that if everyone had acted only from self-interest, the solution to the problem would not have been morally right. He is convinced that the meaning of right and wrong is:

X is right means, anyone who has fellow-feeling with his kind and who knows the nature of X, would approve of X on the basis of that fellow-feeling.

This definition takes into account the importance of essential factual (objective) factors as well as the subjective factor of a sense of fellow-feeling.

This scenario attempts to illustrate how the standard of right and wrong as well as the meaning of right and wrong control the use of discretion by a morally responsible administrator.

It has been maintained in the previous Chapter and in this one that the moral judgements outlined by the normative conceptual framework are important because they are essential to promote justice in school (or anywhere else for that matter). Imagine policies written in such a manner that each policy statement would take into account every moral judgement for every conceivable situation in which the policy might be applicable. The policy regarding the principal's overall responsibility for discipline in the school would have to identify every conceivable situation in which he would be required to exercise disciplinary authority. Each situation would have to be covered by policy in a manner which would consider every one of the moral judgements identified in the normative conceptual framework. That would clearly be an impossible task. However, without considering the

facts of the situation and the moral concerns, a principal could not be sure that justice was done. Therefore, policies must be prepared in statements which are general and the principal must exercise discretion in order to take into account the specific and sometimes unique circumstances of each situation as well as the moral concerns.

## II. EXERCISING DISCRETION: A CASE STUDY

The examples used in this study to illustrate the normative conceptual framework were contrived by the writer. Although many of them are based on actual cases, they were nevertheless selectively chosen to illustrate specific aspects of the model. A conceptual framework should not rest only on a collection of contrived examples because such examples can be constructed to 'fit' the framework. In order to determine the usefulness of a conceptual framework, it must be subjected to actual cases as reported by other people. Eventually, a framework should be applied to numerous cases to establish the scope and limitations of the framework.

In this study the conceptual framework is applied only to one actual case. The application is intended to illustrate the utility of the normative conceptual framework developed and to suggest how, by an extended example, its scope and limitations might be tested. The case is not fully researched in that only one person, the principal in the case, was interviewed. Nor is the complete conceptual framework applied to the case. Only the main features of the framework are applied to the case. To conduct a comprehensive case analysis is a study in itself and cannot be accommodated within the scope of this study.

The case selected for this study had to reflect two features.

First, it had to involve a principal who exercised discretion since that is the main area of administrative responsibilities dealt with in this study. Second, the principal had to attempt to resolve ethical and moral issues when he is exercising discretion. This situation would generate the moral problems to which the normative conceptual framework could be applied. In other words, the case study is restricted to an analysis of the moral judgements made by one person in the case, the principal, to illustrate how the normative conceptual framework might be used to analyze the moral judgements and how it might help to identify the kinds of moral judgements that should be made.

#### A. Brief Account of the Case

The case chosen for this study involved the removal of the novel, Of Mice and Men, by John Steinbeck from the curriculum in a small town high school. The principal of the high school played a central role in the events leading to the removal of the novel. Briefly, the case can be summarized as follows based on an interview with the principal conducted by the writer, on newspaper clippings and on the Minutes of the Board meetings.

Valley Town Collegiate,<sup>1</sup> which was a small collegiate located in a small town, served a school division which has a high percentage of rural students. The town and the rural area served by the high school reflect an essentially homogeneous ethnic background. Only in recent years had the staff of the Collegiate represented an increasing variety of cultural backgrounds. Education was considered important and the high school, in particular, served an important educational

and cultural centre for the community, especially the town community of approximately two thousand inhabitants.

The English teacher, who did not represent the dominant ethnic background of the community chose the novel Of Mice and Men by John Steinbeck as required reading for the Grade IX English program. The principal picked up a rumor that one or two parents were displeased with this selection because it contained some four-letter words or, as some trustees later described it, the book contained some "offensive language". In response to the rumor, the principal initiated discussions with the staff as to how to deal with students of parents who objected to the language in Of Mice and Men.

Before long, a father of one of the grade nine students called the principal and objected to the use of the book in school. The principal assured the parent, that after he (the principal) had discussed the matter, he would call back. A few days later, the principal called the parent and advised him that arrangements had been made for his daughter to read an alternative John Steinbeck novel.

To the surprise of the principal, the parent was not at all satisfied with the solution. In the interview<sup>2</sup> the principal recalls that

between the Friday and the time I phoned him, he found out that the teacher was a Jewish teacher and that the issue became a much broader issue for him and he felt that there needed to be some kind of purge on the school system.

When the principal discovered what he judged to be a racial motive for taking issue with the use of Of Mice and Men, he reported to the Chairman of the Curriculum Committee, "If that's the case, if that's the basis for it, then you can be sure that we're going to fight it as

far as we can possibly fight it"!

Every effort was made to restrict the controversy to the 'offensive language' issue and avoid what was perceived to be the parent's real motivation, namely,

that everybody should . . . be freed from this menace kind of thing, you know, pending doom here--this Jewish person corrupting your mind kind of thing. And, that the book needed, in fact, . . . to be removed not just from his girl but from everybody.

In fact the principal said to the Chairperson of the Board Curriculum Committee that "we will try to keep it out . . . and we would appreciate if you would do the same thing so that would not be an issue that the Board would make an issue".

As for the removal of books from the school curriculum, the principal made his position quite clear when he said

I really believe that the authority to choose materials and the way they are going to present materials and the methodology . . . lies with the teacher . . . they/[parents] have no business getting into that area at all.

He did concede that "certainly we have an obligation to discuss what we are doing at all times and . . . we should be willing to justify that to parents."

The principal discussed the issue with the staff and in some detail with the English Department. It was agreed that "if in fact a parent insists on censorship for his or her own student, that is acceptable . . . a parent has some overriding censorship power for his own student". However, they emphasized that "a parent cannot censor materials for other parent's children". Specifically, in response to the parent complaint, the English teacher involved suggested that students whose parents objected to the use of the novel Of Mice and

Men would be assigned to read The Pearl which is another John Steinbeck novel. It does not include any swearing. Three students were assigned, upon request, to this book. This course of action was deemed acceptable by the principal and the staff because it was felt that the goals of the curriculum could be met with the alternate selection.

Although the principal was in full agreement with the steps taken to accommodate individual parents, he did not waver on the role of teachers. Teachers should discuss educational issues with parents but

after your discussion with parents and your looking at the situation from every possible angle, you (the teacher) determine that this is what has to be done. Then I would support him because an overriding principle for me is that the teacher has to make that ultimate decision and has to take the responsibility for it.

It is with this position in mind, that the principal joined the Board in its deliberations over this issue over a period of almost two months.

The textbook controversy was discussed at several board meetings, where the principal was encouraged to participate freely in all discussions as well as to bring staff members to the meetings. The discussions throughout the Board meetings touched on a number of issues--legal authority of the Board, moral responsibilities of the Board, authority of the teacher, overriding parental prerogatives, Board procedures, students' rights, and minority rights. However, two main issues dominated most of the discussions. First, the professional staff objected to the procedures used by the Board to remove an approved textbook from the curriculum at the high school. Second, the Board objected to the use of a novel in school which contains what

they described as 'offensive language'.

As regards the of the board's procedure in removing a textbook from the curriculum, the principal and staff recognized that the Board had the "legal authority" over the curriculum but they added that the Board also has a "moral responsibility". That moral responsibility consisted of "the obligation to involve the professionals, to consult teachers; to involve them in two things: complaints [. . .] and to choose materials and the way they are going to be presented". The principal elaborated on this position as follows:

Unless you do that we are not going to take any action . . . .  
 Unless you are prepared to sit down and discuss with us and justify what you have done because we don't see any justification for it . . . . If we don't see any justification for it, then we are not going to do what you are asking us to do.

This position seemed to bother a number of Board members because they kept on returning to the issue, "if they, (the Board) give an order, it's got to be followed".

The principal seemed to be demanding "a democratic kind of way of doing things". This process had not been followed by the Board. According to the principal, the Board "hadn't involved us in something which we saw as integral to the teaching profession . . . the judgement kind of thing which you need in teaching".

The staff presentation to the Board included a statement which challenged the Board's course of action. It focused on the manner in which the decision was made to remove Steinbeck's novel and recommended a procedural solution. The brief read as follows:

We as a representative body of the staff would like to take the following position on the November 12 decision to ban the book Of Mice and Men by John Steinbeck from the English program and from the school and the further intent to remove "other books of similar offensive nature" and the manner in which it was done.

We realize throughout this presentation that the board has the legal authority to make the type of decision it did. However, there are aspects of this decision which seem to us to carry immense implications for the educational program in the high school. This responsibility of educating our young people has been placed in the hands of professionals, namely us, just as the board's authority carries with it responsibilities to the community, the staff, and the students.

We recognize the right of parents to be interested in and concerned about the educational process, and acknowledge their consequent desire for input.

Moreover, as for the staff it has certain implications in the manner with which the issue was dealt. It appears:

1. that insufficient information was available to make a decision with such vast implications;
2. that a few parents can force such strong decision from the board on such an integral issue;
3. that this creates problems in staff--board communication; (teachers' jobs were considered without due process).

Secondly, these are implications concerning censorship implied by this decision which would affect the educational program, the staff, the students and community of the high school.

We as a staff see these to be:

1. for the educational program

The freedom of thought and speech is basic to the assurance of a democratic society. Education includes exposing the real world of life and the values which the students have to deal with in that real world.

2. for the staff

The instructor, with his professional training, has the responsibility to enlighten the student in school through the use of materials and methods that he deems most effective. Censorship undermines the professional integrity and judgement with which he has been entrusted. The ultimate end is to destroy student-teacher relationships, teacher effectiveness, and morale.

3. for the students and community and parents

The student has the right to be educated to become a responsible citizen of the community; the community has the right to expect this--a heritage of our democratic society.

Thus, to prevent a reoccurrence of similar situations, we propose the following machinery:

1. The school should have within its groups of teachers, in all subject areas, which will review and select books and materials for the school. These groups should be allowed to explain the rationale and handling of any text to the board when necessary.

Moreover if certain parents, because of religious or moral convictions, take objection to a particular text or material, the teacher will provide a suitable alternative.

2. Formation of a committee, consisting of representatives from board, community, parents, staff and students to examine formal complaints of parents with the power of recommendation to administration and school board.<sup>3</sup>

In summary, the principal and his staff focused on a procedural issue. They felt that the process used by the Board to remove the novel was not a good process. As the principal put it "It wasn't sound on the basis of majority interest, . . . interest of education, . . . interest of allowing teachers to make professional judgements which they are capable of making". The principal was convinced that

we could have reached that concensus in terms of selecting a group of people who would take a look at the issue, including ministerial, including a representative group of the community, to look at the issue and come back to us and say, this is morally right for our community.

The principal and his staff lost on this issue. The Board acted unilaterally. The Board passed this motion:

That we reaffirm our position . . . regarding books of an offensive nature and that we instruct our teachers to use discretion when selecting books, bearing in mind the wishes of the community that we live in.

The Board did not set up a joint committee to deal with complaints. To appease the staff the Board passed an amendment stating "That the Board has full confidence in the teaching staff to use the required discretion".

The second issue dealt with by the principal in his

presentation to the Board was the "offensive language" issue. This was done in the form of a protest in an attempt to persuade the Board not to censor the curriculum and specifically Steinbeck's novel, Of Mice and Men. The issue of swearing was discussed in terms of "how it was treated and why it was felt important to treat it in a certain way". The principal pointed out that "it was becoming a community issue and that it was important now to deal with it honestly with the children so that they could see our viewpoints". It was emphasized by the principal that "we didn't condone swearing and this is written in this way because of the obscenity of the situation and so on".

The principal indicated that he was fully aware of the dilemma that this novel created for some people. People would say to him "How do we support the language in the book? How do we support the book without the language in the book?" When parents were confronted with the question "Well, do you think this is good?", they would reply, "Well, no. It's not good". They found themselves caught in a bind.

The principal involved the staff in two different strategies in his attempt to change the views of the Board members. First, he brought the English teacher with him to a Board meeting. The teacher explained why and how he used Steinbeck's novel. He pointed out that

the book was chosen because it was good literature. What interested him and his students in grades 9 and 10 were the subjects the book dealt with: loneliness, friendship, dreams, slow people, what causes hostility, what stops communication.<sup>4</sup>

He acknowledged that the first thing the students mentioned in response to reading the book was the swearing. Then he proceeded to

explain how he used the book. For example, he asked the class whether the author was swearing. The class understood that it was the characters in the novel who were swearing, not the author. The swearing was, in fact, part of the realistic style Steinbeck used to depict his characters, according to the teacher.

The teacher asked why people swear. The students, through discussion, indicated that often it is because of an inability to communicate that people resort to swearing. The swearing done by the characters in the book was an expression of their inability to communicate. According to the teacher, the class understood that swearing created further misunderstanding and frustration. The teacher stressed that "the only way they (the students) can understand is by facing these problems". He claimed it is in the tradition of education to give students the opportunity to face problems in school which they may have to deal with in life.

Some Board members appeared to remain unconvinced. One member maintained that "by using a book with swearing in it, swearing is 'promoted'". The teacher countered that "a book is used to expose an issue, not to promote a cause. In facing this issue, students are encouraged to form value judgements about it".<sup>5</sup> Another teacher added that "we expose them to an issue and then say 'make up your mind'. The formation of these value judgements takes place within an intelligent environment which encourages analysis".<sup>6</sup> The principal suggested that the school has perhaps been remiss in informing the community what it is doing. He argued that in the past, schools taught that the truth was in the book but now the basis of education is "to question the book".

A Board member drew attention to another book, Flowers of Algernon which includes a sex scene. He commented, and "Here again, I feel we are promoting something; and promotion sells".<sup>7</sup> Again the principal emphasized that

the intent is not to promote, rather to 'deal' with the issues which are real. Students have to face the issue of pre-marital sex. Discussing it in school may help them face it.<sup>8</sup>

A Board member countered "What if one student who had read the book had a sexual affair because of it. Can those present accept the responsibility for this?"<sup>9</sup> Another Board member added that it is wrong to force these issues on students. The majority of parents would condemn the use of such books. At this point a Board member raised a broader issue when he asked "Once it starts (questioning books), where does it end? There are so many areas where there would be objections".<sup>10</sup>

This prompted the principal to ask whether books with cut-away pictures of a mare with a foal inside should be removed from the grade five science course. Some Board members felt that there was a big difference between biology books and the Steinbeck novel. They felt there had been an unfair comparison made when the principal wondered if it would be necessary to censor pictures from a science book showing a mare with a foal inside.

The Superintendent introduced another basic question when he asked, "does our school teach morals or not?"<sup>11</sup> He claimed that "regardless of whether a teacher directly deals with morals, his approach to subject matter will have a moral influence on his students".<sup>12</sup>

In response to the continuing controversy, the principal

presented the Board with a Resolution which had been prepared by a staff committee. The Resolution read as follows:

RESOLUTION on The Freedom to Read

1. WHEREAS the freedom to read is essential to our democracy, and
2. WHEREAS freedom keeps open the path of novel and creation solutions
3. and enables change to come by choice, and
4. WHEREAS every silencing of a heresy, every enforcement of an orthodoxy,
5. diminishes the toughness and resilience of our society and leaves it the
6. less able to deal with stress, and
7. WHEREAS, now as always in our history, books are among our greatest
8. instruments of freedom, and
9. WHEREAS, we believe that free communication is essential to the
10. preservation of a free society,
11. BE IT THEREFORE RESOLVED that we affirm these propositions:
12. 1. It is in the best interest of students in our schools
13. for teachers and librarians to provide a wide diversity
14. of views and expressions, including those which are
15. unorthodox or unpopular with the majority.
16. 2. Teachers and Librarians do not need to endorse every idea
17. or presentation contained in books they make available.
18. It would conflict with the public interest for them to
19. establish their own political, moral or aesthetic views
20. as the sole standard for determining what books should be
21. studied or circulated.

22. 3. The censorship laws of the larger society should be the  
23. standard of evaluation for instructional and library  
24. materials. There is no place in our society, beyond the  
25. censorship laws, for extra-legal efforts to coerce the  
26. tastes of others.
27. 4. It is the responsibility of teachers and librarians to  
28. give full meaning to the freedom to read by providing  
29. books that enrich the quality of thought and expression.  
30. By the exercise of this affirmative responsibility  
31. schools can demonstrate that the answer to a bad book is  
32. a good one, the answer to a bad idea is a good one.
33. 5. It is the responsibility of teachers and librarians, as  
34. guardians of the people's freedom to read, to contest  
35. encroachments upon that freedom by individuals or groups  
36. seeking to impose their own standards or tastes upon the  
37. community at large.<sup>13</sup>

It was argued by the principal that the Resolution might serve as a standard for discussing the appropriateness or curricular materials in an open and democratic context involving teachers, Board members and parents.

All these efforts on the part of the principal and the staff were to no avail. As was pointed out, the Board did not change its position. Nor did it set up the joint committee outlined in the Brief.

Even the local ministerial association was not able to sway the Board. The association called for free and open discussion of the problems. They emphasized that "most of all we need to understand

each other in terms of our goals, values, and methods of education used".<sup>14</sup>

When all was said and done, the Board reaffirmed the 'offensive language' motion which had been passed a year earlier and instructed the Superintendent to enforce the motion. The Superintendent approached the principal and instructed him to remove the book Of Mice and Men. The principal asked the Superintendent whether, in fact, the board's motion stated that that particular book must be removed or whether the motion reiterated the 'offensive language' clause. The principal continued by saying that, if the motion is of a general nature (i.e., stated in terms of the 'offensive language' clause) then he would not remove any book because it was his opinion that no offensive literature was being used at the Collegiate. The principal recalls the incident as follows:

I insisted that the Superintendent tell me directly to remove the book. I did not accept the motion as being . . . he had to tell me directly what action I should take in terms of the book because I wasn't willing to accept the motion, I guess, partly for the reason that we maintained that we did not have offensive books in our school . . . . This would have been a kind of a recognition by us that we had made bad judgements.

The Superintendent backed off.

The next day, after informally talking to a few board members, the Superintendent instructed the principal to remove Of Mice and Men by Friday noon of that week. The principal complied, under protest, as follows:

I went and talked to the classes about it and said that this is a directive. You probably are all aware of some of the things that are going on and causing a great deal of controversy. You are probably aware of why that is. I'm not sure that I know all of the answers.

. . . you've got this class in which to clear it up. I'm asking your teacher to collect all the books at the end of this class. It is also the last time that you in class will, at least on my recommendation, be discussing this book . . . . I've got an order to take all the books out of the school and I interpret that to mean 'out of circulation' in terms of our responsibility, out of circulation.

The removal of the book was followed by a staff meeting at which the principal reassured the staff that, they had made good judgements in the past and that they are encouraged to continue to do so. In the interview the principal recalls his talk with the staff as follows:

You still, in my opinion, have not abused your judgement at all. In my opinion you have erred in judgement whatever or abused the power that I certainly have invested in you. Here it becomes another issue and that is the issue of support for your judgement. If you feel that you need that at any time and you are concerned at all about some material, then please feel free to come and check with me. I don't insist that you do that and you will have my backing . . . this is the principle--you basically go and do what you always have been doing and exercise your judgement, recognizing, of course, that we have had an issue now and we have had an incident and that might make you more sensitive to some of the issues.

Shortly after the novel was removed, the Board followed up with the motion "that the Board has full confidence in the teaching staff to use the required discretion".

The principal mentioned an unanticipated sequel to the incident. He received twelve to fifteen calls from the community requesting copies of Of Mice and Men. Upon approval from the Superintendent, the principal distributed the book to people in the community who requested it. Thus the incident probably increased the number of people who read the book.

## B. Considerations in the Analysis of the Case

The purpose of the analysis is not to provide a complete analysis of all the moral judgements made by all participants in the case. The analysis focuses on the moral judgements made by the principal when he exercised discretion. Even an analysis of all the moral judgements made by the principal would constitute a major study of its own because he made numerous judgements on a lot of issues. The list of issues would include:

(a) Does a parent have an overriding prerogative regarding the education of his child?

(b) Do parents have a right to censor books for other students?

(c) Should a principal consider only pragmatic solutions to school issues?

(d) Should a principal conduct research on school issues or proceed on the basis of his own past experience?

(e) Should a principal be open to alternative courses of action?

(f) Does a board have only legal responsibilities or does it also have some moral obligations?

(g) What authority do teachers have in selecting curricular materials?

(h) How much should a person's personal position influence the decision he makes?

(i) Should a principal support the teacher?

(j) Should a principal support a majority staff decision?

(k) Should a principal take issue with the racial prejudice expressed by a parent?

(l) How should a principal prioritize competing moral principles?

(m) When is a justification for each situation adequate?

