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# Bennett on the Moral Order

By EDMUND L. PINCOFFS\*

Professor Bennett's list of values presents a number of analytical problems. First, several of the items overlap; for example, "respect for persons, expressed in part by fair dealings," and "a regard for justice, revealed in part by a commitment to treating like cases alike." No special order or priority is indicated. No values are mentioned that must be completely satisfied before other values are attended to. We do not know what the relations of inclusion and exclusion are. For example, we do not know whether the fulfillment of the value of respect for persons entails the fulfillment of the value of concern for personal accountability. Would substantial support for a sound educational system that attends to the development of citizens be subsumed under concern for personal accountability? Is the concern by persons for their status as moral agents a value independent of concern for the domestication of power?

We are offered an unordered array of values that theorists may ponder and attempt to order. It is not a list that would have been accepted by a candid Trujillo, or a forthright Stalin; but it is acceptable, probably, to most of the readers of this journal, and to this writer. The list is intended to remind us of values we hold, rather than to propose new values or to reduce value to one theoretical description. If we do not live by these values, no constitution can save us; but neither can we be saved unless the constitution in question is itself informed by certain fundamental values. To make his points, then, Bennett needs only a value-system, and need not argue for some unifying and ordering theory, such as utilitarianism or some form of contract theory. Intuition serves his purpose, intuition that makes no eighteenth-century claims to a special inner sense or illumination. It is enough that, when reminded of these values, we embrace them and acknowledge them to one another. What is at issue is not what we can know, but what we are to do about, how we are to live with, the values that we do mutually acknowledge.

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Yet is the epistemological issue or the problem of the theoretical goals to which the values correspond so easily by-passed? How strong is an argument based on mere consensus? And how deep and wide is that consensus found in common acknowledgement of the values listed? Can we move quite so readily to the mustering of our common resources and wills to live by what we all truly believe in? We are now engaged, in this country, in a grand theoretical debate over the proper aims of our nation as a whole and ourselves individually and collectively. It is uncertain what theory shall prevail, or when, but it must be recognized that the street between theory and order runs two ways. What we believe to be values must be accounted for under the theory we come to accept. But the theory we accept may influence not just the ordering but the actual constitution of that list of values. Suppose that our aim is simply to maximize satisfaction and to distribute it fairly? Then this will surely put us at odds with those who would place such high value on equal liberty that they would require that condition to be satisfied before any other objective may be taken into account. Or suppose that our objective is an order that is historically just, in that people are entitled to those things, and only those things, that they have acquired by fair and proper procedures, and that there are no rights that override entitlements? Then we will confront those who would redistribute that to which we are entitled according to some pattern they hold to be fair. Because the drive for a unifying theory is a strong one, and its eventual effect on the common values is unknown, the consensus to which Bennett appeals is not necessarily a stable one.

Yet it is the only consensus we have. We must start from it, and be properly skeptical of the powers of theory. To weigh values in advance, according to some theoretical scheme, is to attempt moral legislation for autonomous agents who in the future may not accept our theoretical conclusions. We should be humbly aware that possibly no theoretical ordering can succeed. Close examination of modern versions of contract theory and utilitarianism reveals that, in the particular circumstances to which the theories must be applied, the theory often yields morally acceptable answers only at the price of qualification by just those values that the theory has understated. As agents, insiders, or citizens, although not as mere observers or social experimenters, we find ourselves bound to certain values. If theories can alter the system, theories are most certainly tested against it. We don't accept just what we inherit, but we do have an inheritance.

The question whether to accept that inheritance as a whole does not arise. It can be expressed but not given a sense. We argue, in-

evitably, from value to value, from point to point within the system. In the end, there is no foundation for values but value; in this sense, our moral arguments are circular, but not damagingly so. It is salutary to keep in mind that we are incapable of creating values *ex nihilo*, but can at most, like Plato's demiurge, order what we find already given or trim a bit here and expand there.

In his proper concern that we rally 'round before we lose the very possibility of the eunomic state, Bennett underplays the essential role of the ongoing criticism of accepted values. Yet responsible criticism should not be thought incompatible with rallying 'round. It is not necessarily finicky or divisive to keep insisting that we should be clear what it is we are to cherish and support. Not surprisingly, a good many of the values we regard as most fundamental serve precisely to protect those who would prove or test the value system. It is an article of faith with us that these protections should extend to everyone, and not just to a few, since no one can legislate values for anyone else, and each is responsible for the values he holds.