This list of issues could be supplemented with the list of procedural considerations discussed in Chapter II.

A detailed analysis of the decisions made by the principal would reveal that he exercised discretion on numerous occasions. On many occasions the principal had to decide 'whether to', 'who', 'when', 'how', 'how much'. For example, when a parent phoned the principal to object to the use of the book, Of Mice and Men, the principal had to decide whether to return the call, whether to listen to the parent's concerns, whom to contact before returning the call to the parent, how to respond to the parent, and how much of an effort should be made to accommodate the parent. When the principal considered discussing the parent's objections with the staff, the principal had to decide whether to discuss the parent's complaint, which members on staff should be involved in the discussions (e.g., only members of the English Department), when the issue should be handled with the staff, and how much discussion should be encouraged. Many more examples could be cited. In fact, it would be almost impossible to cite all conceivable situations in which the principal exercised discretion.

In each situation in which the principal exercised discretion, he had to make numerous choices. He had to decide whether to take

positive action, whether to take negative action or whether to remain inactive. He had to choose among degrees of inactivity: do nothing, do almost nothing, do something less than might have been done. For example, when the parent phoned, the principal could have taken positive action as he did, criticized the parent for complaining about the book, evaded the parent's request for action by ignoring the complaint, talking about the complaint to the teacher but not acting on it, or returning the call to the parent but not pursuing the complaint with his staff.

The principal could have chosen to make an interim decision. He might have decided to placate the 'complaining parent' by giving the parent's student an alternate book to read without formulating a policy on the issue. On the other hand, the principal could have made a final decision about the procedure for identifying books of an offensive nature and deal with situations accordingly. This is, in fact, the decision made by the principal.

In short, the principal had to exercise discretion on numerous occasions. It would be virtually impossible to identify each decision based on the exercise of discretion. Consequently, only a few major decision situations are selected for analysis in this illustrative case study. In each case, the analysis focuses on the justification which the principal provided for his exercise of discretion.

The analysis of what the principal had to say on these issues was done with two goals in mind. First, the analysis should point out what justification the principal offered for the positions he took as well as the justifications he might have considered. Second, the

analysis should illustrate how the conceptual framework helps to analyze various kinds of justifications which were used or could have been used. This analysis can help to illustrate which judgements promote justice. It can help to illustrate how the framework can be used to scrutinize moral judgements.

The analysis was limited by the fact that it was restricted to a one and a half hour interview of the principal by the writer. The interview, which was conducted in 1981, covered an event which took place several years earlier. The time lapse between the interview and the event itself may have resulted in some recollections which may not accurately reflect the event itself. That possible discrepancy does not materially affect the purpose of the interview. The purpose of the interview was to solicit the kinds of moral judgements which a principal feels he ought to have made in specific situations and not to produce an entirely accurate recreation of the event itself. The questions directed at the interviewer solicited the justification which the principal felt compelled him to act as he thought he should act.

The interview was made up of three parts. In the first part of the interview, the principal was asked to respond to three questions. The three questions focused on three situations in which the principal exercised discretion. The purpose of asking the questions was to find out how the principal justified the position he took in each situation. The three questions were:

1. When a parent, who had a student in a class which was reading Of Mice and Men, objected to the use of the book in public schools, you indicated to the parent that an alternate book could be taught to the students whose parents objected to the book. How did you justify the use of your discretion to

accommodate parental censorship of curriculum materials?

2. When you received instructions from your Superintendent to remove the novel on the grounds that the Board insisted on the removal of John Steinbeck's novel, Of Mice and Men, from the curriculum, how did you justify your discretionary judgement to take issue with the Board's decision?
3. Some parents and the Board of Trustees used their discretion to decide that the novel Of Mice and Men should be censored from the school curriculum. You exercised your discretion to conclude that it was wrong to censor Of Mice and Men even though it might be acceptable to accommodate some parents by allowing their children to read an alternate John Steinbeck book. How did you justify your decision to take issue with censorship in schools?

These questions were sent in advance to the principal along with copies of the Board minutes and newspaper clippings covering the events. This gave the principal time to recall the events and to think about the questions.

The second part of the interview focused on key questions reflecting the normative conceptual framework developed in this study. The principal was asked to respond to the following questions as they applied to the case.

1. Would it be right to say that parents, trustees, teachers, and yourself had some duties, responsibilities, or obligations in this case? If so what were they?
2. How did you deal with the question of rights?
3. What morally good motive prompted you to act as you did?
4. Did you consider the issue of deserts at all?
5. What made your acts just or fair?

These five questions were broken down into a number of component questions which reflect in more detail the normative conceptual framework. An additional question was asked to focus on the application of a moral judgement. The question was: What conditions must be met in

the implementation of a morally just decision so that the implementation will also be morally good?

It was anticipated that this second part of the interview would indicate whether the normative conceptual framework identified questions which the principal thought were important in resolving the ethical and moral issues which he had to resolve in the case. If he considered the questions relevant to the resolution of the moral issues, then the framework would be considered useful for identifying important moral questions. If the question was considered irrelevant, then the framework would not be considered useful by the principal who was interviewed. Of course the framework may still prove to be useful for other principals. That issue is left for future studies.

The third part of the interview was a monologue. The principal was asked to recount the case as he recalled it focusing on the reasons why he acted as he did. The purpose of this part of the interview was simply to provide some continuity to his piecemeal account of the case in the first two parts of the interview.

### C. Analysis of the Case

The analysis focused on the following key issues:

1. Do parents have an overriding prerogative to determine the curriculum for their children?
2. How should the principal deal with the racial motivation of the complaining parent?
3. Did the principal consider any punishments and rewards?
4. How did the principal justify his decisions and his actions?

As was pointed out earlier, these are certainly not the only moral issues raised in the case. However, any reading of the case would suggest that these four issues appear to be important issues in the case. They appeared to be important issues to the writer.

Each issue was analyzed in terms of the statements made by the principal throughout the interview. The issues were reviewed in terms of the kinds of moral judgements presented by the principal as well as the kinds of moral judgements identified by the normative conceptual framework developed in this study.

1. Do parents have an overriding prerogative to determine the curriculum for their children?

(a) Rights

This issue was chosen for analysis because the principal based much of his justification on the rights of people. In the case of the parent who requested the removal of the novel, Of Mice and Men, the principal resolved the issue in terms of the rights of parents. The principal began by saying that a "parent has more overriding censorship power over his own student". It is because of this "overriding parental authority" or "overriding parental prerogative" that the principal, in cooperation with his staff, decided that it was acceptable to allow the parent's student read a different Steinbeck novel. In fact, at one point, the principal recognized that "parents have a moral right to determine what was suitable for their children". He claimed that justice would be served by the recognition of that parental right.

The principal drew a sharp limit for the "overriding parental

authority" by stating that "a parent cannot censor materials for other parents' children". Although the "final responsibility rests with the parents", this principle applies only to the children of the parents who object. Although parents have a "moral right to determine what was suitable for their children", the principal and his staff "denied them the right to determine that for other people". It was considered wrong, by the principal "for the minority to determine that for the majority". In fact, the principal emphasized that the staff "really took exception to the minority determining the rights of the majority". The following explanation was offered for this position:

As a democratic kind of way of doing things, first of all, we felt that parents had no right to deny other parents' children of certain materials and the opportunity to question, to form their own values . . . .

What are the implications of the principal's emphasis on the parents' rights? The normative conceptual framework identifies a few implications. These are as follows.

To have a right to an object of interest means that it is not wrong for a person to pursue that object of interest, nor is it wrong not to pursue it. For example, parents may exercise their prerogative to take issue with specific aspects of the curriculum. On the other hand, parents do not have to take issue with any aspect of the curriculum even if they might have some reservations about some aspects.

A person does not have a right to all his objects of interests. For example, the parent who complained about the use of the novel, Of Mice and Men, had a right to withdraw his child from that part of the

curriculum. However, he did not have a right to impose his judgement on the children of other parents' children. Other children have a right to read the book even though one parent objected to the use of the book in school. Nor did the parent have a right to deprive his child of an education. He had to agree to the use of an alternate book--in fact, an alternate Steinbeck book.

Moral rights must be distinguished from civil rights although a right can be both. It was emphasized that parents certainly have a "moral right to determine what was suitable for their children". Justice would be served by the recognition of this parental right. It was also suggested that the Public School Act seems to say "that there was an overriding parental prerogative".

Rights must be distinguished from duties. The principal made reference to the rights and responsibilities of parents. He claimed that the "final responsibility rests with the parents" even though he agreed that there should be a school system with compulsory attendance. People seek rights (i.e., the right to remove the novel). People are deprived of rights. The principal deprived the parent of the right to remove the novel from the high school curriculum.

A person may have a right as well as a duty to do certain things. The principal emphasized that the parents have a "parental prerogative and obligation" to provide their own children with a good education.

If a person has a duty to do something, then he also has the right to do it. Parents could not exercise their duty to provide their own children with a good education if they did not have a right to do it.

Is it the case that if a parent has a duty then in virtue of his having that duty, he would have a certain right? That may or may not be the case. The right would have to be something other than that which it is a person's duty to do. For example, if a parent has a duty to provide his child with an education, does he have a right to dictate what should go on in schools? Does he have a right to object or make recommendations with regards to the education of his own child or the children of other parents?

Is it the case that if a parent has a certain right, then in virtue of his having that right, he would have a certain duty? Not necessarily. At first glance, it would seem that for every right there is a corresponding duty. For example, a person who has the right to provide an education for children would have a corresponding duty to provide the education. However, even this corresponding duty has exceptions. In societies which offer comprehensive and compulsory schooling, much of the responsibility or duty to provide children with an education, lies with the state. In other words, correspondence between rights and duties does not seem clear at all.

Is it the case that if a parent has a certain duty, then in virtue of his having that duty, someone else, say children, would have a certain right? It is not clear whether to every duty there is a correlative right. It is probably true that if parents have the duty to provide children with an education, then children have the right to an education. However, it is not clear why there must be a connection between the parents' duty and the children's right. The children's right to an education, for example, may well be based on other reasons than the fact that parents have a duty to provide children with an

education.

Is it the case that if a parent has a certain right, then in virtue of his having that certain right, someone else, say a school principal, would have a certain duty? It is analytically true that to every right there is a correlative duty. To deny it would be self-contradictory. For example, if a parent has a right to object to the use of a certain book, then the principal has a duty to honor that objection. Inherent in the meaning of "right" is the understanding that others may not deprive a person of his rights.

The principal devoted a large portion of the interview to a discussion of parents rights in his attempt to justify his course of action in the case.

#### (b) Duty

Several references to duty were made in the discussion of parent's rights above. The principal focused primary attention on these two concepts--rights and duties. The parents' duties is referred to primarily as parental "responsibilities". In one instance, reference is made to a personal sense of responsibility (i.e., the parent felt "he should be responsible for removing it from the school entirely"). In most cases, the principal referred to the responsibilities he thinks parents should assume. He seemed to place equal emphasis on the responsibility of parents as he did on the rights of parents. After elaborating on the rights of parents, the principal emphasizes that "Parents have a duty as individual parents to their children--a responsibility--an overriding responsibility, a greater responsibility than anybody else in the system".

He goes on to add that

as a group of parents they have a responsibility, I think, to ensure that democratic institutions are upheld and that the children aren't denied opportunities that probably are in their best interest. That's kind of a public responsibility, a social responsibility.

Again, it should be emphasized that the principal sometimes referred to rights and responsibilities (duties) as though they belong together. For example, he makes reference to "the whole idea of parental prerogative (right) and obligations (duty). Whether, in fact, rights and duties correspond or whether they are correlative was discussed above. It should also be noted that the principal focused much more on rights than he did on duties.

What are the implications of the principal's reference to "duty" from the perspective of the normative conceptual framework? Duty means doing the right act because it is the right thing to do. A duty is the right thing to do independent of a person's motives or interest. If it is a person's duty to do something, then the act of doing it is morally right and it would be wrong not to do it. For example, if it is a parent's duty "to ensure . . . that children aren't denied opportunities" then it would be right not to deprive children of educational opportunities and it would be wrong to deprive them of it. Indeed, parental duty may well have required of the complaining parent not to interfere with the school curriculum if it could be argued, as the English teacher did before the Board, that the curriculum provided children with appropriate educational opportunities.

A person is not necessarily obligated to do every right action. Suppose the parent, who wanted different reading materials for his

child, had insisted that a teacher be made available to the class of one student, namely, his children. It might well be right to individualize a program to that extent but it does not follow that the school was obligated to provide a separate teacher. That might be asking people to go 'beyond the call of duty' for an individual student.

There are no degrees of rightness. If an act is the right thing to do, then it is not somewhat right, half right or very right. It is either right or wrong. For example, if it is a parent's duty (i.e., the morally right thing to do) to ensure that children aren't denied opportunities, then it is the right thing to do and parents should do it.

However, there are degrees of seriousness of wrong acts. For example, it may be wrong for a parent to deprive his own student of educational opportunities but it is more seriously wrong to deprive all the students in a school of educational opportunities. Therefore, the principal would not grant the parent's demand to withdraw the book from the school curriculum.

Does it follow from the fact that an action is right that not doing it is wrong? It may be wrong but it need not be wrong. An action may be right but it need not be wrong not to do it. For example, the principal emphasized that he accepted the English teacher's decision to use Of Mice and Men as a right decision but he also accepted that some students were not required to read it. He did not consider it wrong that some students would not be reading that book. On the other hand, it may be wrong not to do an act which is right. For example, the principal believed that the right thing to do

for the Board in the censorship controversy was to involve the staff in the deliberations. He also believed that it was wrong, very wrong, of the Board not to involve the staff in the deliberations.

Of course, there are morally indifferent acts. For example, at no time did the principal imply that the choice of dates for specific telephone calls and meetings had any special moral significance. The choice of dates seemed to reflect only a chronological convenience.

Throughout the controversy, the principal seemed to assume that other participants were actual or potential moral agents. In other words, the principal assumed that the parents, Board members, and teachers could distinguish between right and wrong, had a concept of right and wrong and understood the meaning of right and wrong.

The principal seemed to imply that what he thought the Board should do, it, in fact, could do. The Board could adopt procedures to involve the staff. These procedures were outlined in the brief prepared by a staff committee and presented to the Board.

At no point does the principal show any doubt as to whether people act from a free will. In fact, when he was asked whether anyone had been out of his mind, he replied, "No". He simply assumed that people act, at least to some degree, from a free will.

The principal seemed to think that the Superintendent had a conflict of duties, probably, a prima facie conflict of duties. He had a duty to represent the Board, a duty to work with his professional colleagues and a duty to "resolve this issue quickly enough so that we can get on with what we are supposed to be doing". Implicit in the principal's response seemed to be the assumption that

the conflict is resolvable although he suggested that he would not have resolved it the way the Superintendent resolved it. This would suggest that the Superintendent had only a conflict of duties on the surface of things but not an actual conflict of duties. In other words, he did not really have to do two contrary things at one time which, of course, would be impossible to do. For example, he did not really have to say to the Board that the staff should not be involved in the deliberations and to the principal that the staff should be involved.

In summary, it would seem that all reference to duties refer to something a person can do or refrain from doing. It does not refer to beliefs, attitudes, feeling, emotions and thoughts. These natural conditions influence what a person perceives his duty to be but "duty" refers to action.

In conclusion, most references to parents, made by the principal, focused on parental rights and duties. However, might not the principal have considered: Should parental involvement in this controversy also be discussed in terms of their motives, what they deserve, or the principle of justice? Would the principal have come to the same conclusions if he had considered these factors as well? One of these questions (i.e., motives) was considered in this study, in connection with an issue which surfaced briefly but which was never really discussed. The issue is the racial motivation of one parent for demanding the removal of the novel, Of Mice and Men from the curriculum. A discussion of this issue follows.

2. How should the principal deal with the racial motivation of the complaining parent?

The principal introduced the race issue by referring to it as one of the biggest problems which is maybe considered as extraneous kind of factor but it was really key to the whole thing . . . was that [the English teacher was Jewish] and the reference in the book was interpreted in such a way as a put down of Jesus Christ the way it was written. The discussion earlier was that that's all you expect from a Jewish person.

The principal felt very strongly that the racial identity of the English teacher should have no bearing on the choice of novels and therefore should not become a part of the issue of whether Steinbeck's novel should be used in school. In fact, he warned the chairman of the Curriculum Committee that "if that's the case (remove the novel because the teacher is a Jew), if that's the basis for it, then you can be sure that we are going to fight it as far as we can possibly fight it". The principal requested that everyone would "try to keep out of that and we would appreciate if you (Chairman) would do the same thing . . . that that would not be an issue that the Board would make an issue of". The principal felt that the Board did not make an issue of the teacher's race "though it came out in discussion; they did not pursue it at any length, did not pursue that tangent".

The principal insisted, however, that the complaining parent was motivated by the fact that he found it unacceptable to allow a Jewish teacher select the curriculum materials. With the help of a Board member the parent claimed that "this guy is trying to say that Jesus Christ is a bastard, and what else could you expect from a Jewish person?" That was, according to the principal, the parent's motivation in "determining that everybody should now, you know, should now be freed of this menace kind of thing pending doom here; this

person corrupting your mind kind of thing". Therefore, according to the parent, the book must be removed not just from his girl but from everybody.

The principal recognized that the motives of everyone, including the parent, must be tested "against the motive of 'are they honestly pursuing what is in the interest of the individual?'"

What are the implications of the principal's reference to 'motives' from the perspective of the normative conceptual framework developed in this study?

The first question which comes to mind is; What conditions must be fulfilled for an action to be morally good? The action must be right and it must be done from a morally good motive. Both conditions must be met. First, was the parent's action to request the removal of the novel right? According to the principal it was not right from an educational point of view but it was right in that the parent seems to have an overriding prerogative regarding the education of his own child. Therefore, the principal accepted that the parent's child be allowed to read a different book. But, the principal did not condone the withdrawal of the novel from the curriculum. Second, did the parent act from a morally good motive? According to the principal, the parent did not act from a morally good motive in that the parent did not "honestly pursue what is in the interest of the individual (student) but was motivated by the fact that the English teacher was Jewish". As an aside, the principal identified another morally bad motive. The principal had reason to believe that the parent was "getting back at the school because his son had had a very difficult time at school". In short,

according to the principal, the parent did not act from a morally good motive. Consequently, it must be argued that the parent's action was not morally good.

If it was not morally good because of the parent's motive, why was the motive not challenged by exposure? The principal's response to this question was "we could never say that". But, if the parent's action is morally bad because of his motive, why could no reference be made to it? Who prohibited the principal from addressing the race issue? Why?

What if a person does an act which is actually wrong but he believes it to be right and he does it from a morally good motive? For example, suppose it is wrong to conceal the parent's racist motivation. The principal attempted to conceal the parent's motivation and he believed it to be right to conceal the parent's racist motivation and he acted from a morally good motive--i.e., a desire to do what is right. Was the principal's act morally good?

What if a person does an act which is right but he does not believe it to be right and his motives are not good? Suppose it was right to remove the novel from the curriculum after the Board had decided to remove it. The Superintendent complied with the Board's decision. Suppose, however, that he did not believe it to be right and suppose his motives were not good. The principal did suggest that the Superintendent probably was sympathetic towards the teacher's position and disagreed with the Board's decision. Suppose the Superintendent was motivated more by a desire to remove the controversy than by the implications of the racist attack on one of the staff members. Would the Superintendent's action be morally good?

Motives seem to be important for moral action. What is a morally good motive? Two conditions must be met. A person who acts from a morally good motive must believe that the act is right and must desire to do what is right or do his duty. Suppose there is no doubt that the principal acted from morally good motives. He believed that his action regarding the parent's request was right. He was convinced that it was right to allow the parent's child to read a different book but that the other students should be allowed to read Of Mice and Men. The principal also acted with a desire to do what is right or his duty. He felt that since parents have overriding priority regarding the education of their own children, it was his duty to accommodate the parent's child at school even though he considered Of Mice and Men to be good literature. Similarly the principal acted from morally good motives with the teachers and the Board.

Did the parent act from a morally good motive? Suppose the parent really believed that he was right in demanding the removal of the novel from the school curriculum. Did the parent act from a desire to do what is right or his duty? Did the parent really believe that it was right to remove the novel because he did not approve of the Jewish teacher? Did the parent really believe that it was the right thing to do to get back at the school for the failure his son experienced in school? Is that acting from a desire to do right?

To act from a morally good motive requires that a person desires to do what is right for all parties involved in a particular situation. That can create dilemmas for a person. For example, the principal decided that the race issue should not play a part in the

censorship controversy because "we could never say that" (i.e., that the parent was anti-semitic). Was the principal also motivated to do what was right regarding the Jewish teacher who was accused of saying that "Jesus is a bastard"? What would be the right thing to do for the teacher? Would it be right to challenge the parent on the grounds that his motive was not good? Would it be best for the teacher not to mention the race issue? The principal felt it would be best not to raise the issue. But, if these issues are not faced when they arise, is that condoning racial prejudice? What are the implications for a community of condoning racial prejudice?

'Wanting to do one's duty' must be distinguished from 'Wanting to do what is one's duty to do'. It would appear that the principal was quite prepared to do what it is his duty to do, regarding the complaining parent. However, he did not want to withdraw students from the teacher's prescribed readings.

Cynics assume that people act only from self-interest. Even though some motives of the actors in this case study may be questioned, it does not appear as though they acted entirely from self-interest. Other motives, besides self-interest have already been discussed.

'Morally good motives' must be distinguished from other good motives'. Some other good motives are compassion, love, generosity, kindness and friendship. The principal showed compassion for the complaining parent's student. The Board offered the principal generous opportunities to express his views in Board meetings. Numerous friendships prevailed in spite of the controversy. However, all these motives must be distinguished from the morally good motive

of desiring to do what is right.

One of the most important questions to raise about motives is, "Is 'morally bad' simply the converse of 'morally good'?" In other words, does 'morally bad' refer to the desire to do wrong for the sake of doing wrong? Suppose the principal was right when he claimed that the parent was morally bad when he expressed racial prejudice against a teacher. Is that tantamount to saying that the parent acted with a desire to do wrong for the sake of doing wrong? Why would a person do something that is wrong for the sake of doing wrong? What would be in it for a person who is in his right mind? It would seem that several motives of the parent have been identified--his son's lack of success, racial prejudice towards a teacher, opposition to language of an offensive nature. None of these seem to indicate that the parent desired to do wrong for the sake of doing wrong. However, some of them seem to reflect an absence of a desire to do right or an indifference as to the rightness of an act (i.e., racial prejudice towards a teacher). Therefore, it may be more accurate to say that 'morally bad' refers to an absence of a desire to do right or an indifference as to the rightness of an act. A person can also be influenced by naturally bad motives. For example, the parent may have been influenced by hatred toward Jewish people. Other people in the case may have been influenced by revenge, jealousy, envy or malice.

The principal identified several stages of moral goodness and moral badness. Personally, he seemed to be a decent person--a person characterized as a principled and conscientious person. He wrestled with the prioritization of moral principles because he was committed to

doing what it is his duty to do. This applies not only to the issue of parental involvement in selecting school materials but also to staff rights and responsibilities as well as the school board's authority and responsibility. The principal expressed a concern about the fact that some parents appeared to be misguided in this controversy. They were misguided by neighbors who were trying to discredit the novel. Consequently, parents would ask, "How do we support the book without the language in the book?" They found themselves in a bind because of the misplaced emphasis on the "offensive language" which is all they knew about the book.

The principal was even more concerned about the people who had blind spots. He was particularly concerned about two board members who were characterized as follows: "Once they saw the language, they were not willing to discuss the issues on any other basis at all". Immediately, they jumped to the further conclusion that "any teacher who had that kind of [attitude] must be rotten".

The principal was most concerned about any unscrupulous action. At one point, the principal questioned the Superintendent's scruples, that is, his personal commitment to seeing that the right thing was done. The principal certainly felt that the complaining parent was unscrupulous in that he was not honest about his real motives for taking issue with the use of the book. It was felt that the Board was not entirely honest in that "they were hoping to achieve, in my opinion, . . . a quick solution to the problem; [let] everything die away, go away, keep everything nice and smooth". Is this, possibly, also the motive why everyone agreed to

sidestep the issue of racial prejudice? In any case, the principal was most anxious about people who might act unscrupulously as a matter of course.

The stages of moral badness are to be distinguished from acting carelessly. A person who acts carelessly may not be indifferent as to whether an act is right and might even desire to do his duty. The principal mentioned one example when he referred to a Board member who made the statement that "he wouldn't let his kids read some parts of the Bible". The principal felt that to make such a statement in a small town in which the churches play a leading social and religious role is "bordering on the foolish". Making this kind of statement probably could be described as 'negligent behavior'. If, however, a person carelessly makes a racist statement about the action of another person, that would be much more seriously wrong and therefore might be described as being a generally irresponsible statement.

### 3. Did the principal consider any punishments and rewards?

The use of the first three classes of moral terms and judgements have been discussed with reference to specific issues. That was difficult to do with the fourth class of moral judgement-- judgements of desert. The principal emphasized that very little attention was paid to punishment. Nobody was out to punish the parent who complained about the use of the novel Of Mice and Men. Nor did the principal or teachers try to corner board members or the Superintendent for statements they made. Very little attention was also paid to rewards. Reference to positive deserts were made

primarily to rights, especially the rights of the teachers to be consulted on educational issues such as the removal of books from the school curriculum. Consequently, the usage of the class of moral judgements which refers to the punishments or rewards which people deserve will be discussed with reference to the case in general and not with reference to only one issue in the case.

The normative conceptual framework developed in this study states that a "moral agent deserves X on account of Y". How was this notion used by the principal to resolve the moral issues he faced? In the positive sense of the concept of desert, the principal maintained that the teachers deserved to be heard on the issue of whether or not the novel, Of Mice and Men, should be removed from the curriculum. As was pointed out in the brief prepared by the staff, teachers have some professional knowledge about young people and the curriculum which should be taken into account in any curriculum decision. The Board should show its approval or appreciation for this source of relevant insight by sharing the decision with the teachers. In fact, the principal and teaching staff objected strongly to the Board's decision because the Board had not consulted with the professional educators before making their decision.

In the positive sense of the concept of desert, the principal pointed out that students deserve the right to read widely in the literary field. That is why he objected to the parent's insistence that no student should be allowed to read the novel. The principal was prepared to make arrangements for the use of alternative novels for students of parents who objected to the reading of Of Mice and Men. But, he felt that other students should not be deprived of an exposure

to a wide range of literature. Also, the principal seemed pleased that the local newspaper had received a reward for high quality journalism on the basis of its coverage of the events surrounding the removal of the novel, Of Mice and Men.

In the negative sense of the concept of desert, the principal expressed strong disapproval on several crucial occasions but at no time did he consider any forms of punishment. The principal expressed strong disapproval of the parent's objection to the fact that the English teacher was Jewish. The principal objected to the racial overtones of this reason for removing the novel. However, the principal did not suggest that any form of punishment be considered for the parent. In fact, every effort was made to accommodate the parent's child.

The principal disapproved of the way in which the Board arrived at its decision to remove the novel. Although he recognized the legal right of the Board to make curriculum decisions, he felt that the Board has an obligation to make such decisions in consultation with the educators.

The principal expressed disapproval of the way in which the Superintendent handled the Board's decision. It must be recalled that the Board never passed a motion which said that the novel, Of Mice and Men, must be removed from the curriculum. The motion stated that all books of an offensive nature should be removed from the curriculum. When the Superintendent asked the principal to remove Of Mice and Men on instructions from the Board the principal took issue with the Superintendent pointing out that he was interpreting what the Board had stated in the motion. The principal took issue

with the interpretation. At all times, however, the principal emphasized that the "issue of punishment never crossed our minds". At no time did the principal or the staff insist.

principal or the staff insist

that (the parent) should be forced into a corner that he could get out of and made to look stupid, that the Board should be forced into a corner they couldn't get out of, or that the Superintendent and so on. That never was part of our motivation.

When asked what would have to happen for somebody to deserve punishment, the principal said

Repeated unscrupulous actions, I guess. At some point, it would seem to be, to deserve defeat at the polls, would deserve rejection by other people, you know; rejection of your ideas by others, rejection of credibility and so on.

Did the principal provide reasons for allocating objects of interest or disinterest (i.e., expressing approval or disapproval)? Yes. He gave reasons for his disapproval of the parent's objection to the fact the English teacher was a Jew. The principal referred to it as racial discrimination which he claimed was morally wrong. He also claimed that the race of a teacher should have no bearing on the selection of curricular materials.

The principal offered several reasons for asserting that teachers deserved to be heard regarding the removal of a book from the curriculum. Teachers can offer some important information concerning child development as well as literary appreciation which should be taken into account in the selection of appropriate literature. For the same reasons, the principal disapproved of the way in which the Board arrived at its decision. He felt that the process was a violation of the democratic process.

It is of interest to note that the principal did not focus his

attention on rewards and punishment but rather on a sense of approval or disapproval. Awards and punishments can reflect a sense of approval or disapproval. Awards and punishment can be given or withheld but not so with the feeling of approval or disapproval. The sense of moral indignation generated by the parent's racial comments initiated a feeling of disapproval in the principal though it did not make him punish the parent. In that sense, the feelings of approval and disapproval may reflect a person's moral concern more accurately than his actions.

It was pointed out that the principal paid very little attention to awards in connection with the moral issues which he discussed. Apparently he did not feel that a person need to be rewarded for performing a morally good act from a morally good motive, or for not doing something wrong, or for doing one's duty. This kind of behavior is simply expected from a morally good person. It elicits a psychological state of being of approval but does not seem to deserve a reward.

A person seems to deserve punishment for willingly doing a wrong act (i.e., the Board's failure to consult the teacher regarding the removal of the novel), doing a morally wrong act (i.e., the racial discrimination expressed by the parent), and for being a morally bad agent (i.e., some of the Board members who acted with indifference as to the rightness or wrongness of the act, according to the principal).

The principal implied that bad acts do not deserve the same degree of punishment when he said that "the punishment should fit the level of crime or the action". In other words, it would seem that the

punishment should be in relation to the seriousness of the wrong act.

Does a person deserve punishment for the willingness to do wrong? Apparently not, according to the principal. He did not recommend or encourage any punishment for the people who he thought were willing to act wrongly. He did not recommend any form of punishment for the Board members or the Superintendent. He only expressed his disapproval and gave reasons for his feelings of disapproval.

In summary, the principal incorporated axiological judgements or judgements of desert in dealing with the moral issues which arose in the case. The class of axiological judgements helped the principal to determine what the people who were affected by the case deserved.

#### 4. How did the principal justify his decisions and actions?

It should be apparent by now that none of the classes of moral judgements is sufficient by themselves to resolve the moral issues. The principal seemed to require all four classes to resolve the moral issues. In fact, the principal seemed to rely on all four classes of moral judgements in an interrelated sort of way. This seems apparent from his understanding and appreciation for the need to justify whatever action was taken. He responded at great length to each of the three questions presented to him which were based on the form "How did you justify . . . ." He employed all four classes of moral judgements in his response to the questions.

The principal applied the principle of justice to the decisions and actions of the people who exercised authority. The

parent claimed that he had the authority to tell the principal to remove a book from the curriculum. The Board claimed it had the authority to instruct the educators as to what they may or may not do. The Superintendent claimed he had the authority to instruct the principal regarding board policies. The application of the principle of justice helped to scrutinize people's decisions, reasons, and actions.

Justice refers to the decisions or actions of distributing or allocating objects of interest or disinterest. The parent's object of interest was to get the novel, Of Mice and Men, removed from the school. The Board's object of interest was to assert its legal rights and responsibilities as well as to meet its moral obligations in school. The teachers' object of interest was to be consulted on curriculum issues. The principal's primary interest seemed to be a concern for the rights and responsibilities of teachers and students. Failure to achieve these interests on the part of each party in the case constituted objects of disinterest for each party. For example, the parent did not want to see the novel in use at the high school. How can all these objects of interest and disinterest, which conflict in many ways, be resolved with justice? It certainly is not possible to grant the object of interest to everyone and avoid everyone's objects of disinterest.

From what point of view is the distribution of objects of interest or disinterest just or unjust? First, is an act of distribution or allocation fair from the point of its utility? Only once does the principal imply a positive relationship between utility and justice. For example, the principal accepted a parent's

overriding prerogative to censor the literature for his own children but not for other children. He also considered this position as "a very good way to deal with the problem". In all other situations, the principal did not consider the utility of his position but focused on the moral rightness of his position. Therefore, it would seem that the principal did not consider "utility" as a sufficient point of view in the distribution of objects of interest and disinterest.

Second, is a distribution considered just from the point of view of the needs of the recipient? Objects of needs are objects of interests but not all objects of interests are needed. The parent felt that he should make sure that no student read Of Mice and Men. That was his object of interest and his object of need. On what moral grounds should this need be met? The principal felt there were none.

Third, sometimes a distribution involves objects of disinterest, especially when the objects of interest of two parties conflict. For example, when the teacher's need to be consulted are met, then the Board cannot exercise its object of interest, i.e., not to consult the teachers.

Is a distribution considered just or unjust from the point of view of the rights of any one recipient? The principal considered the rights of all parties involved. He considered the rights of the students (i.e., to be educated in a climate of choice), the parent (i.e., their overriding prerogative of parents to censor the books read by their own children), other parents' children (i.e., no one parent having the right to censor the books read by children of other parents),

teachers (i.e., their right to be consulted on educational issues), and the Board (i.e., its legal right to make decisions). Consideration of the rights of any one party in a moral dilemma did not seem a sufficient point of view for determining whether a distribution is just or unjust. In fact, a distribution seems to be just or unjust from the point of view of the way in which the distribution affects the interests of the recipients relative to one another.

The issue of justice entails the following components: distributor, distributions of objects of interest and disinterest, and recipient. What characteristic must each have for an act to be just? It has already been pointed out that the principal clearly recognized that the distribution itself must be just. Justice must be done to the children, parents, teachers and board members by distributing objects of interest (e.g., rights) and objects of disinterest (e.g., accommodating the rights of others at the expense of one's own interests) in a just and fair manner. The principal referred to the concern for justice as "insisting on a certain sense of fair play . . . probably aptly called a sense of justice".

As for the distributor, he must act with impartiality. This was apparent in the discussion of how the principal handled the removal of the novel from the high school. However, what makes an act just? The principal's answer to this question seems to lie in his response to the three questions presented to him regarding his involvement in the removal of the novel from the curriculum. He responded to the three questions by considering the duties, rights, motives, and deserts of the participants in the case. It would seem that the interrelationships of these four classes of

moral judgements guided the principal in his quest for justice.

The principal claimed that the participants should act from a sense of duty. For example, the principal recognized that the Board has the legal authority to make decisions but claimed that board members "also have some moral responsibility". At another point, the principal maintained that the board members have an obligation to involve the professionals, to consult teachers, to involve them in the decision". The Board has a responsibility "to the public and particularly to the majority in the public--a responsibility to operate in a democratic . . . fashion". The Board also has a responsibility to its employees "to protect its employees against frivolous and capricious kinds of actions and to consult with the professionals". The teachers must assume the responsibility for curriculum materials. The staff has a responsibility "to expose children to value judgements, to give them opportunities, to put them in situations where they have to make value judgements". The final responsibility rests with the parents who have "a duty as individual parents to their children--a responsibility--an overriding responsibility, a greater responsibility than anyone else in the system". As a group, the parents have a responsibility

to ensure that democratic institutions are upheld and that the children aren't denied opportunities that probably are in their best interest. That's kind of a public responsibility, a social responsibility.

The board, the teachers, the children and the parents also have rights which must all be taken into account to justify appropriate action according to the principal. The Board has the ultimate authority to determine the curriculum. However, this legal

authority must be coupled with moral responsibility. The Board also felt that it had the authority that "if they gave an order, it's got to be followed". The principal took issue with this right by insisting that parents and teachers must be involved in decision making. The parents have the overriding prerogative for their own children. The principal did not deny that parents have a moral right to determine what is suitable for their child. However, the principal denied the right "to determine that for other people". In general, the principal felt that the teachers had the authority or right to establish the school curriculum. In fact he claimed that "the professionals have an absolute moral right to have an input into the final decisions". Children have a right of access to "certain materials and the opportunity to question, to form their own values and all that kind of thing".

The principal also considered the motives of everyone involved. He took issue with the motives of the complaining parent whom the principal thought was motivated by racial discrimination (e.g., "that's all you can expect from a Jewish person") and the failure of the parent's son at school. The principal did not concur with the Superintendent's political motivation of trying to resolve the issue as quickly as possible regardless of its outcome. The principal challenged the Board's motive of trying to establish that when "they gave an order, its got to be followed". Only one motive seemed appropriate to the principal and he "tested" everyone's motive against this motive. He put the motive in the form of a question: "Are they honestly pursuing what is in the interest of the individual?"

Whereas the principal focused most attention on 'rights', he paid least attention to the issue of 'deserts'. He strongly deemphasized punishment. He mentioned several times that the teachers deserved to be consulted because of their professional training. If punishment should be considered, it ought to be done for "repeated unscrupulous action". Appropriate forms of punishment might include 'defeat at the polls, . . . rejection by other people, . . . rejection of your ideas by others, rejection of credibility". In so far as the principal focused any attention on deserts, he referred to feelings of approval and disapproval.

In conclusion, the principal focused on duties, rights, motives, and deserts in his attempt to justify the course of action taken by himself and others. The overriding prerogative of parents was never questioned but the racial motivation of a parent negated the parent's demand for specific action (i.e., to remove the novel from the school). The legal rights of the Board was recognized but it was maintained that the Board should also consider its moral obligation. It was conceded that the teachers should not have absolute authority over the curriculum but they deserve to be consulted. In short, the principal considered the duties, rights, motives and deserts of the participants in his attempt to justify one course of action as opposed to some other.

However, for an act to be justified consideration must not be given only to the recipient or to the justification of the act but also to the distributor. As was pointed out earlier, the distributor must act with impartiality. The principal took great care to act with impartiality. He tried to treat the complaining parent's

student as fairly as possible by providing her immediately with an alternative novel and by soliciting some classmates to join her on the alternative novel. When he finally had to remove the novel from the school, he explained the situation to each class without capitalizing on his captive audience to discredit the people who had made the decision. He announced a uniform termination of discussion of the novel (i.e., at the end of this period). He explained how the books would be collected. He did not attempt to evade his instructions (from the Superintendent) to remove the books by leaving them in the school where students might gain access to them. He stored them in his basement. He did not distribute the novel to adults upon request without first soliciting the approval of the Superintendent. All these steps suggest that the principal tried to execute the decision as impartially as possible. For an agent to be impartial, he must not favor one recipient over another. The principal did not favor the children of the parents who cooperated with him over the children of the complaining parent.

A distribution can be done with impartiality without being just. For example, the principal could have condoned unfettered use of swear words in literature classes or indeed at any time in school. He would have been impartial towards the students but his act need not be just. His motive might have been to remain popular with the students so that he could use them in a battle against some parents. However, this motive is not a morally good motive.

A just distribution may favor discrimination. The principal acted with discrimination when he allowed some students to read an

alternative novel. Given the rights of parents regarding the education of their own children, the principal justified the discrimination. On the other hand some discrimination is wrong. The principal claimed that the parent was wrong when he expressed racial discrimination against the English teacher. Racial discrimination violates the rights of the discriminated.

Several conditions must be met for an impartial distribution to be just. The distributor must have a right to make the distribution. It was recognized that the Board had the right to decide on the use of the novel. The distributor must have a duty to make the distribution. The principal emphasized that the Board not only had a right but a "moral obligation" or duty to decide on the use of the book. The distributor must be a moral agent. The principal expressed concern when he felt that some people were acting without scruples. At one point, he doubted the Superintendent's scruples (i.e., his motive for removing the novel), and at another point he doubted the honesty of some board members.

The principal, did not only act with impartiality when he implemented a decision, he also tried to be as unrepressive as possible in the implementation. This applies to the action he took based on the decision he made in response to the parent's complaint as well as the action he took in response to the decision made by the Board and the Superintendent.

With regard to the student of the parent who complained about the use of the novel, Of Mice and Men, the principal took several steps. He arranged with the teacher to allow the student to read an alternate Steinbeck novel. He also invited other students

to switch to the alternate novel so that the one student would not be isolated. At no time did the principal or teachers put down the student's parent for objecting to the use of the novel, Of Mice and Men. All these steps were taken to act as unrepresively as possible to the student so that the student would be able to continue to learn at school. In contrast to the action he did take, the principal could have suspended the student, isolated her or argued with her about her parent's 'bigoted' attitudes. These courses of action would have created a distressful situation for the student.

Similarly, the principal acted as unrepresively as possible when he implemented the decision to remove the novel from the curriculum. He outlined his course of action personally to all students. The books were collected at a particular time by the teacher. Students were given time to bring books to class from their lockers and from home. Although the principal did not agree with the decision to remove the novel, he did not discuss his objections with the students so as to cause further problems or debates in the community regarding the Board's decision. He simply pointed out that he had received instructions to remove the novel and that he would like to do so in an orderly manner. Nor did he allow the books to be stored at school where students might have been able to obtain copies and continue to read the novel on their own time. He took the books home and stored them in his basement. In fact, when some parents requested a copy of the novel, he first solicited the consent of the Superintendent before he distributed any copies. In short, the principal tried to be as unrepresive as possible to the students, parents, superintendent and board members when he implemented the

decision. He recognized that people who implement decisions should be impartial and as unrepressive as possible. The principal attempted to meet both conditions in the situation where he made a personal decision (i.e., regarding the student of the complaining parent) and where he had to implement a decision made by others (i.e., the removal of the novel from the curriculum).

#### D. Summary

In summary, for an act to be just, four conditions must be met:

1. A distribution is just or unjust from the point of view of the way in which the distribution affects the interests of the recipients relative to one another.
2. For a distribution to be just, the duties, rights, motives, and deserts of the participants must be considered.
3. The distributor of the objects of interest or disinterest must act with impartiality.
4. The distributor must act as unrepressively as possible.

The principal seems to have followed these four conditions in his attempt at arriving at a justifiable course of action. In other words, his action in the case and his explanations of them suggest that his exercise of discretion involved the use of many of the categories of the normative conceptual framework developed in this study. This in turn made it possible to use the normative conceptual framework to analyze the case study. Needless to say, more cases need to be analyzed to explore the scope and limitations of the normative conceptual framework. One analysis serves only as a beginning of an extensive analysis which should be conducted on numerous case studies involving various substantive issues.

Issues about the "Meaning of Right and Wrong" were not raised in the case study, because these issues focus more on meta-ethical questions underlying moral terms and judgements. The principal was not expected to elaborate on these questions in the interview. Hence his response to them is somewhat incidental and indirect. Too much conjecture would be involved to establish his position on these questions on the basis of the interview.

It must be emphasized that the analysis of the case study does not review critically the adequacy of the principal's use of the moral judgements outlined in the normative conceptual framework. Nor was that the intent of the analysis. However, implicit in the conceptual framework is the assumption that it is important how the framework of moral terms and judgements is used. The adequacy of the use of moral judgements is extremely important. The somewhat critical analysis of the manner in which the racial issue was dealt with attempts to point out the importance of how and when different moral judgements are used. People are not free to choose whichever moral judgement they prefer from the conceptual framework. They should use those moral judgements which apply to the issue at hand.

FOOTNOTES

<sup>1</sup>In the interest of ensuring anonymity, specific places and persons referred to in this study have been assigned fictitious names.

<sup>2</sup>A complete transcription of the interview with the principal is available in the Appendix. All quotations are taken from the interview unless otherwise indicated.

<sup>3</sup>"Brief" presented to the Board of Trustees by the principal and his staff.

<sup>4</sup>Quotation from the local press.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

<sup>11</sup>Ibid.

<sup>12</sup>Ibid.

<sup>13</sup>"Resolution" presented to the Board of Trustees by the principal and his staff.

<sup>14</sup>Quotation from the local press.

## CHAPTER V

### SOME IMPLICATIONS OF THE CONCEPTUAL FRAMEWORK FOR THE ORGANIZATION AND MANAGEMENT OF SCHOOLS

What are some of the implications of organizing and managing schools on the basis of the conceptions of discretion and justice presented in this study? How would the experiences of teachers, students, parents, secretaries, custodians and administrators be affected? The conceptual framework developed in this study should be recommended only if it improves the quality of justice and reduces injustice in schools.

Four consequences of the conceptual framework for school organization and management can be identified. First, checking discretion would yield a liberal view of authority which focuses on the question: How can schools be organized so as to prevent potentially unreliable and fallible authorities from doing harm in schools? The notion of "harm" dealt with in this study is "injustice". Second, structuring discretion so as to improve the quality of justice would lead to a plurality of authorities. Many people in schools and not only administrators are authorities about something. Third, all people with authority, including administrators, would exercise authority through rational and moral persuasion. Rationality would be used so as to avoid resolving moral problems on the basis of self-interest, personal tastes or personal idiosyncracies. 'Moral persuasion' refers to a particular subjective attitude described by David Hume as a 'sense of fellow-feeling' coupled with an objective basis for knowing what is right. Fourth, rules would comply with the

standard of right and wrong. Such rules are characterized by the fact that they are just and as unrepresive as possible. Justice is pursued when the duties, rights, motives and deserts of all persons affected by a moral problem are dealt with in a context of a sense of fellow-feeling. Then distributors act with impartiality and distributions are just and unrepresive.

#### I. CHECKING DISCRETION: A LIBERAL VIEW OF AUTHORITY

It was maintained in Chapter II that the use of discretion must be checked so that discretion will not be misused or result in more injustice in schools. This motion of controlling authorities is a liberal view of authority. But, what does it mean to control authority and what are some of the implications for schools of efforts to control authorities? These questions are dealt with by comparing a liberal concept of authority with an illiberal concept of authority.<sup>1</sup> The implications of each for schools are also discussed.

Historically the concept of authority in education has reflected a continuum of viewpoints from a liberal view to an illiberal view. The liberal view is reflected in the following quotation from Karl Popper:

And although I do not advocate 'laissez faire with regard to teachers and schoolmasters', I believe that this policy is infinitely superior to an authoritative policy that gives officers of the state full powers to mold minds, and to control the teaching of science, thereby backing the dubious authority of the expert by that of the state . . . .<sup>2</sup>

In contrast to Popper's statement, the following quotation from Plato reflects an illiberal view of authority in education:

Of all wild things, the child is the most unmanageable; an unusually powerful spring of reason, whose waters are not yet

canalized in the right direction, makes him sharp and sly, the most unruly animal there is . . . . Our sharp-eyed and efficient supervisor of the education of the young must redirect their natural development along the right lines, by always setting them on their paths of goodness as embodied in the legal code.<sup>3</sup>

Popper's statement reflects a liberal view of authority in education in that it addresses the question:

How can schools be organized so as to prevent potentially unreliable and fallible authorities from doing harm to school members?

Liberals raise the question of 'how to control the ruler' or how to check school authorities (i.e., teachers, principals, counsellors, clinicians, custodians, secretaries, school board members, superintendents). On the other hand, Plato's statement reflects an illiberal view of authority in education in that it addresses the question:

What authorities can be relied upon to control and decide the daily activities of school members?

It raises the question "Who should rule?" or expresses a concern for controlling the activities of the ruled.

What can be said about liberalism as a philosophy which mistrusts the use of authority? This position has been advocated and defended by people like John Stuart Mill,<sup>4</sup> John Dewey,<sup>5</sup> Bertrand Russell,<sup>6</sup> Frederick A. Hayek,<sup>7</sup> and Karl Popper.<sup>8</sup>

Popper, for example, summarizes the liberal view of authority as follows: ". . . by a liberal I mean . . . a man who values individual freedom and who is alive to the dangers inherent in all forms of power and authority".<sup>9</sup> Popper claims that to give a person the authority to make decisions and judgements about how other people should act and

think is loaded with the danger of misuse of power. Therefore he argues that all authorities must be viewed as fallible. Whenever possible, people should be free to determine their own course of action. John Stuart Mill expresses this same mistrust for authority in On Liberty. Walter Lippmann maintains that it is the misuse of power that has led liberals to mistrust authority. More basically, liberals emphasize that authority must be controlled because fundamental human rights are possible only if people in authority do not get unlimited power. As John Dewey put it: "But the values of free intelligence, of liberty, of opportunity for every individual to realize the potentialities of which he is possessed, are too precious to be sacrificed to a regime of despotism".<sup>10</sup> In short, liberals have argued for the maximum amount of freedom that can be tolerated by a society. This point was made by Bertrand Russell when he said: "The Liberal creed, in practice, is one of live-and-let live, of toleration and freedom so far as public order permits, of moderation and absence of fanaticism".<sup>11</sup> It must be pointed out, however, that although liberals have a fundamental distrust for authority they recognize that authorities are a necessary condition for society and unquestionably preferable to anarchy because they prefer social order to chaos. Liberals recognize that individuals living together do encounter conflicts of interests. Authorities must exist to facilitate the resolution of conflicts of interests. In contrast, anarchists insist that no provision be made to resolve conflicts of interests peacefully.

Unfortunately, many liberal philosophers have not extended their liberal view of authority to children. For example, Kant, who

is one of the liberal thinkers, stated: "The management of schools ought, then, to depend entirely upon the judgement of the most enlightened experts".<sup>12</sup> Similarly, John Stuart Mill and Friedrich Hayek also make an exception regarding the education of children. In other words, many liberal philosophers switch to a illiberal position on authority when they discuss the education of children. This seems to be the case because they all share the common assumption that children are unable to make adequate educational decisions.

Most philosophers seem to think only in terms of two alternatives regarding authority in schools. The two alternatives are: (1) children learn best without supervision (liberal view) and (2) children learn only under strong control (illiberal view). Historically, both approaches have had their advocates. The history of the problem of controlling school activities traces back to Plato. He argued that it is necessary to have experts who control what young people learn and think. Teachers, school administrators and other experts must be trained to determine and control what goes on in schools. Even Rousseau seems to appeal to the use of some authority:

It will probably be necessary to give him (student) a little guidance. But let it be very little and avoid the appearance of it . . . at most, arrange some practical situation which will make him realize things personally.<sup>13</sup>

Similarly, today many educators advocate the need for expert authorities for schools. Jerome Bruner, for example, addresses the question of control in his stress upon the structure of knowledge:

The experience of the past several years has taught us at least one important lesson about the design of a curriculum that is true to the underlying structure of its subject matter. It is that the best minds in any particular discipline must be put to

work on the task.<sup>14</sup>

In short, Bruner maintains that the curriculum should be determined by reliable authorities such as professional scholars.

Even some advocates of innovations like open classrooms, who are usually viewed as nonauthoritarian educators, reflect policies emphasizing control. For example, Charles Rathbone says:

It is the teacher who exerts principle control over the original stocking of equipment: he is responsible for requesting, ordering, finding (or scrounging), whatever he determines is appropriate, and it is he who decides which materials shall be made accessible to the children and when.<sup>15</sup>

In summary, the problem of control seems to be very much a part of the history of education. In fact, this may be due to the fact that people do not consider a reformulation of the problem. Of course, it may be possible that people have considered alternatives and rejected them.

However, in spite of the emphasis of most educators on the problem of controlling the education of children, there are a number of important objections to this approach. First, the arguments used to defend an emphasis on control contain circular arguments, contradictory arguments, or an infinite regress. These logical criticisms of the policy of "expert authority" are as follows. To try to prove the truthfulness of the policy of expert authority, a person might claim that this policy is true because the experts tell us they are reliable authorities. This is a circular argument. The problem with circular arguments is that they can be used indiscriminately to prove that any authority is "reliable". This type of argument permits people to choose to rely on any conceivable authority.

A person, on the other hand, may claim that the policy of expert authority is valid on the grounds that a more reliable authority than the experts has determined the reliability of certain experts. For example, the person might argue that a teacher is reliable because of certain training he has received from an accredited university. This line of argument is no improvement over a circular argument because it leads to a contradiction or an infinite regress. A contradiction is created by the following argument. If it is claimed that educational experts are the most reliable authorities, (i.e., a strong claim) then an argument that appeals to an authority more reliable than the experts contradicts the original claim. This line of argument allows people to rely on any authority as was the case with the use of a circular argument.

If a weak claim of authority is made, that is, the expert is only one of many reliable authorities, then it is always possible to keep on asking the question "How reliable is that authority?" This question leads to an infinite regress if it is to avoid a circular or contradictory argument. An infinite regress cannot explain any point satisfactorily.

Second, historical criticism can also be made of the policy of expert authority. Briefly, this criticism makes the point that all the authorities people have relied upon in the past have been, at one time or another, unreliable. For example, experience has often been used as a reliable authority. However, at one time it was used to prove that the earth was flat, whereas today it is used to argue that the earth is round. This example shows that experience sometimes was

unreliable in the past. Furthermore, there is no way of ensuring that what appears as a reliable authority today, will be infallible tomorrow.

In summary, liberals cannot prove that all authorities are unreliable, but they can show that, logically and historically, authorities are potentially unreliable. Therefore, they argue that educators should work from the hypothesis that all authorities are potentially unreliable.

All that has been done so far in this section is to identify several important objections to adopting an illiberal approach to the problem of authority in education. In order to have some confidence in a liberal approach, it is important to be able to identify some important reasons for adopting a liberal approach. Are there any educationally sound reasons for advocating a liberal approach?

One way of approaching this question is to explore the assumptions underlying the liberal and the illiberal approaches because questions make assumptions and have built into them certain expectations. For example, when a person, Bob, asks a friend, John, "When did you stop beating your wife?", Bob has made certain assumptions about the relationship between his friend and his wife. Therefore, it is useful to explore the assumptions underlying questions to determine just what is being asked and expected by a question. In fact, the adequacy of a question sometimes can be established by establishing how satisfactory the assumptions are which underly a question. For example, suppose John is not in the habit of beating his wife, then the question raised by Bob simply is not appropriately stated because of the false implicit assumption under-

lying the question. A more appropriate question to ask would have been "How are things at home?" or, "How is your wife?" because these two questions do not imply any particular assumptions about the relationship between John and his wife. Evaluating questions by the assumptions they make is one criterion that is useful for determining whether checking school authorities is preferable to entrusting school authorities with controls without checks.

It has been pointed out that there are logical and historical objections to the assumptions underlying the illiberal approach. What are some of the assumptions underlying a liberal approach and are they more satisfactory? First, authorities can, and at times must, exist in liberal schools. The liberal position accepts the assumption that authorities are a necessity but they are constantly in need of checks.<sup>16</sup> Second, a liberal approach does not recommend anarchy nor does it have to lead to anarchy. Anarchy is as undesirable as an illiberal approach to authority because both can lead to violence and the arbitrary use of power. Authorities are needed because people often have conflicting interests and opinions which they cannot always resolve by themselves. It is recognized that the authorities are necessary but at the same time they are not always reliable nor fallible. That is why liberals like Popper<sup>17</sup> advocate a system where fallible authorities check one another.

The assumptions underlying the liberal view are more satisfactory than those underlying the illiberal view. The liberal view accepts the need for authority just as the illiberal view does. However, the liberal view is not subject to the logical and historical objections that apply to the illiberal view because the liberal view

recognizes that authorities can be fallible. What the liberals need to do is apply their view of authority to the education of children, which historically they have been reluctant to do, and explore ways of organizing and conducting schools on the basis of a liberal concept of authority.

Historically, some limited efforts have been made in this direction. Plato, for example, points out that students cannot rely on teachers as authorities who know the truth: "But I was never anyone's teacher . . . . And I cannot justly be charged with causing these men to turn good or bad, for I never even taught or professed to teach any of them any knowledge whatsoever".<sup>18</sup>

This quotation not only reflects a liberal view of authority in education but it also suggests a solution to the problem of taking a liberal view. Plato suggests that individuals should be personally responsible for their own education because teachers are not qualified to tell students what they should think. This notion introduces an educational policy of personal responsibility.

A school which adopts a policy of personal responsibility is a self-governing school. Whereas this policy recognizes that everyone in school is an authority on something in school, no person in school is a single reliable authority. This situation creates a check on the authority of everyone in school. The freedom of every individual is checked by school regulations and rules which are controls governing everyone's actions.

Summerhill, a school run by A.S. Neill, is an attempt to operate a school on the assumption that all forms of authority need to be checked without confusing freedom with license. Neill expresses

this concern as follows:

At Summerhill . . . the imposition of authority--necessary authority--on a child does not in any way conflict with the idea that a child should be given just about as much responsibility as he can accept at his particular age.<sup>19</sup>

Self-governing schools also need school authorities but no authority must go unchecked. Individual views, the law, nor the majority should never be viewed as consistently reliable authorities. All must be viewed as potentially fallible and in need of some kinds of checks.

Self-governing schools must not view students as infallible. People must not romanticize the ability of children.<sup>20</sup> The authority of children must be checked so that self-governing schools will not be social situations where the students do anything they wish. To replace the authority of the professionals with that of the students is not consistent with the principles of liberalism.

Bertrand Russell summarized the liberal view of educational authorities in the following quotation:

There must be educational authorities, and children must be to some extent under authority. But in view of the fact that no authority can be wholly trusted, we must aim at having as little authority as possible, and try to think out ways by which young people's natural desires and impulses can be utilized in education.<sup>21</sup>

In other words, educational authorities, like all human authorities, are fallible and in need of checks.

A liberal concept of authority advocates a plurality of authorities where everyone in school is an authority about something. How can a plurality of authorities improve the quality of justice? This issue is dealt with in the next section.

## II. STRUCTURING DISCRETION: A PLURALITY OF AUTHORITIES

The use of discretion can be structured so that the administrator of a school exercises most of the discretion or so that discretion is exercised by many people in schools. A liberal concept of authority structures the exercise of discretion so that many people exercise discretion. This structure enables people in schools to check each other so as to dissuade authorities from doing harm in schools. In other words, a plurality of authorities can help to structure the exercise of authority to improve the quality of justice and reduce injustice.

If a plurality of authorities is desirable for schools, the following questions arise. What is meant by a 'plurality of authorities'? How can it improve the quality of justice in schools? These two questions are dealt with through a discussion and application of Walzer's concept of "plurality of authorities".<sup>22</sup> Walzer applies the concept to citizens and governments. However, his analysis seems to be equally appropriate to schools.

Walzer questions the separation of the citizens from the 'authorities' where the citizens are expected to be faithful to the state in return for security which is provided by the authorities of the state. He claims that this distinction creates a number of problems. First, it creates an alienated and powerless citizen. Second, the citizen cannot really assume any moral obligations and therefore cannot assume any moral responsibilities.

Walzer's account also describes the traditional school setting where the teacher is the authority who provides the

instructions and where the students are expected to be faithful and conforming to the authorities. This situation reflects an illiberal authority in classrooms and in schools.

Walzer points out a number of serious limitations of viewing the citizen as "the recipient of certain benefits that the state . . . provides".<sup>23</sup> In this situation the citizen receives liberty and protection but does not wield the instruments which provide the services. This arrangement provides no relationship among the citizens but provides only promises from the state and not from fellow citizens to provide security in return for obedience. It separates citizens from authorities which raises the following questions: Who decides? Who decides what is to be protected? Who decides whether the protection is adequate? Does the state decide or do people decide? If it is people who decide who, at the same time, are also citizens, which people decide?

Conventionally, these kinds of questions have a ready answer in schools. The teacher decides in strictly classroom related matters and the principal decides in general school related matters. The arrangement requires only obedience from students. Nor does it facilitate any relationship among the students. Everyone is responsible to the principal and not to each other.

Viewing the citizen only in terms of a recipient of benefits, Walzer maintains, also deprives citizens of any moral obligations. No mutual concern among citizens is promoted. In short, citizens turn out to be passive figures.

Likewise, viewing students only in terms of recipients of benefits deprives them of any moral obligations. Such a passive role

does not promote the development of a mutual concern among students nor between staff and students.

Walzer identifies an alternative to the passive role by drawing attention to Aristotle's concept of the citizen who is a "man who rules and is ruled in turn".<sup>24</sup> It is a situation where every person has a sense of personal participation in the affairs of the state by participating in a government office at some time. This notion reflects an active citizen.

Applying Aristotle's concept to schools is also problematic because it would imply that staff and students would participate as equals. This arrangement does not recognize that staff and students are in schools for different functions. The students are suppose to learn and develop as young people and the staff is required to provide opportunities for the students to learn and develop. Different expectations implies differentiated roles. Therefore, equal and undifferentiated roles for staff and students seem inappropriate in the organization and management of schools.

Walzer outlines a third alternative which seems applicable to schools. He claims a third option is needed because Aristotle's concept of the active citizen is not feasible in contemporary large states and the passive citizen is unacceptable because it seems to create citizens who are compromised, anxious, guilty, and impotent. He suggests that the tie between a citizen and the state can be mediated by various associations in which citizens can take an active part. The citizen does not relate to the state only as a private citizen but as a member of a number of associations so that the associations can help to protect the quality of security available to

each citizen. Through active involvement in various associations, a citizen is indirectly involved in the protection of his liberty even though he is not directly involved in the affairs of the state. The citizen finds his moral and political meaning in his direct involvement in various associations. Self-determination is asserted through active involvement in a number of associations. Citizens can have scope for meaningful involvement through involvement in a variety of associations. This concept of plural associations can build moral and political conflict into citizenship where the citizens' relationship to state authorities is not only a matter of obedience, because he must choose constantly among several loyalties to which he is committed. Such a citizen Walzer describes as being "free, he governs himself, virtuous because of his public spirit, powerful because his actions have significant effects".<sup>25</sup>

Walzer recognizes that this kind of situation could make for a dangerous citizen in that he might not be able to agree with the state authorities at all times which could result in a refusal to obey state authorities. The fact that this kind of pluralism attempts to accommodate the need for protection as well as the need for self-determination creates a situation in which a citizen may be caught in a dilemma when the two objectives are on a collision course. This approach rests on the assumption that "pluralism may not promote 'order' and yet still be socially and morally valuable".<sup>26</sup>

Walzer concludes that a citizen's welfare is best attended to through his participation in groups through which he is more capable of protecting himself and not leaving that entirely to state authorities. The citizen also develops a stronger sense of

responsibility in his group as compared to his relationship to the state. Through his involvement in groups he takes an active role in the primary values of citizenship—protection and responsibility. Walzer emphasizes that pluralist participation is "not a (legal) duty but only a means to realize values that ought, perhaps, to be realized".<sup>27</sup> If the values ought to be realized then the pluralist participation, if it is the only way to realize the values, would be a moral duty.

What application does Walzer's concept of pluralist participation have for schools? First, it must be recalled that the exercise of authority consonant with discretionary justice appears to require a liberal approach to authority. A liberal approach to authority implies a self-governing school where everyone is regarded as an authority and where everyone's authority must be checked because all authorities are regarded as potentially fallible. 'Everyone' includes administrators, teachers, parents, students, secretaries, custodians and anyone else associated with the operation of a school. This liberal notion of a plurality of authorities raises a very difficult question: "How can everyone operate as an authority in schools?" How can children exercise authority? How is it possible for a school to function if the principal is not the sole authority in a school?

Walzer's concept of pluralism suggests the following approach. Everyone connected with a school should belong to associations which can influence the activities going on in a school. Teachers may belong to different school committees and outside organizations, such as teachers' societies, political parties, church groups, community clubs, which influence schools. Parents may belong to similar

associations. Students may belong to school committees and clubs which help to direct the activities planned in a school. The important point emphasized by Walzer is that the participants in the associations must be able to take an active role in the associations. They must be able to determine the course of the association to a considerable extent. Second, the association must be able to influence schools. How can these two conditions be met without the parents losing the services of the school to 'educate' the children and without the children losing their right to an education? How can teachers experience this form of self-determination without destroying the effective leadership of administrators?

Teachers can enjoy this role of self-determination in a number of ways. They can be part of a Faculty Committee which could be the effective vehicle for making important decisions like preparing budgets, identifying curriculum priorities, identifying staffing priorities and identifying organizational and management priorities. The administration could be obligated to administer the school within the parameters outlined by the Faculty Committee. Staff representation on a Faculty Committee could generate a considerable sense of responsibility. Some staff members might not care to sit on such a high profile and time consuming committee. They might sit on a committee with a more limited agenda such as staff development or they might organize special activities like field trips, concerts, or other student activities. Others might plan a division-wide science fair or sit on a provincial executive committee. The important point is that these staff members should have an established procedure for being able to determine the nature of the activity and not just do what

others tell them to do. Each association must have the right to a considerable degree of self-determination.

How could administrators and teachers subject themselves to a situation where they are exposed to this form of plural authorities? It should be emphasized again, that administrators and teachers should not be expected to give up their legitimate responsibilities to students, parents, or anyone else. The staff should be expected to apply strategies like administrative rule-making effectively. They should be expected to exercise their discretion in a context of openness. Their plans, policies, rules, findings, reasons, and precedents should be open so that everyone understands how the school operates. This openness could discourage arbitrariness and improve the quality of justice.

Similarly, the students must have a considerable degree of self-determination in the associations in which they participate. For example, a Student Council should be able to influence its own plans and activities. It should have some discretion over the use of its budget, the social activities which are planned, and the rules and guidelines governing student deportment. The Student Council might have a consultative role in determining what are fair courses of action with students who are destructive and uncooperative with staff and fellow students. They might have a consultative role in identifying what mini-courses might be offered as enrichment in school. They might be involved in discussing concerns students have about certain programs, rules, or staff practices. This would give the Council a degree of self-determination as well as a way of influencing the school. Other students might be involved in other

associations such as fund-raising committees, Art Club, Science Club, Spirit Week Committee, Parent Advisory Council and Grievance Committee. The important point, again, is that each association must have a degree of self-determination as well as channels for influencing the school system.

How might students exercise discretion so as to minimize injustice to individual parties and to improve the quality of justice? First, they could be involved in administrative rule-making as it applies to their associations. For example, they could be involved in identifying the rules governing Council procedures--rules for discussion; procedures for voting, calling meetings and electing officers; and procedures for doing administrative tasks. They could be involved in establishing the rules for the grievance procedures--written and oral presentations, investigation procedures, communication procedures. They could be involved in establishing bookkeeping and banking routines for the Student Council funds. Second, the structure of the activities of their association would have to be open. They would have to be willing and able to conduct open findings, present reasons and precedents and conduct their proceedings fairly. Third, they would have to be willing to be under the scrutiny of colleagues, teachers, administration, parents, and the public. If teachers and administrators are willing to subject themselves to such scrutiny, students could discover how self-determination is facilitated through various forms of scrutiny.

Parents could also belong to associations which enjoy a degree of autonomy as well as channels for influencing the school. Such associations might include a Parent Advisory Council, Band

Steering Committee, Sports Committee, Library Services Committee just to mention a few. A Sports Committee, for instance, might assist the inter-scholastic sports program by discussing and planning the inter-school games, discussing appropriate rules about student deportment at games, soliciting the help of coaches, raising funds, planning year end recognition night, and coordinating school and community club activities. With these kinds of responsibilities, the parents could influence the quality of the inter-scholastic program as well as influence the curricular priorities and the morale in the school generally. Similarly, other associations could provide parents with responsible involvement.

However, if the parents serving on a committee such as the Sports Committee are to have a degree of self-determination, they, as a committee of parents and teachers, must be able to exercise some discretion in matters related to the function of the Committee. They must be able to exercise some discretion in the use of the budget, the rules for student deportment, and the inter-scholastic game plans. If all these matters are pre-determined by the principal or the physical education staff, then the parents are left impotent. They will soon become frustrated and tired of doing only what they are told to do. More important, their contribution to the quality of the inter-scholastic program would be greatly compromised.

These are a few examples of how Walzer's pluralism could be applied to schools to implement a liberal concept of authority. The administration would have to cooperate with each association, and at the same time, could anticipate considerable support from them.

Everyone in a school who assumes some authority would have to

learn to understand and appreciate the moral considerations of exercising discretion. They would have to develop a sense of fellow-feeling so that they could make decisions which are fair and not oppressive. This requires that students, teachers, parents as well as administrators would have to operate from a sense of duty, understand their own rights and those of others, consider the recipient, be morally good people and be committed to act on the principle of justice. They would have to understand the standard of right and wrong and the meaning of right and wrong as well as be committed to conduct themselves on these bases.

How can administrators, teachers, students, and parents operate, in practical terms, within the guidelines outlined above? The plurality of authorities can be introduced only when everyone recognizes persuasion as a basic mode of operation. Although various people in school have specific tasks and responsibilities, they should attend to them with a recognition of the need to defend them with facts, reasons and moral justification. This is not a laissez faire situation where it is not clear who is responsible for what but it is a situation where people are held accountable for the responsibilities which they have assumed. The persuasion can be exercised through rational strategies of persuasion as well as moral strategies of persuasion. These strategies are discussed in the next section.

### III. EXERCISING DISCRETION: RATIONAL AND MORAL PERSUASION

Everyone involved with a pluralistic structure of controlling authorities must know how to use rational and moral persuasion to

promote justice. If the various people in a school have not acquired strategies of rational and moral persuasion, then a school might still be characterized by a plurality of authorities but it may not contribute to the improvement of the quality of justice nor reduce injustice. The inevitable question which arises is: What are strategies of rational and moral persuasion and how might they affect the quality of justice in schools?

What is meant by rational strategy or the rationality of a strategy of persuasion? 'Rationality' is not used in the narrow sense of logic but in the broad sense of "having traction: from being such that their introduction into our deliberations materially alters the complexion of a problem, independently of the tastes, idiosyncrasies, or other attributes of the particular person involved".<sup>28</sup> The notion of traction or rationality entails the following:

1. A rational point does not commit any logical fallacies.
2. A rational point is clearly stated.
3. Rationality requires staying with a problem and dealing only with the way things stand as a result of what has actually been said so far. For example, if A has made a point which B does not wish to accept, however tempted B may be to discontinue the argument or change the subject, B is not acting rationally unless B goes to work on A's point and perhaps shows that A's point involves a confusion or that it would hold only if certain other things were true which are not true.
4. A rational point does not itself create any of the considerations that are to persuade a person. On the contrary, a bribe, for example, creates one of the considerations that are to persuade a person.
5. Rational proceedings are candid rather than opportunistic. They do not involve the invention of arguments for the purpose of persuading a person. Attempts are not made to mislead a person as to how much a point establishes.<sup>29</sup>

These five points do not serve as a comprehensive list of conditions of rationality but suggest a manner of conduct which is generally deemed to be rational. They would affect the interaction of authorities in a school as follows. Suppose a principal, recognized the reading resource person as an authority on interpreting the results of reading tests. Suppose, further, that the principal does not accept the resource person's interpretation of a student's performance on a reading test. The principal would be irrational unless he offered some good reasons for taking issue with the resource person's interpretation. For example, the principal might have observed that the resource person overlooked some relevant information. In that case, the resource person would be irrational if he refused to consider the relevant information identified by the principal even though he is not an authority on analyzing the results of reading tests and the resource person is an authority on this matter. In this situation two authority forces would be serving rational checks on each other.

Second, suppose there are no clear statements in a school about rules governing the conduct of students between classes. Suppose, further that a student, Alice, stopped at the water fountain for a drink of water as she travelled from her math class to her science class. Suppose that the vice principal, Mr. Bates, observed Alice as she stopped for a drink of water. Suppose the vice principal approached Alice and insisted that she report for a detention after school for not proceeding promptly and directly to her next class. Suppose Alice objected to the vice principal's demands on the grounds that she did not know nor could have known

that she must not stop for a drink of water. The vice principal would be acting irrationally if he insisted on the punitive measures if it were true that no clear statement had been made concerning the general conduct of the students during class breaks. In this case the vice principal should yield to the argument presented by the student if the vice principal intended to proceed in a rational manner.

Third, suppose a teacher, Mr. Beck, made the statement "It is always boys who cause all the trouble in class"--in a conversation with Miss Webb. Suppose Miss Webb strongly disagreed with Mr. Beck's generalization. Miss Webb would not be acting rationally if she simply avoided a discussion of the subject raised by Mr. Bates because of the disagreement. Unless special circumstances do not permit a discussion, Miss Webb should work on Mr. Beck's generalization and perhaps show that his position fails to take into account certain points of information about girls in class. Miss Webb might prove to be more of an authority on the particular issue than Mr. Beck who made the statement about boys' behavior.

Fourth, suppose a teacher would like to be excused from school early because his wife is in a hospital expecting a baby. The teacher could try one of a number of things to be excused early from school to see his wife. He could try to bribe the principal so that she might grant the teacher an early leave. On the other hand, he could present the situation to the principal as it is, hoping that the principal would consider the arguments sufficient to grant an early leave. In the former case, the teacher created one of the considerations, (i.e., the bribe) which is supposed to persuade the

principal to grant the teacher an early leave. In the later case, the teacher did not create any of the considerations that are to persuade the principal. The former approach would not be considered a rational approach whereas the later would be considered a rational approach. In the situation where the teacher used a rational approach, he would be an authority on the situation. The principal would rely on him to produce the information relevant to the situation. Even though the principal is required to make the final decision in a matter like this, the authority of the teacher in using a rational approach, should compel a rational principal to take into account the information presented by teacher.

Fifth, suppose a teacher brought a student to the office for misconduct in class. Suppose the teacher reported to the principal that the student had used foul language in class. Suppose, further that the teacher is not sure just what the student had said but the teacher believed that the student probably used some foul words. In this case the teacher was not entirely candid about the student's misconduct. It would appear that the teacher 'invented' the argument that the student used foul language. The invention was presented with the aim of persuading the principal to take concrete action with the student. The teacher's action would not be considered a rational approach. The principal would have to exercise her authority to check out the teacher's allegations and when they were discovered to be unfounded, the principal would have to exercise her authority to act contrary to the allegations presented by the teacher.

These examples illustrate how rational strategies of persuasion make justice possible in the context of a plurality of

authorities in schools. A plurality of authorities need not result in anarchy if a rational approach is adopted.

A second set of strategies is required to deal with moral issues in schools. Throughout the thesis, numerous moral issues which arise in schools have been identified. Therefore strategies of moral persuasion are required by those who exercise discretion in schools. Since it is argued in this study that schools should be organized and managed on the basis of a liberal view of authority, it follows that the school organization should be characterized by a plurality of authorities. Hence everyone in school should exercise some discretion. Therefore everyone requires strategies of moral persuasion.

The normative conceptual framework developed in this study provides a range of strategies for moral persuasion by identifying numerous types of moral judgements for resolving ethical and moral issues. The five classes of moral terms and judgements developed in Chapter III, it is argued, should be used in the context of the human sentiment of fellow-feeling. In other words, the duties, rights, motives and deserts of the recipients relative to each other must be established in resolving ethical and moral problems in pursuit of justice. This type of resolution of moral issues constitutes moral persuasion. Nothing else should persuade people that a decision or an act is morally right. The numerous judgements entailed in the development of this type of justification have been developed in Chapter III and illustrated in Chapter IV.

This notion of moral persuasion places a difficult responsibility on everyone in schools who exercises discretion.

Those who exercise discretion, whether they be students, teachers, secretaries, custodians or principals, must be prepared to be subjected to the scrutiny of the moral judgements outlined in the normative conceptual framework. Everyone has to learn to understand and use the numerous kinds of judgements developed in the framework if moral issues are to be resolved on the principle of justice. The normative conceptual framework would control the moral persuasiveness of the exercise of discretion.

#### IV. ESTABLISHING RULES: PRINCIPLE OF JUSTICE

The discussion of checking and structuring the use of discretion as well as the discussion of the exercise of discretion all point to the importance of the principle of justice. Moreover, the principle of justice is also important for the establishment of rules in schools.

It was pointed out earlier that the formulation of rules is a desirable way of controlling the use of discretion in many instances.<sup>30</sup> Many studies of schooling<sup>31</sup> also point out the importance of rules for controlling activities in schools. This raises the following questions: What standard of right and wrong must school rules meet? What would schools be like in which the rules conformed with the standard of right and wrong?

As was pointed out earlier, the answer to the question "What is the standard of right and wrong?" requires some understanding of the human condition. It must be understood that the human condition is characterized by the existence of conflicts of interest among individuals and groups. For example in School-teacher: A Sociological

Study,<sup>32</sup> Dan Lortie claims that teachers are caught in a dilemma since teachers have mobilized power<sup>33</sup> through collective means. The dilemma is created by the following situation, as described by Lortie:

responses from bargaining opponents will probably focus on collective obligations; teachers' individualism will come under pressure as school boards make demands on the entire group. Agreements signed by teachers' representatives will carry the obligation to ensure that members adhere to the stated terms; the need for internal discipline will increase as teachers are forced to prove their reliability as bargaining partners. Counter demands would add to the points on which the group, acting through its leaders, would be expected to control individual teachers. Voluntary ties among teachers would be supplemented (and perhaps replaced) by increasingly coercive rules. Yet leaders may balk at enforcing such rules, refusing to engage in what they will call 'management obligations'.<sup>34</sup>

This description of some of the consequences of collective bargaining provokes the following dilemma for teachers: "teachers will have to choose between more collegial discipline or the greater exercise of authority by administrative superordinates".<sup>35</sup> Lortie claims that in either case the autonomy of the individual teacher will be reduced. The apparent issue faced by teachers is what kind of external power is preferable? However, the real issue is the teachers' objections to the reduction of their autonomy. The teachers' object of interest is to gain autonomy, not lose it. The administrators' object of interest, according to Lortie, is to retain power or authority to manage teachers. Consequently, a conflict of interest has developed between teachers and administrators as to who should have effective power to determine what goes on in schools. The existence of a conflict of interest may lead to an effort, by both parties, to obtain the same object of interest thus putting them into competition with each other over the object of interest.

Different strategies can be considered to resolve the conflict

of interest. A compromise might be negotiated. This is how school boards and teachers' unions settle their conflicts of interest. Sometimes they have to appeal to a third party to arbitrate a settlement when they are unable to negotiate a settlement. Frequently sets of rules are established to govern human relations. Suppose teachers and administrators wanted to resolve their conflicts of interest concerning the distribution of effective power in schools by setting up appropriate sets of rules. Suppose further, that both parties wanted the rules to comply with the standard of right and wrong. Then the question is: What characteristics would such rules have?

First, the set of rules would be just. In other words, the rules governing the distribution of power or authority over what goes on in schools would be just. It would seem that, according to Lortie, the introduction of collective bargaining has not in fact transferred authority to teachers but has transferred it from administrators to teachers' union leaders. This situation does not appear to introduce a liberal view of authority nor a plurality of authorities which involves the teachers. Collective bargaining does not necessarily change what Lortie refers to as a truism of organization (based on Parson): "that administrators need a degree of autonomy and authority to carry out their responsibilities".<sup>36</sup> Lortie describes the conventional distinction between the role of administrators and that of teachers as follows:

teachers work under administrators--the latter term is used to distinguish managers from teachers. Without the title to identify their managerial functions, teachers do not benefit from the principle of administrative discretion. Nor are they expected to show the personal qualities (e.g., independence in decision-making, aggressiveness) which mark the manager. Teachers rarely have budgetary discretion and the other prerogatives which are part

of the manager's working equipment. In status terms, teachers are disadvantaged compared with managers; imperatives which flow from their managerial tasks are likely to be misaligned with their formal status.<sup>37</sup>

What set of rules governing the effective distribution of power would be just? The set of rules must not favor one recipient over some others without sound principles or reasons. It would seem that administrators and union leaders are favored over teachers. However, are administrators and union leaders favored on the basis of sound principles or reasons? The favored status of administrators is based on the truism articulated by Parson. The favored status of union leaders, Lortie argues, is forced by the school boards with whom union leaders entered into a bargain on behalf of the teachers. Both reasons discriminate in favor of one of the recipients in that the truism favors administrators and the role of union leaders in the collective bargaining process favors union leaders. In neither case have teachers themselves gained power or authority. What justification is there for favoring administrators or union leaders for these reasons? Is the discrimination justified on the principle of justice? No reference is made to the principle of justice. In fact, that is one reason why teachers are caught in the unacceptable dilemma of having to accept more discipline from union leaders or a greater exercise of authority by administrative superordinates.

How might the dilemma of distributing power be resolved on the principle of justice? In other words, how might the teachers' dilemma of choosing between collegial discipline (i.e., discipline meted out by union leaders) and a greater exercise of authority by administrators be resolved? The solution to this dilemma seems to lie

in the relationship between teachers and administrators as described by Lortie. That relationship is not in accord with the principle of justice as it (the relationship) relates to the duties, rights, motives and deserts of teachers and administrators. In short, the relationship is unjust or unfair in that the rules governing the distribution of power in schools favor administrators without sound principles or reasons. What would the relationship be if it were based on the principle of justice?

First, teachers would not work 'under administrators' but would share the principle of administrative discretion. Teachers would participate in the formulation of rules and in the scrutiny of rules. In fact, it would be the duty of teachers and administrators to come up with good rules and to enforce them fairly. Second, teachers would have a right to make decisions. It would be understood that teachers know much more about many aspects of the curriculum and how children learn than the administrators of a school could ever know. Therefore teachers would be regarded as authorities in many areas and would have a right to plan what should be done in schools. Third, teachers' motives would not be suspect when they assert independence. Independence would not be treated as a morally bad motive for teachers. Teachers would not be viewed as being more selfish than administrators. Fourth, it would be recognized that teachers deserve to be involved in the distribution of power in schools. They deserve a sense of autonomy which they need to make individual assessments and decisions about students whether it concerns their performance or their deportment. In short, if rules governing the distribution of power or authority are based on the principle of justice, then the relationship

between administrators and teachers changes from that, of subordination to shared administrator discretion. Teachers would have budgetary discretion, curriculum discretion, scheduling discretion just to mention a few substantive issues in schools.

A set of just rules governing the distribution of power or authority between teachers and administrators would affect the dilemma in which teachers have to choose between collegial discipline or greater exercise of authority by school administrators. Teachers and administrators alike would be authorities on the basis of rational and moral persuasion. Teachers would not be subordinate and therefore that dilemma would not exist. The relationship between union leaders and teachers would be similar to the relationship between teachers and administrators based on the principle of justice.

The rules would have a second characteristic besides being just. They would also be as unrepresive as possible. What would a school be like in which the rules governing the distribution of power or authority are as unrepresive as possible as well as being just? To begin with, this characteristic presupposes a liberal view of authority as well as a plurality of authorities as outlined in previous sections which means that teachers and administrators alike would not establish rules which are oppressive. For example, the principal of a school has the responsibility of preparing periodic reports on each teacher for the superintendent's department. The preparation of these reports include that the principal collect relevant information on each staff member in order to prepare a fair report. The procedures for collecting relevant information may include any number of the following:

- (a) Observing a staff member teach a formal lesson several times;
- (b) Recording every instance when a teacher refers a student to the office;
- (c) Observing a teacher in the classroom for one hour every day for a month;
- (d) Inviting the superintendent to make a surprise visit to a teacher who is being evaluated;
- (e) Soliciting a team evaluation of a team member through a team discussion of the teacher's general performance with students;
- (f) Inviting parents to come to school to observe a teacher who is evaluated;
- (g) Presenting difficult hypothetical situations to a teacher to find out how the teacher thinks they should be handled;
- (h) Observing a teacher's performance the last hour of classes on Friday;
- (i) Conducting open discussions of observation lessons with the teacher being evaluated.

A principal would be fair to all the teachers if he selected any one of these procedures and applied it to each teacher because everyone would be exposed to the same treatment. However, the rules are quite different from each other in that some procedures demand a much greater object of disinterest than others. Some procedures are more repressive and others are more liberal. A repressive rule (or procedure) makes people suffer more objects of disinterest than does a liberal rule. A rule which is as unrepressive as possible enables people to satisfy their interests to the maximum degree and makes them

suffer the fewest possible objects of interest.

Undoubtedly teachers would feel that some of the procedures outlined above are more repressive than others. For example, inviting the superintendent to make a surprise visit to a teacher who is being evaluated probably is one of the more repressive steps to take as compared to conducting an open discussion of observation lessons with the teacher who is evaluated. Observing a teacher's performance the last hour of classes on Friday is more repressive than observing a teacher on various days of the week at various times of the day. The rules governing teacher evaluation should not be repressive but as liberal as possible without being unjust. Evaluation procedures should ensure that the teacher's strong qualities (satisfy the teachers interests to the maximum degree) are properly presented in any evaluation report and the procedure for collecting relevant information should avoid inconvenience and interference (make teachers suffer the fewest possible objects of interests) in the classroom as much as possible.

Similarly teachers must not introduce rules which are repressive to others, including administrators. For example, a teachers' union should not insist upon teacher evaluation procedures which are unduly repressive for administrators to implement. Unions for example, expect administrators to document evaluative reports which they prepare on teachers, especially if the report includes some unfavorable observations about a teacher. This is, undoubtedly, a reasonable and fair expectation provided that the documentation is not so detailed that the procedure becomes unduly repressive. If a principal is expected to keep a daily log on his or her communication

with each staff member, then the procedure is so repressive that the principal would have time for little else than writing logs.

Precisely what constitutes appropriate rules for documentation should be worked out among teachers and administrators in an open context of rational and moral persuasion so that the set of rules will be just and as unrepresive as possible.

In summary, just schools are characterized by rules which are just and as unrepresive as possible. Needless to say, the scenarios used to illustrate the establishment of rules also pointed out that the rules must be implemented with impartiality. Teachers and administrators alike should be impartial when they implement rules. On the other hand it must be noted that impartiality does not ensure justice. Rules must meet the standard of right and wrong to ensure justice.

The examples used to illustrate the establishment of rules which conform to the standard of right and wrong do not present a comprehensive account of what a school would be like where justice prevails. However, the illustrations bear on some of the most important relations influencing schools, namely, the type of authority relations which exist in schools. If these relations are established on the principle of justice then much of what goes on in schools will be just.

This concludes a brief outline of how a school might be organized and administered on the principles of liberal authority and discretionary justice. The application of these principles is a matter of making a commitment to operate on the basis of these principles. It is a life time commitment and their

effective implementation requires the company of the committed. To implement these principles demands the cooperation of all the members of a staff or school division.

In summary, the implications of the normative conceptual framework for the organization and management of schools are significant.<sup>38</sup> Such schools would be characterized by a liberal view of authorities, a plurality of authorities, the use of rational and moral persuasion as well as the use of rules which are just. Studies conducted on schools do not identify these as dominant characteristics of schools. In fact, schools commonly reflect the opposite. Therefore, the introduction of these characteristics through the adoption of the normative conceptual framework developed in this study would constitute a major change in schools.

## V. SUGGESTIONS FOR FURTHER STUDY

At this point, two steps should be taken. First, descriptive empirical research should be initiated to establish the applicability of the conceptual framework since this kind of research was not attempted as part of this study. Empirical research should include continued critical review of the framework itself with the aim of revising it wherever necessary. Second, a program of studies on "Discretion and Justice" should be introduced for administrators.

### A. Empirical Research on the Framework

A number of empirical questions must be raised about the

extent to which the normative conceptual framework is grounded in real experience because these questions have not been dealt with in this study. The questions can be organized under the following areas of concerns.

(a) Using moral terms and judgements.

- What substantive moral issues do school administrators encounter?
- How selective is the use of moral terms and judgements?
- Which moral terms and judgements are administrators most commonly using and how adequately are they being used?
- What are the implications of selective usage and how can such usage be changed?
- How can administrators be encouraged to develop a more differentiated and integrated usage of moral terms and judgements?
- What is the correlation between the way in which teachers and administrators use moral terms and judgements?
- How does the use of moral terms and judgements affect the organization and management of schools?

(b) Using discretion.

- What substantive issues do administrators resolve by discretion?
- How widespread is, in fact, the use of discretion by administrators?
- How widespread is the use of administrative rule-making and on what issues is it used?
- How widespread is the use of hypothetical rule-making and on what issues is it used?

- How do administrators proceed from the use of unguided discretion to the formulation of rules so as to attain an appropriate level of rule-making for different issues?

- How is discretion used to promote justice?

(c) Promoting justice in schools.

- To what extent are schools just or unjust?

- How can studies like those of Coleman,<sup>39</sup> Jenks,<sup>40</sup> and Bowles and Gintis<sup>41</sup> be conducted in Canada to determine the degree of equality or inequality prevalent in Canadian schools?

- How is the quality of justice in schools affected by what goes on at home and in the community?

(d) Promoting justice in society.

The research should not stop with schools as was pointed out earlier, the studies on the quality of justice in schools, also points out that much injustice occurs outside the schools and spills into schools. Therefore studies should be conducted on how the normative conceptual framework could be used to improve the quality of justice at home, at places of work and in government. Issues to be studied are:

- To what extent do people in general use moral terms and judgements?

- How can strategies of rational and moral persuasion be used in all walks of life?

These are, indeed, difficult areas in which to conduct empirical studies because of the normative dimensions of these issues. Probably an ethnographic approach, similar to Lightfoot's study<sup>42</sup> on political reasoning, might be suitable for studying these issues.

B. Program of Studies on "Discretion and Justice"

The application of the framework shows that the responsibility of administrators for exercising discretion and for resolving ethical and moral issues is complex. The application of the normative conceptual framework in a manner which is rationally and morally persuasive is not only complex but important because it improves the quality of justice and reduces injustice. The implications of the use of the framework are profound since it vitally affects fundamental relationships and management procedures. A plurality of authorities based on a liberal view of authority changes the relationships among administrators, teachers, students, secretaries and custodians in a manner which places a moral responsibility on everyone because everyone has some discretion.

What steps should be taken to prepare administrators to assume their responsibilities? The importance of this question is reflected in the analysis of the case study in Chapter IV. The analysis pointed out that many of the moral terms and judgements outlined in the normative conceptual framework are, in fact, used in the case study. This observation concurs with numerous studies about schools. Other judgements were suggested which could have helped to scrutinize some of the statements made by the participants in the case study. Still other aspects of the framework were not applied. The analysis raises the question: How could the case have been resolved if all relevant moral judgements had been used? Although this issue was not dealt with in the analysis of the case, it is an important issue if the normative conceptual framework identifies the moral terms and judgements which should be used to resolve ethical and

moral issues. Chapter III clearly makes that point. Therefore, it is important to identify what should be done to prepare administrators to use the normative conceptual framework as an effective decision-making and scrutinizing tool to improve the quality of justice and reduce injustice in schools.

A program of studies should be established in the university setting to provide administrators with a clear understanding of what is involved in resolving ethical and moral issues and what conceptual tools should be used to resolve ethical and moral issues. The program of studies should include the following. First, the program should provide an introduction to moral theory. This would include a study of moral terms (as compared to non-moral and a-moral terms), standard of right and wrong (as developed by various philosophers), and the meaning of right and wrong (as developed by various philosophers). This component of the program of studies would concentrate on readings, discussions and the preparation of papers so that administrators would become acquainted with the theoretical context for understanding ethical and moral issues. An introduction to basic moral theory could help administrators to become aware of and understand their own conceptual framework more clearly and to learn to scrutinize alternative conceptual frameworks. This would set the stage for developing a more integrated and differentiated conceptual framework with the assistance of the conceptual framework developed in this study.

The second part of the program of studies should focus on how the conceptual tools apply to the resolution of ethical and moral issues and how the conceptual framework is grounded in real

experience. Unless administrators are able to apply moral theory to actual situations, their knowledge of moral theory may contribute very little to the quality of justice in schools. Therefore, administrators should not only become familiar with a normative conceptual framework but they should apply it to hypothetical or actual <sup>case</sup> case studies in order to learn to make decisions to scrutinize statements made by others. The practice of applying the framework could be made available in several ways. Administrators could analyze (scrutinize) hypothetical or actual case studies to learn to use the framework to scrutinize other peoples' arguments. Initially vignettes or dilemmas could be used to focus on specific aspects of the framework. These could lead up to an analysis of reported case studies and finally to an analysis of case study kits which contain documents, interviews and reports. Simulation activities could also be organized in a manner similar to the moot court experiences that are planned for law students. Whatever, the activity might be, it should always be followed by discussion because it provides a forum for using the conceptual framework to make decisions as well as to scrutinize what others have to say.

The program of studies should have a third part which should focus on the implications of the framework for organizing and managing schools. This part should include a discussion of a liberal view of authority, a plurality of authority, rational and moral persuasion as well as exercising discretion. These topics should be discussed to explore how they can be used to improve the quality of justice and reduce injustice in schools. Participating administrators could select specific schools to find out what view of authority has

been adopted by the administrator and teaching staff and what the implications might be for the school to adopt a plurality of authorities. For such a transition to take place it would have to be accompanied with a training program for staff and students so that they would understand the new roles of authority for everyone. The training workshops would have to deal with strategies of rational and moral persuasion as well as skills for exercising discretion (i.e., administrative rule-making skills, instruments for open structures, and supervision roles and procedures). The purpose of the field study would not be to change the schools which are being observed but for the administrators in the program to acquire an understanding of some of the implications of the conceptual framework for the organization and management of schools.

The development of a program of studies for school administrators should be one of the first consequences of developing a normative conceptual framework. Administrators must become familiar with the framework and must learn to use it in the day-to-day organization and management of schools so that the development of a framework may, indeed, help to improve the quality of justice and reduce injustice in schools. It has been pointed out in this study that the possibilities for injustice are numerous in schools due to the widespread use of discretion and the numerous ethical and moral issues which arise in schools. Steps should be taken to confine, structure and check the use of discretion so as to promote justice. The normative conceptual framework developed in this study provides a set of conceptual tools (i.e., moral terms and judgements) with which to promote justice through the exercise of discretion.

Administrators should learn to use the framework.

In conclusion, moral terms and judgements should be used by administrators, as well as everyone else in schools, to resolve ethical and moral issues. Not to do so is irresponsible.

## FOOTNOTES

<sup>1</sup>The liberal and illiberal view of authority viewed in this Chapter have been developed by Ronald Schwartz in "Toward a Liberal View of Educational Authorities", Teacher College Record, 78:4 (May, 1977).

<sup>2</sup>K.R. Popper, The Open Society and its Enemies, Vol. I (New York: Harper & Row, 1962), p. 122.

<sup>3</sup>Plato, The Apology (New York: Bobbs-Merrill, 1950), p. 43.

<sup>4</sup>John Stewart Mill, On Liberty.

<sup>5</sup>John Dewey, Liberalism and Social Action (New York: Copriwin Books, 1935).

<sup>6</sup>Bertrand Russell, A History of Western Philosophy (New York: Simon and Schuster, 1945).

<sup>7</sup>F.A. Hayek, Studies in Philosophy, Politics and Economics (New York: Simon and Schuster, 1969).

<sup>8</sup>K. Popper, The Open Society and its Enemies, Vol. I.

<sup>9</sup>Ibid., p. viii.

<sup>10</sup>John Dewey, Liberalism and Social Action, p. 54.

<sup>11</sup>Bertrand Russell, Unpopular Essays (New York: Simon and Schuster, 1950), p. 157.

<sup>12</sup>E. Kant, Education (Ann Arbor, Michigan: University of Michigan Press, 196 ), p. 177.

<sup>13</sup>J.J. Rousseau, The Emile of Jean Jacque Rousseau (New York: Teachers College Press, 1967), p. 76.

<sup>14</sup>J.S. Bruner, The Process of Education (New York: Vintage Books, 1960), p. 19.

<sup>15</sup>C.H. Rathbone (ed.), Open Education: The Informed Classroom (New York: Citation Press, 1971), p. 531.

<sup>16</sup>Bertrand Russell, Authority and the Individual (Boston, Mass.: Beacon Press, 1960), pp. 54-66.

<sup>17</sup>K.R. Popper, The Open Society and its Enemies, Vol. I, p. 25.

<sup>18</sup>Plato, The Apology, p. 39.

<sup>19</sup>A.S. Neill, Summerhill (New York: Hart Pub., 1960), p. 46. Reference to A.S. Neill is not to suggest that Summerhill reflects an educationally desirable system of checks and balances of educational authority. Neill's somewhat contradictory statement about authority are recognized.

<sup>20</sup>A.S. Neill seems to romanticize the ability of children in some of his writings.

<sup>21</sup>Bertrand Russell, Sceptical Essays (New York: Barnes & Noble, 1963), p. 132.

<sup>22</sup>Michael Walzer, Obligations, Essays on Disobedience, War and Citizenship (Cambridge: Harvard University Press, 1970).

<sup>23</sup>Ibid., p. 205.

<sup>24</sup>Ibid., p. 209.

<sup>25</sup>Ibid., p. 222.

<sup>26</sup>Ibid., p. 223.

<sup>27</sup>Ibid., p. 225.

<sup>28</sup>J.F.M. Hunter, "The Possibility of a Rational Strategy of Moral Persuasion", Ethics, 88 (1977), p. 185.

<sup>29</sup>Ibid., p. 187.

<sup>30</sup>K.C. Davis, Discretionary Justice: A Preliminary Inquiry.

<sup>31</sup>See D.C. Lortie, School Teacher, A Sociological Study (Chicago: University of Chicago Press, 1975); S.B. Seymour, The Culture of the School and the Problem of Change (Boston: Allyn and Bacon, 1971); S.S. Boocock, An Introduction to the Sociology of Learning (Boston: Houghton Mifflin Co., 1972); R. Dreeben, On What is Learned in School (Don Mills, Ontario: Addison-Wesley, 1968).

<sup>32</sup>D.C. Lortie, School Teacher, A Sociological Study.

<sup>33</sup>"Power" seems to be used by Lortie to mean "actual authority". Ibid.

<sup>34</sup>Ibid., p. 224.

<sup>35</sup>Ibid.

<sup>36</sup>Ibid., p. 166.

<sup>37</sup>Ibid., pp. 166-67.

<sup>38</sup>Michael E. Manley-Casimir, "School Governance as Discretionary Justice", School Review, 82:1 (February, 1974), 347-362.

<sup>39</sup>J.S. Coleman, et. al., Equality of Educational Opportunity (Washington, D.C.: U.S. Government Printing Office, 1966).

<sup>40</sup>C. Jenks, Inequality: A Reassessment of Family and Schooling in America (New York: Harper & Row, 1972).

<sup>41</sup>Samuel Bowles and Herbert Gintis, Schooling in Capitalist America (New York: Basic Books, 1976).

<sup>42</sup>S.L. Lightfoot, "Political Reasoning: Through the Eyes of Teachers and Children", Harvard Educational Review, 43:2 (May 1973), 197-244. See also Van Clive Morris, The Urban Principal: Discretionary Decision-making in a large educational organization (Chicago: University of Illinois, 1980).

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APPENDIX

APPENDIX

Taped interview with the Principal of Valley Town Collegiate regarding the removal of the novel Of Mice and Men from the curriculum.

- I. When a parent, who had a student in the class which was reading Of Mice and Men, objected to the use of the book in public schools, you indicated to the parent that an alternate book could be taught to students whose parents objected to the book. How did you justify your use of discretion to accommodate parental censorship of curriculum materials?
- I. It's a loaded question.
- P. I can answer the question and talk about some of the other factors that existed or the other way around. But the basic question that we took and it was more or less a staff decision as well, was that if in fact a parent insists on censorship for his or her own student, that is acceptable--has to be acceptable. There is an overriding, the parent has some overriding censorship power for their own student, but, we also took the position a parent cannot censor material for other parents' children so that we would accommodate, you know, what we believe to be the parents' wishes but that was the limit that we would place on it at the same time. I believe that to be a good or strong principle on which to base any case we might take from there, but, also practically it was a very good way to deal with the problem. If the teacher had insisted that we pursue the case, then I would have been a little

more hesitant at the time. Then I would have tried some more avenues. Quite honestly the teacher suggested that route and said that he wished to pursue that route and we examined not only, I called all the English teachers in and we examined it and talked about it and there was basic agreement that that was the route that was acceptable and that the principle that I announced first was acceptable. We thought that because of the overriding parental authority prerogative and that if we could achieve the objectives that we wanted to achieve in some other way we should be able to do that. I guess I did a great deal of research during that time about authority, curriculum authority and so on and before we came out with our decision you know, about the insistence of the parent, because it took a little bit of time because I had had rumor about this before he called.

- I. Because you moved fairly fast on it because you got the call on Friday and on Monday you responded to the . . . .
- P. I had a rumor.
- I. I see, so you had time to think about it. That's how you were able to have time to meet with the Department.
- I. What are the courses of action which came to mind besides saying that a parent has the overriding prerogative of being able to take issue with some aspects of the curriculum providing that those same objects could be met in some other form? In this case you stuck with the same author. You just took a different book with which, it could be argued, the objectives probably were met.
- P. We discussed other courses of action and we in fact pursued other courses of action. I phoned the Department and I drove in that

Friday night, I think. I drove in at one time and sat down and I talked to the Department trying to get a commitment from them in support of the materials, in support of any materials. The answer I got is that it's a local concern and you will get no help from us. That's one of the other things we considered. I phoned the Minister of Education. I could get no commitment. Those are authorized textbooks but local discretion.

- I. Their emphasis was upon local discretion to be exercised by whom?
- P. By whom? The school board had the ultimate authority. You'll read that into one of the . . . into our presentation. We recognize the school board has the authority. That's part of my answer to the second question. In fact, they have the legal authority probably, but they also have some moral responsibility to deal with it in a certain way and that's why we pursued it. We pursued those avenues. We saw nothing there. We went to the Public Schools Act. There was nothing there to comfort us in terms of any kind of support. We saw the Public Schools Act as saying that there was an overriding parental prerogative. We did not want to see our program go down the tube because certainly they could have found objections to a half a dozen books plus the library . . . . The library got embroiled in an issue later. We did not want to create the kind of stir, a kind of a purge of the school. We felt because the ground that we, after our research found we stood on, this is the position we took. The parent wasn't happy with that. He felt that it was an unacceptable book and that he should remove it. He should be responsible for removing it from the school entirely and pursued it on that basis.

- I. You mentioned that the board has the legal authority but that there probably is also a moral obligation. What is the moral obligation that you are referring to?
- P. Well, I guess, the moral obligation I am referring to is the obligation to involve the professionals, to consult teachers, to involve them in the discussion of two things: of complaints but also the whole area of, I really believe, that the authority to choose materials and the way they are going to present materials and the methodology and so on lies with the teacher. It's a position that I have maintained throughout my teaching career and that in fact, you know, I have a much stronger position personally, they've no business getting into that area at all, but . . . .
- I. Does a parent have no moral obligation to sort out the materials that . . . .
- P. My position is softened that much that, certainly we have an obligation to discuss what we are doing and be able to justify what we are doing at all times and that we should be willing to justify that to parents.
- I. But there could be a number of moral principles and parents could come with one set of moral principles and a teacher with yet another. If the English teacher for example, had not concurred with you, then there would have been three positions here--the parents', yours and the English teacher, let's say, had taken the position that he is the person who is trained in English, in specifically English Grade IX. He must make that ultimate discretionary decision as to whether it is John Steinbeck's Of Mice and Men or John Steinbeck's, what's the other book? The

Pearl? That means that we have three moral principles that are competing with each other. How would you sort that out?

- P. I would have supported the teacher's position if he had taken that.
- I. How would you justify taking that position over against the other two positions?
- P. In terms of what I have said about the teachers. The teachers having the authority. I would have said, yes, you have the right to choose and after all your discussions and so on, I think you have to involve the parent. No problem with that at all. But after your discussion with the parents and your looking at the situation from every possible angle, you determine that this is what has to be done. Then I would support him because an overriding principle for me is that the teacher has to make that ultimate decision and has to take the responsibility for it.
- I. That is more overriding than the principle that a parent has a right to prioritize the readings of his or her own child?
- P. Well, I think, it would have been tested in that instance. That is a hypothetical question. I would think if a conflict existed between those two, which I think we avoided by the action we took . . . . I'm not sure which way I would go on that. But I know that, I'm pretty sure that I would have supported the teacher's right to do that. I really believe that at the present time. That has a lot to do with who the person is--in terms of how I trust their judgement, and so on, and their competence. That's where I get into the whole area of personal judgements and discretion--in that sense a discretionary action. There are other

factors that entered into this whole thing. You might want to consider one of the biggest problems which maybe considered an extraneous kind of factor but it was really the key to the whole thing . . . was that the English teacher was Jewish and the reference in the book was interpreted in such a way as a put-down of Jesus Christ the way it was written. The discussions earlier were that that's all you expect from a Jewish person. So, that's why you would have found me taking a very defensive kind of position because to my way of thinking that has no part of the issue--should not be a part of the issue.

- I. That was an imposed racist interpretation, a kind of ad hominum argument?
- P. I, in fact, believe that if he hadn't been Jewish that it would not have become an issue. Now we could never say that. We could never say that, but it's a comment that was made openly by the parent and was made in camera at a Board meeting. So that's the other factor when I really would have risen to his defense on the other issue. You know, I hadn't thought about the priority of those two but I think the overriding priority probably would be that the parent would have overriding authority.
- I. Maybe there are other principles that have to be used to sort out the prioritization between those two. For example, maybe the principle of freedom of expression, the principle of justice.
- P. I think that would change from situation to situation. I wouldn't doubt that at all. This is a kind of situation I'm just thinking back to some of the things I said. When I think about this situation, I would have come out in support of the parent having

the overriding prerogative. I believe that the final responsibility rests with the parents in most of these cases as well. I know and I agree with the fact that in the school system we have compulsory schooling for a societal kind of reason and I accept that and I believe in that and it's almost a protection from their parents in some instances. At the same time, that was not in jeopardy here at all. It was not the day of proliferation of the private school issue.

I. Let's have a look at the second question:

When you received instructions from your Superintendent to remove the novel on the grounds that the Board insisted on the removal of John Steinbeck's novel, Of Mice and Men, from the curriculum, how did you justify your discretionary judgement to take issue with the Board's decision?

I get the impression from your initial response to the Superintendent that it wasn't altogether clear what stand the Board had taken because you came back to him and asked him, "Did the Board pass a motion to the effect that the book must be removed?"

The Superintendent didn't answer the question, according to the press release. He then came back to you a day or two later and said the Board insists that that book plus other similar literature be removed from the school.

P. The dynamics, I'm not sure about the dynamics. I can only speculate on what happened in terms of what happened. But, initially you are right, they passed a motion something to the effect that 'all the books of an offensive nature' and my immediate response was we do not consider this book to be of an

offensive nature. 'Do I remove it or don't I remove it' caused some confusion for him because he thought he would get out of it, I believe, he thought he would now escape this thing because it was an established fact that this was an offensive book, I think. We had never accepted that fact that it was an offensive book so my response was, O.K., I'm willing to do that. Which are the offensive books? And I said, is this an offensive book? We don't think it is. He wasn't willing to respond to me at that time when he told me about the motion. You know that's where the thought came out whether they passed the motion.

- I. You took issue with your Superintendent at that point by taking issue with the discretion which he had exercised because the Board hadn't in fact said "you remove Of Mice and Men". They used the 'offensive nature' clause up until that point, at least. So you exercised . . . .
- P. They never passed a formal motion to remove it either.
- I. Not the book itself. They stayed with the 'offensive nature' clause. And then the Superintendent played to them, you might say, by putting their interpretation on it. You took issue. You exercised your discretion. Some principals at that point, would have said, "Well, sir, if you take the responsibility then I can go home and go curling. My job is finished and it is easy because I can say to my staff, "I have no choice. The Superintendent has spoken!" I'm sure those words have been used at one time or another. You exercised discretion at that point on what basis?
- P. The principles are basically what I have alluded to before. First

of all, I believe the authority to choose the materials and so on basically lies with the teacher and that for practical purposes as well. But, the principle exists so far as I'm concerned. We recognize the overriding authority of the Board but we also said "You have a moral obligation to involve us in that decision". Unless you do that we are not going to take any action. That was my initial stand. Unless you are prepared to sit down and discuss with us and justify what you have done because we don't see any justification for it. It was a little bit of a heated debate at that point. If we don't see any justification for it, then we are not going to do what you are asking us to do. And certainly we are not going to guess at what you ask us to do. That's the last thing we are going to do. Because we are not going to get into the space where we are going to guess what your motives are and what actions you want and so on, because we would be running all over the place not knowing what to do. There's a future consideration too because we wanted to make a big enough issue of this so that this would not recur--that kind of a situation where they . . . what we call infringement, what I call infringement on kind of my territory, on our teaching territory by a board without any kind of discussion and so on. Perhaps the taking of a complaint by a minority group or an individual, that's the other principle, and acting on that without any consultation and that whole kind of way of proceeding really bothered us. We did not want, I didn't want to see that happen. So, we wanted to, I wanted to establish some precedent for acting in a certain way and establishing certain consultative processes for complaints but

also for action.

I. The process of justifying . . . .

P. That's right, a consultative process kind of thing so that we would be clear. We would not be trying to anticipate what the Board wanted here and what they wanted there. And, I did remove the book eventually, under protest because, I forced his hand. I said, there is no way I'm removing the book unless you tell me to remove the book. He said, "well", and then he walked out, kind of thing. He went back and talked to a few board members and I'm sure they told him, yes, we want that book out.

I. There wasn't a meeting?

P. There was no meeting. There was no formal discussion by the board. That's kind of why I did it under protest as well. I registered my protest, and said, yes, I will do it, I think you are making a grave error and we do not believe you are doing the right thing in terms of a number of things which we pointed out in a little brief that we drew up. So I went and removed the book. I went into the classroom. I guess, I used my discretionary power again. I went into the classroom. I explained to the kids the decision that was made. I did not talk about whether I agreed with it or not. I said this is the decision that has been made. We have no choice at this point in time. I'm going to give you this class so I want you to wrap up your discussion. Now, I had talked to the teacher about it before. That's why I handled it--to remove him from the threat; he was non-tenure. So I went in and said "you have this class to wrap up the discussion. If you wish to pursue this at any time you are going to have to

pursue it with somebody else because these are the orders I have", and so on. It caused quite a stir of course. I took the books. I wasn't told what to do with them. I had 87 copies or something Of Mice and Men in my basement at home. I was told they had to be out by Friday at noon. I took them out by Friday at noon. I took them . . . I asked the kids to get them out of their lockers and if they had them at home to bring them back to the school on Monday and bring them to my office. And that was it.

I. Did you have a lot of students take issue with returning the books?

P. No.

I. None?

P. They were grade IX students, first of all. If they had been grade XII students, we would have had a fantastic up-roar of course. They were grade IX students. The whole thing kind of mystified them. You know, they were first of all, you can never even do the first action of having a kid opt out, without a great deal of behind the scene discussions and so on and, in fact, I discussed that with the class as well at an earlier time. They knew at that point and one thing I think that you have to recognize is that the atmosphere in the school was a very good kind of relationship between the teachers and the students. They recognized that we were being put in a bad spot. That's one thing they recognized. They said that if it means . . . . Of course the story was floating around the community by this time. So most people knew that this was causing us a great deal of concern. It was creating a hassle for us. So they in fact, accepted that

fact fairly readily. Some of them said to us "this is absolutely ridiculous". I made no comment even though I agreed with them completely, you know. But, there was a very low key kind of protest. They were on our side, if you want to put it that way. They almost saw, as teenagers are wont to do, they saw it as a kind of conspiracy between us and them. We were going to help each other out kind of thing.

I. So that nobody would get hurt?

P. That's right.

I. You took issue with your Superintendent. Did you consider that issue in particular, aside from taking issue with the Board and aside from the principle of the prerogative of the professionals to select materials? That, I get the impression, was a bit of a tension point too, like: "I've asked you to remove it. I know the Board didn't instruct me in specifics". The Superintendent surely must have felt at that point that you were pushing him just a little bit.

P. O certainly. I think he felt I was pushing him but, I think it has to be recognized that perhaps in the back of his mind, he was sympathetic to what we were doing.

I. Then why did he take the stand he did? He didn't have to. He could have taken exactly the same stand you did.

P. I think that he saw his position as a highly political thing in his position. That was his biggest motivation in my opinion. It seems to be it has been born out in other kinds of positions in different times. I don't necessarily knock him for that. It's not the way I choose to operate but he is certainly not alone in

this. In many other ways he was certainly an excellent Superintendent, in terms of supporting extra projects, special projects, funding and so on. So, it never became a personal issue between he and I. We remain good friends to this day, though it was certainly a tension point because . . . . Maybe what made it easier was that he was not a person who insisted on his authority, making a big issue about his authority. He was never that kind of person--not an authoritarian kind of person at all.

I. So he accepted that you might take issue with him.

P. Exactly, he accepted it as a matter of course. He didn't at any point threaten me with insubordination or action because of insubordination or anything like that. He accepted that it was a matter of course. It was my right to do that and I don't think he ever made it an issue with the Board.

I. That certainly speaks well of him.

Let's go on to the third question:

Some parents and the Board of Trustees used their discretion to decide that the novel Of Mice and Men should be censored by the school curriculum. You exercised discretion to conclude that it was wrong to censor Of Mice and Men even though it might be acceptable to accommodate some parents by allowing their children to read an alternative John Steinbeck book. How did you justify your decision to take issue with censorship in schools?

I. You have sort of dealt with this question in many ways and they are overlapping. I'm wondering whether you could talk about the discretion which was exercised here by three groups so to speak-- you have the parents who have a right to address this question--

without really going into the question of the legal right but they felt they had a right, and I guess we would say, a moral right to do so. We have a Board which, I think, pretty clearly indicates that they have the legal right--so that's not the debate, but, that they also have a morally justifiable position. I gather from what you have said that you would have wished that they had a forum in which that moral justification could have been put under review and they appeared to be reluctant to do so, I don't know. Then there was the third group, the professionals, who felt, under your leadership, that they had the right to exercise discretion in the selection of the books. Can you comment a little on where these people are coming from in terms of the grounds of their rights, so to speak?

P. O.K. The parents certainly felt they had a moral right to determine what was suitable for their children. We did not deny them that moral right. We denied them the right to determine that for other people and for the minority to determine that for the majority. That's the position that we held throughout the whole issue. In terms of the second one, the Board, I think, held to the position, which we initially questioned, at least amongst ourselves, that they had the legal right to do it and whatever they did should be followed without question. I think that that was one of the main parts of their discussion. In fact, they didn't talk a great deal about censorship or whether that book should be removed. They talked about the fact that they were--at least in the later stages--they talked more about: if they give an order, it's got to be followed, unlike the Superintendent. The

Superintendent really, you know, I guess he would have to say to them, I guess you are right. He never would have encouraged them. I don't think he encouraged them to take that kind of position. The Board operated simply from what I call Newton's third law of action--reaction vs. action kind of thing--or equals actions. At most they had a complaint or reaction from three parents and maybe one of their own Board members--one of their own members took a strong reaction to it. At later Board meetings more of them took a reaction. I suspect it was based on the authority issue rather than on the moral issue.

I. Or is that a moral issue?

P. The authority issue? NO. I don't see it as a moral issue.

I. You can talk about legal authority and moral authority. My question is whether they saw it from the perspective of their legal authority or their moral authority.

P. I think, particularly in the later stages when it became that-- an impasse kind of thing, they saw it more from a legal standpoint, legal authority, rather than a moral authority standpoint. I think their discussions would bear that out if you had some kind of transcript there. Well, maybe the minutes would help you to determine that to some extent. We really took exception to the minority determining the rights of the majority kind of thing. As a democratic kind of way of doing things, first of all, we felt that parents had no right to deny other parents children of certain materials and the opportunity to question, to form their own values, you know, all that kind of thing and that was one of the issues we took with the board. The other issue, and it's

probably the main issue, we took with the Board in terms of their process--the fact that they hadn't involved us in something which we saw as integral to the teaching profession. You know, the judgement that you need in teaching. Who is in the best position to make that judgement call? We insisted that the teacher was in the best position to make that judgement call and at no time in the process should the teacher be left out or ignored or by-passed. That judgement was integral to our profession--it is a key of our profession. That judgement that a teacher brings.

- I. Would it be fair to say that the parents had a duty on this issue or that the board had a duty? Certainly you had a duty; the teachers had a duty. Where does that issue fit in?
- P. I agree that the parents had a duty. The parents have a duty as individual parents to their children--a responsibility--an overriding responsibility a greater responsibility than anybody else in the system. That formed the basis of the whole thing. As a group of parents they have a responsibility I think, to ensure that democratic institutions are upheld and that the children aren't denied opportunities that probably are in their best interest. That's kind of a public responsibility--a social responsibility aspect. The Board has a responsibility, I think they have a responsibility to the public and particularly to the majority in the public--a responsibility to operate in a democratic . . . in a democratic fashion and they have a responsibility to their employees in this instance on two counts. One of them is to protect their employees against capricious and frivolous kinds of action--that is one of their responsibilities.

The other responsibility is to consult with the professional and to ensure that the best decision is made and that all the facts are in. And of course, our responsibility is to--is basically what we felt we developed in that brief and that is a responsibility to expose children to value judgements, to give them opportunities and put them in situations where they have to make value judgements and generally you know, allow them to grow as individuals, I guess. That would be our responsibility. That is our responsibility to the board but it is even a greater responsibility to the public and the children. That's our duty.

- I. It would almost seem as though the Superintendent was caught up in a kind of a conflict of duty. He had a duty to represent the board maybe and he had a duty to work with the professional colleagues. That's really what the relationship of a Superintendent and the professional staff of a school should be. Was there a conflict of duty for him?
- P. I think that is true enough though I think his way of resolving that duty was always to recognize the legal rights rather than the moral principles, I guess, and educational principles that we thought we stood for. Certainly there was a conflict for him. I guess, in this kind of instance it's a conflict that I don't think I could have dealt with in the same way that he did. For example, because I believe strongly enough in what we are doing not to accept, you know, at face value or by extension what the board was trying to do. I suspect there was a conflict for him. One of the conflicts is how do we resolve this issue quickly enough so that we can get on with what we are supposed to be doing

kind of thing? That would be one of his dilemmas.

- I. What is the . . . ?
- P. I think he was in sympathy with us but if you check his actions he wouldn't appear to be.
- I. I thought he was vacillating. There seems to be a connection, at least in the minds of some people, between the duty a person has and the beliefs that a person has.
- P. I can give you my personal position on that. I think there is a direct connection. If you believe in something you form those kinds of beliefs through an honest kind of search and a comprehensive kind of search at least to your own satisfaction. You have a duty to either live up to those kinds of things or change. You have a responsibility to do that as an individual to yourself but also to the people who place faith in you. That's my personal viewpoint of that. You have a responsibility to believe, to act according to your beliefs kind of thing.
- I. You mention a number of times a concern for the rights of people-- the rights of students, the rights of the professionals and so on. How does one deal with the question of rights?
- P. I guess, you know, the best situation in my mind would be if moral rights were congruent with legal rights. Now I'm not sure that always can be achieved. But, that certainly should be the goal, the ultimate goal.
- I. In other words, it is not necessarily the case though that they concur?
- P. No, not necessarily the case that they are--that they concur. And I think this instance is a good example of that, that it isn't.

In fact, they didn't. We don't really know what the legal rights were--though at some point in time, even though it hurt some of us a great deal, we accepted that the legal rights were that the board could exercise the options that they were talking about. And, I guess, I believe that in reality when legal rights and moral rights come into conflict, in most cases the legal rights will dominate. That's been my experience.

- I. It seems to me that it is fairly easy to establish whether a person has a legal right or not. You check the legal documents and if they are written clearly then you know. How does one establish whether a person has a moral right or not?
- P. Well, I think, it is something that you hope to establish by consensus. First of all, you know, by, say if there is a conflict between you and I and we are trying to determine the moral right, we would try to, by exchange of information and exchange of ideas, we would try to establish some common moral kind of right or duty or whatever. I think that's how you at first establish it. The only other, you know, way that you establish a moral right--I'm not sure that there is such a thing as the establishment of a moral right. Maybe I should stop there.
- I. Try it with a particular case. Maybe it is easier. I don't want to get into some abstract philosophical exercise because that's not what we came here for and I don't want to lead that way.
- P. I don't mind that.
- I. I like it too but . . . . In relation to the case itself, how did you and your staff talk about getting clear about your rights

and getting clear about the rights that the children have?

P. We were prepared to do this in terms of a moral right and it's almost like a third party intervention. We were prepared to accept consensus; not of consensus about the right but a consensus on a process to establish the right. We were prepared to buy into a process which would be independent, supposedly be an impartial group of people. It's like being a chairperson of an arbitration. We were prepared to do that and live with the decision that was made.

I. What would have to characterize that process so that one would have some confidence that maybe it addressed the question of moral rights as well?

P. We would . . . . You characterize that by a process that both parties agree on.

I. Any process to which both parties agree?

P. Yes, I would say so--any process to which parties, both parties would agree.

I. Wouldn't that process have to characterize at least one feature, that is, that they would have to commit themselves to a process of let's say, rational justification, like not just any process but a particular process?

P. Well, but what I'm suggesting is that the two parties that are in conflict would present a case, a case on which they disagreed and the third party would then deal with the case that had been presented to reach a consensus on the case as represented. I think . . . we believe we could have reached that. We never did get to that point. We believe we could have reached that

consensus in terms of selecting a group of people who would take a look at the issue including ministerial, including a representative group of the community, to look at the issue and come back to us and say, this is what is morally right for our community.

- I. But, not just on whatever may take place in that group. If that group would have displayed a total lack of concern for justification, for statements that are made, would you have had difficulty with their conclusion?
- P. Well, we may very well have, but I think we would have had greater difficulty with ourselves, in terms of our own judgement. We would have done a great deal of soul-searching. We would have been--if we would have come out completely off base or the judgement would have come . . . .
- I. Just to kind of focus it, suppose you had chosen fifteen and they all had consented to it and they had met in a church to pray silently to themselves down on their knees for one hour; then got up and on a little ballot indicated 'yes' or 'no' as to whether the book should be removed; dropped it into a box. Suppose that vote then would determine that the book must be removed along with any books similar to it. Would you have had difficulty with the decision?
- P. We would probably have had difficulty but we would have accepted.
- I. But, would you have considered that a legitimate process for establishing a morally right position?
- P. Yes, we would have. I think that the staff was prepared to do that and I was prepared to do that.

- I. Maybe prepared to accept it as a legally . . . .
- P. Morally
- I. Also morally?
- P. Yes, well the moral thing, I think, we would have more difficulty with that, because 'moral' becomes a very personal kind of thing. But, I think we would have accepted it as the best alternative or the best solution, I guess, and we would have accepted the decision because when we bought into the process--that's not something we came to lightly. Maybe the board didn't consider it but we certainly considered it for hours and days.
- I. Another thing you have alluded to is the motives of people. What is a morally good motive?
- P. What?
- I. What is a morally good motive?
- P. For parents?
- I. For anybody?
- P. Well, the overriding motive is the interest of the other person or the other person affected, I guess would be the overriding motive for education for parents, for board and so on--in the present and the future interest of the individual involved.
- I. So you would try to establish whether a person is pursuing from a morally good motive or from a commitment to do that morally right thing?
- P. We would have tested the motive. We tested the motives for ourselves against that motive you know. We tested the motive of the parent, of the School Board, of the Superintendent against the motive of 'are they honestly pursuing what is in the interest of

the individual?' And if you want to talk about the motives, you know, those are fresh in my memory. The motives of the parent in my opinion, in the opinions, I think of some of the school board members, in fact, and the Superintendent were that initially the motive was to get back at the school because his son had had a very difficult time at school. Then it became more complex in the anti-semitic kind of ingredient. It became built into it because at some point in time between the first discussion and the first rumors he found that this person was a Jewish person. And, that may have been instigated by one of the board members, who was his neighbor, because he mis-interpreted what the book said. He read the book without the comas and stuff like that . . . he read the particular phrase like that. And, the board put, in his opinion two and two together and said, "say yes, this guy is trying to say that Jesus Christ is a bastard. And what else could you expect from a Jewish person?" So, you know, that became a secondary motive kind of thing.

- I. I guess you would say that nobody was perfect in the situation. I mean, that's to be assumed, and that there were a lot of decent people in the context trying to resolve it. Would you feel that there were any misguided people involved in this situation?
- P. I think I would believe that some of the parents who came on stream at some point in time were basically, in the vernacular of the day, sucked into it because they were dealt a kind of a back-hand. I think many of them expressed that to me, you know, 'how do we support the language in the book you know, how do we support the book without the language in the book?' That was the

issue for them and really a dilemma. And, when they are confronted with "Well, do you think this is good?" "Well no, it's not good". They couldn't . . . so they found themselves caught in a kind of a bind they really didn't know their way out of. And, they weren't able to make for themselves, particularly in the face of some of the pressure on them, weren't able to make some of the distinctions that we could make as teachers because the issue becomes issues of friendship; the issue became of personal support, you know; it became a very complex kind of mess for them.

- I. Were there any people participating in the controversy who you think had some blind spots?
- P. Well certainly, that is true of at least two of the board members. They were not, once they saw the language, they were not willing to discuss the issues on any other basis at all. The two board members in particular are Mr. A., Mr. B. and Mr. C. They could not make, you know, the distinction at all they said, "that's it, the language is there; that should not be in school". Those were the blind spots. And, any teacher, they would follow it up with any teacher who had that kind of . . . must be rotten.
- I. Was anybody present in that discussion who was not in his right mind?
- P. No, I don't think so. There was emotionalism certainly. But it was, no. There was . . . there was, I think, pretty controlled kind of reactions by the people.
- I. What would you have had to witness to have to conclude that somebody in the discussions was not in his right mind? What would

have had to happen for you to have to say, well, maybe this person isn't?

- P. Well, inconsistent statements, for one thing, you know, irrational, emotional behavior, personal attacks. Those are basically . . .
- I. Any unscrupulous people involved?
- P. Well, I had, you see. That's the discussion I had with my Superintendent because I questioned his scruples at one point in time. That was the most difficult time he and I had because I questioned his own commitment, his personal commitment to seeing that the right thing was done. There was certainly an unscrupulous element in some people hoping to achieve some things--an element of dishonesty in some of what they were hoping to achieve. I think that was true of the parent. It was true of the school board to some extent because they weren't honest. What they were really hoping to achieve in my opinion was a quick resolution of the problem--everything die away, go away, keep everything nice and smooth, kind of thing. They never discussed that as being their main motivation.
- I. Anybody careless in this whole matter?
- P. Yes, Mr. B., one of the board members was pretty careless with some of the statements he made, injudicious kinds of statements he made in terms of teachers' character and also the statement he made which I was absolutely sure the press would pick up but didn't. You know, a statement that he wouldn't let his kids read certain parts of the Bible. Now to say that is bordering on the foolish, I think.

- I. Which one of these that I have just asked you--whether people are misguided, or have blind spots, or are not in their right minds, or are unscrupulous or careless which ones of these, if any, would you consider more seriously wrong than others or would you put them all together?
- P. The blind spots. I should mention Mr. B. there because he was really hung up on the--he was really hung up on the legal part of it--Mr. A. he was really hung up on the legal part of it. Those are the ones that I would find the most difficult ones to deal with. They would insist on exercising their authority. For a time that was a real question in my mind whether they, morally should be insisted on--these two Mr. A. and Mr. B. to a lesser degree Mr. C. and Mr. D.
- I. Are you suggesting that to operate from a blind spot is more seriously wrong than to be unscrupulous?
- P. No, I would consider to be unscrupulous is more seriously wrong. Dishonest is what I would think your 'unscrupulous' to mean. To be dishonest is much more serious. To make an honest mistake is less serious in my opinion.
- I. And you have put 'not to be in the right mind' in a slightly different category. It doesn't quite fit the issue of acting from a morally responsible base because a person simply doesn't bring the faculties with him to be able to do so.
- I. You didn't mention much about what people deserve to get either by way of rights or by way of punishment in this whole issue. Is it relevant to the issue at all?
- P. The idea of punishment, is in my opinion, not relevant to most

issues. That should not be the motivating force. The motivating force should be positive kind of change, a positive change in attitude, a positive kind of change in direction, and so on. The issue of punishment never crossed our minds--the parent should not be forced into a corner that he couldn't get out of and made to look stupid, that the board should not be forced into a corner that they couldn't get out of, or the Superintendent and so on. That, that never was part of our motivation. We thought that we possibly would achieve a recognition of our right for consultation and a recognition of a better understanding by the school board of the right a child has to a broad education and exposure to a broad set of ideas and values. Now, we hoped to achieve--that was our motivation, I guess--to some extent we hoped to educate the board at the same time--we hoped to achieve some of that. So, that's what we felt what we deserved to get out of that. We felt that the board deserved to understand our position and you know, we quite honestly I can say we never at any time throughout this--different from later on in my career--at no time did I or any staff member entertain at any length of time the notion of some kind of revenge or retribution.

I. On account of what does a person deserve punishment?

P. Pardon?

I. What would have had to happen for somebody to deserve punishment?

P. Repeated unscrupulous action, I guess. At some point it would seem to be, to deserve defeat at the polls, would deserve rejection, by other people, you know, rejection of your ideas by others, rejection of credibility and so on. But I--that would be

the main thing, I think, repeated and consistent unscrupulous actions in behavior. In summing it up, that's the first thing that comes to my mind I guess in terms of what the punishment should be and, of course, you know, I could expound on it philosophically to say the punishment should fit the level of the crime or the action.

- I. I mentioned the principle of justice once. Does it apply to this case? Was there a debate among staff members that there is an issue of being just and fair in this case?
- P. Well, the issue of justice arose at least in one kind of terms of the discrimination of race, you know.
- I. It seems to me it raises another issue too, and that is--maybe I read it in but the concern of the staff for a fair hearing. I sense . . . .
- P. That was justice in the sense of the fair hearing of an idea for consultation . . . .
- I. . . . for the need for interaction for the resolution of an issue and it struck me that it came through fairly strongly . . . .
- P. Yes, we insisted on a certain sense of fair play, I guess, you know. Yes, you could term that as justice--probably aptly called a sense of justice.
- I. How would you summarize acts of justice? What would have had to be the characteristics, let's say of the process of resolving this issue, so that one could say that justice had been done to all parties in the dispute?
- P. Well, my kind of characteristics of that would have been a recognition that justice would have been served by the recognition

of parental right. Of an . . . .

I. So the rights of people . . . .

P. . . . of an overriding parental right. The recognition of democratic rights of the majority, because even though its not a thread that runs through this very much, it was at issue--that the majority seemed to be silent but the majority seemed to be on the side of keeping the book in, in spite of the fact that the board acted the way it did. They probably did not act the way the majority would have wanted them to act. That only--that was a judgement call on our part because I am not sure about that. It wasn't tested. The recognition of the fact that the professional had an absolute moral right to have input into the final decision--object to a decision of that nature and a recognition of what education for people was all about and possibly a recognition of an accepted process for resolving disputes.

I. I was just thinking in terms of the actors involved--specific parents, board members, yourself and your staff--given those actors, what kind of characteristics would their behavior, their thought, their words have to reflect so that one would say that an attempt has been made in this issue to resolve the matter in a just and fair manner? You mentioned some characteristics. Are there others that come to mind? For example, does the notion of acting from a sense of duty have a part in that? Would you want everybody in that group to act from a sense of duty?

P. Yes. I would want them to act from a sense of duty and, you know, their acceptance of each other.

I. Would the motive matter as to whether justice is preserved by all parties? Does the motive matter?

P. Well, I think, that is what I was alluding to at first. I think, when I talked about recognition. I believe that there would be a recognition that those were the principles on which this thing was based; the recognition that those were the motives that should predominate in this case but also in similar cases in other instances and situations.

I. Must all of the parties seriously consider what the people in the case deserve? For example, it would seem to me that the teachers felt that they deserved to be heard because they have a professional contribution to make. I got . . . .

P. . . . professional obligation.

I. They have an obligation as a person and from the perspective of the other side or the other party they have a contribution to be made. They deserved to be heard and I got the impression in this sequence of events that that desert was not necessarily recognized --not even by the board members.

P. Yes.

I. Is that an important aspect of 'that justice or fairness prevails'?

P. Oh, certainly, it is a very important aspect of . . . and I think that what you are saying is at least partially true, that there was not that recognition and you know, that recognition that here is a legitimate claim by teachers to be heard. And, teachers probably deserved that, I believe, because they operated, I believe, in a very responsible, I also believe, in a very

responsible manner throughout the whole thing. They dealt with it on the basis of principles rather than on personal feeling and emotion and so on throughout, you know, a very responsible kind of attitude throughout. Even though they probably had some feelings about, bad feelings, personal reactions to what happened, those things never became public issues. They still went about their business in a very professional manner even after it happened, even though they felt they hadn't received a fair hearing, hadn't received the recognition they deserved, they proceeded to do their job as they saw best, as they saw their duty.

- I. In conclusion, I was interested in the way you handled the situation after a bottom line had been written--the book must be out at noon on Friday. What were some of the guidelines on the basis of which you chose how to implement the regulation as it finally came to you?
- P. We chose, I chose only to do this, in terms of the implementation of the regulation; in terms of the actual removal of the book. The discussion of my staff later, it was probably in our interest to let this thing die; to pursue it any further was a little foolhardy--probably in our interest to let the thing die. We have a motion here that we really have some responsibility to look at, that however most things had not changed. Perhaps nothing had changed. The responsibility was theirs, it had been theirs before. The caution that I gave them or the out that I gave them if they felt uncertain now because of the actions they should feel free to come and consult with me, you know. in my best judgement, or at least combine my judgement with theirs as an outside kind of

consultant to the process. But, the message basically was, nothing had changed. You proceed in the way you still are. You have the complete right and total right in my estimation, to exercise your professional judgement and please proceed exercising your professional judgement. Make sure that you're doing that. That was something that I . . . something that I probably said many times before that as well. Make sure that you are exercising your professional judgement to the best of your ability and if you feel there are other things you should take into account, then come and see me.

- I. There are two features that come to mind in the way you describe the way you implemented the instruction. I think they are important. One is, which you mentioned earlier, that it seems to me you acted impartially. You went to the students and said the same thing to all the students. You did the same thing with all the students, including the ones who didn't have their books there. You were not punitive to select students. Undoubtedly there were students that represented parents who were the cause of this. You acted with . . . once the instruction was in place, whether you thought it was right or not, you acted with impartiality. And, that leads directly to the second one, which you just described. That is that you acted as non-repressive as possible to the students as well as the community at large. And, even more so you encouraged the staff likewise to act as non-repressive as possible so that whether or not all parties had been allowed to get involved in good honor, you insisted on continuing to act in a morally responsible manner in the implementation stage

which I see as a stage that is somewhat different, and yet, of course, inseparably connected with making a moral decision. I find that very interesting.

I. Would you care to summarize now for me very briefly the events as they unfolded, basically the events as they unfolded themselves from the beginning, as you see the beginning, through to the end.

P. O.K., just in summarizing the Of Mice and Men issue, we first of all acted on a rumor that there was some reaction. It was partly a rumor and if I remember correctly I must have had some indication from the child before hand. The girl, was involved beforehand--that her father was displeased. I think I probably had some discussion with her--though that is what I'm fuzzy on.

In any case, we began a discussion of the issue before the parent phoned. When he did phone, I insisted on talking to the school board chairperson, and the board of the curriculum committee--the chairperson of the curriculum committee and so on as well before I called him back. If I remember correctly. Now, we tested on each other on the staff--with the English Department of five teachers and myself--we tested on each other the whole idea of substitution of a book and the whole idea of parental prerogative and obligation, and the consequences that would have. It is not something that we got into but is an important kind of aspect of this: what consequences that would have for a child in terms of their acceptance by the rest of the class, their peer pressure, and so on, and how we could minimize the negative consequences of allowing her to pursue another book.

We considered having the whole class do it, take the

other book and stuff like that. We threw that out very quickly because we thought we would in fact be drawing more attention to the issue and creating and generating a bunch of more problems than we would have actually . . . than were necessary and important to create. So we discussed all those things at some point between . . . before and after the first phone call and when I called him back the negative consequences for the child and how we could best deal with the issue so that the child herself--we wouldn't be getting back at the parents through the child.

I'm really proud of the level of discussion of the teachers here. It wasn't "O.K. I feel sorry for the child". There was a bit of that but there was "what's best for the kid in this instance?" She's got pressure from her father and her parents. She's got peer group pressure. How do we minimize all that?

So as a result of that, the teacher went in and said, "Some people are finding the languages offensive and certainly it can be offensive to some people". We were happy, in fact, that two other kids opted out, you know, because that did not leave this person by herself. So we were prepared for that and we felt that that might resolve the issue.

However, between the Friday and the time I phoned him, he found out that the person, that the teacher was a Jewish teacher and then the issue became a much broader issue for him and he felt that there needed to be some kind of purge on the school system. I didn't recognize that until I phoned him that Monday.

I discussed that openly with the chairperson of the Curriculum Committee and after some discussion we said, "If that's the case, if that's the basis for it, then you can be sure that we are going to fight it as far as we can possibly fight it! So we will try to keep it out of that and we would appreciate if you would do the same thing that that would not be an issue that the board would make an issue". And, I think that the Board generally did not make an issue, though it came out in discussion, they did not pursue it at any length, did not pursue that tangent. But, it came an element for the parent. I think it was his motivation in determining that everybody should--his motivation in determining that everybody should not be freed of this menace kind of thing, pending doom here--this Jewish person corrupting your mind kind of thing. And, that the book needed, in fact, needed to be removed not just from his girl but from everybody.

The next step of course was the Board meeting and I was aware--I was at the Board meeting, I was at all the Board meetings. One of the things that is important to remember, I was accepted as being allowed to take part in any Board discussion, I was accepted as a member of the Board. I wasn't able to vote but certainly they saw no threat in my being there, either before or after this instance. They encouraged my input into discussion. There was a general acceptance that I had something to contribute, that I represented the school and that it was a good thing to have me there. It is important in that I was basically in on all the discussions. They did not have in-camera discussions without me there. And certainly, if I wasn't at any of the discussions it

was because I chose not to be there or because I happened not to be there. And, I could bring along whoever I wanted.

I am not sure what the sequence was here, whether there was a board meeting in between and then I brought the English teacher to the next board meeting. I think that's how it was--to indicate how he had treated it and how we had agreed to proceed on even with that issue that was becoming a community issue--the swearing in this book--because by now the tentacles had spread out.

In any case, at some point in time we decided to confront the issue head on--the issue of the swearing in the book and the purpose and so on. We discussed it with the students and we discussed it with the school board--how it was treated, why it was felt important to treat it in a certain way and we alluded to the fact that it was becoming a community issue and that it was important now to deal with it honestly with the children so that they could see our viewpoints and so on. One of the big issues, of course, was that we didn't condone swearing and this is written in this way because of the obscenity of the situation and so on.

We went through the whole procedure. After, I believe our brief really followed after the book was removed in fact, I'm a little fuzzy there, in fact--maybe not. It may be before, it may be after. I guess it's really not important. At one point we accepted the fact that book was no more to be in our school. We didn't like it but we accepted it. We didn't think it was a good decision but we did accept it but we felt that we really had to.

It was important for the education of our system, for the freedom of our teachers, to exercise their own judgements and so on, that the Board recognize that their process was bad and that it would in fact be in their interest and in the interest of education and in the interest of the children if we worked out some kind of procedure if something like this happened again. And, that teachers certainly be involved in the decisions at all levels throughout. And that was the main jist, I guess, we talked about --intellectual freedom, we talked about what the English course tried to do and what we thought education stood for. But, the main jist I guess, one of the main points certainly of our brief was that the process was not a good process--the one that had been followed was not a good process. It wasn't sound on the basis of the interest of education, it wasn't sound on the basis of major interest, it wasn't sound on the interest of allowing teachers to make professional judgements which they are capable of making, which a year later in fact, became a part of a motion saying we trust the teachers to exercise their judgement. That may be a direct result of our interaction at that point.

To summarize, you know, to wrap the whole thing up, after we made the presentation to the Board, we got a bit into the paper work--the local newspaper and so on. By the way, it got an award from the Manitoba Teachers' Society for the best education story on Steinbeck--quite fantastic--but, you know, for one of their editorials or something or one of their features. So we got into that kind of thing and we down-played that as well, you know. I'm not sure, I might have been interviewed as well.

Anyway, it became a bit of a paper thing, but we down-played that. We didn't get into the whole idea of waging some kind of a war through the local paper. Once again we didn't, because it wasn't in the interest of the school and the interest of the parent's education that that kind of a conflict . . . because of the emotional implications and ramifications of that kind of a war would destroy a lot of good things that we thought we had going. And, I think, we judged that accurately.

Upon removal of the book, you know, we questioned the Board's decision and I insisted that the Superintendent tell me directly to remove the book. I did not accept the motion as being, I have already alluded to that, I won't expand on it. But, he had to tell me directly what action I should take in terms of the book because I wasn't willing to accept the motion, I guess, partly for the reason that we maintained that we did not have offensive books in our school, any offensive books in our school. This would have been kind of a recognition by us that we had made bad judgements and so on. At that point . . . we were not willing to make that recognition although a little later on we did make it in terms of one book. But at that point we did not see any grounds on which we could say: now we have exercised bad judgement, something's got by us and so on. So on that basis, I insisted that it had to be that particular book and that it had to be an action and there had to be a directive,--that I was not going to do that unless I had to do it.

When a set of the directives was given, I proceeded to carry out the directive. I carried it out in the way that I

mentioned. I went and talked to the class about it and said that this is a directive. You probably are all aware of some of the things that are going on and causing a great deal of controversy. You're probably aware of why that is, I'm not sure that I know all of the answers. But I have a directive. I'm going to ask you-- you've got this class in which to clear it up. I'm asking your teacher to collect all the books at the end of this class. It will also be the last time that you in class will, at least on my recommendation, be discussing this book. If you have not got your book here--if they are home in fact, would you bring them to me the next day or as soon as possible, after lunch if possible. I've got an order to take all the books out of the school and I interpret that to mean 'out of circulation', in terms of our responsibility, out of circulation, which I did. I took them out.

And then the sequel was the staff meeting that same night, Monday night or Friday night, whenever I took the book out. The sequel to that was to say that this is what happened. This is the directive that was given. This is what I have done. Now, it is probably in our interest now, to try to take the case from here. You still, in my opinion, you have not abused your judgement at all. In my opinion you have not erred in judgement whatever or abused the power that I certainly have invested in you and the authority that I have certainly invested in you. Here it becomes another issue and that is the issue of support for your judgement and backup for your judgement. If you feel that you need that at any time and you are concerned at all about some material then please feel free to come and check with me. I

don't insist that you do that and you will have my backing but this is the principle--you basically go out and do what you always have been doing and exercise your judgement recognizing of course that we have had an issue now and we have had an incident and that might make you more sensitive to some of the issues--and left it at that.

And basically, certainly the issue was discussed in the staff room but we didn't discuss the issue any further in public. We felt that it was up to the Board now to come back to us and see whether they accepted our process--the one we had suggested or whether there was some other process to resolve the problem. I think there maybe was one further follow-up. We asked if they considered and they said no. At that point we dropped the whole issue and said, fine, we will just proceed as we have been proceeding. We expect you will support us. The Board indicated, I think, that they were willing to support us even the first time. The second time they put it in a motion--which became a public motion.

The only other sequel is that I had phone calls from in the neighborhood of fifteen parents, people in the community who wanted a copy of the book. I said, well the book is not my property. It is still the school board's property, it is still the schools property but I will do one thing. I will check with the Superintendent to see if he has any objection to my giving copies of the book away. He had no objections to my giving copies of the book away. In fact, it has probably been read by a lot more people as a result of the controversy. He said, please do it

quietly and so on and exercise some judgement as to who you give it to. Of course, the people who would have wanted to make a further issue of it didn't call me. It was only people who had a genuine interest and their interest had been created by this thing. So I gave away about fifteen copies of the book. The other copies I threw away when I moved away. That's the sequel to it and so, as a result of the conflict, probably Of Mice and Men was read by more people in the community than possibly could have in any other way.