
Moral and Legal Control

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Both immoral behavior and illegal behavior usually interfere with the well being of humanity, while moral behavior contributes to the well being of humanity. Society adds both moral and legal contingencies to counteract the natural contingencies of reinforcement and punishment that support immoral and illegal behavior and to supplement ineffective natural contingencies that fail to support moral and legal behavior. Because these contingencies are usually indirect-acting analog contingencies, they control behavior only when expressed as moral and legal rules. Generally, society adds moral analog contingencies to control behavior that is harder to observe and legal analog contingencies to control behavior that is easier to observe. Moral analog contingencies usually have nonmaterial outcomes, whereas, legal analog contingencies usually have material outcomes. Analogs to avoidance are more effective than analogs to reinforcement, because the avoidance deadline prevents infinite procrastination. Therefore, effective moral and legal analog contingencies must be based on aversive control.

I have based this analysis of legal and moral control on the three-contingency model of performance management (Malott, 1993, 1998). That model involves a number of definitions, principles, and guidelines, as well as a special way of diagramming behavioral contingencies. I will take the liberty of introducing necessary elements of this model, throughout the present analysis. I have also based this analysis on an approach I call *behavioral anthropology* (Malott, 1988). An earlier version of this analysis can be found in Malott, Malott, and Trojan (2000, pp 415-425).

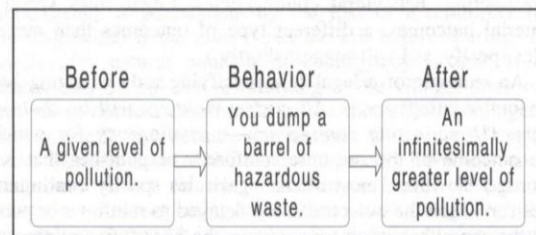
Ineffective Natural Contingencies

"Don't dump your hazardous waste here, buddy, because it will pollute the environment and decrease the quality of life for your friends and neighbors." (See Fig. 1.)

This is an example of a natural contingency. (A contingency that occurs in nature, without being designed by a performance manager to control behavior.) Society in general and we behavior analysts in particular are concerned with those natural contingencies that affect the quality of life of the individual and the members of our society but are, nonetheless, ineffective in controlling behavior.

Figure 1

An ineffective natural contingency. (Note that the "Before" condition in these diagrams is not the same as an S^D ; it is more like, but not exactly like, an establishing operation.)



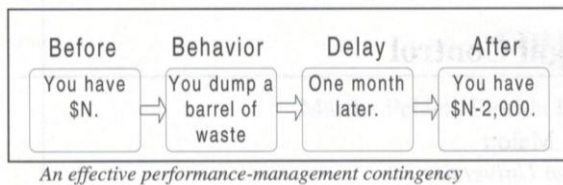
(Contingencies are ineffective in controlling behavior if they involve outcomes that are too improbable or too small, though the cumulative impact of many such outcomes may be significant. Contrary to the standard lay and behavioral view, according to the three contingency model, the delay of the outcome is of little importance, as long as the behavior knows the rule describing that contingency.)

These ineffective contingencies fail to control our behavior directly as reinforcement or punishment contingencies. Also, such contingencies often fail to control our behavior indirectly through rules describing them. The rule advising not to dump waste because it will pollute may be ineffective; and, if so, its ineffectiveness is probably because the impact of dumping only one barrel of hazardous waste may make too infinitesimal a contribution to the pollution of the environment. Because of the ineffectiveness of the anti-pollution rule, pollution may gradually overwhelm us, one infinitesimally significant barrel at a time, unless we intervene. One way to intervene is to pass laws against pollution.

Legal-Rule Control

"Don't dump your hazardous waste here, buddy; or we'll fine you." (See Fig. 2.)

Figure 2.



That is an example of a performance-management contingency. (*Performance-management contingency*—a contingency that does not occur in nature and is designed by a performance manager to control behavior.) If the person obeys this rule and refrains from dumping, then we have an example of control by a legal rule. (*Legal-rule control*—control by rules specifying added, indirect-acting contingencies or added, direct-acting, behavioral contingencies. Legal rules specify material outcomes, a different type of outcomes than moral rules specify, as I will suggest shortly.)

An example of a legal rule specifying a direct-acting behavioral contingency is: *All curfew violators will be shot on sight.* (*Direct-acting contingency*—a contingency for which the outcome of the response reinforces or punishes that response.) However, most often, legal rules specify contingencies for which the outcome is too delayed to reinforce or punish the causal behavior; for example, the \$2,000 fine might not actually be collected until a month after the behavior occurred. Nonetheless, rules specifying these indirect-acting contingencies can still control the causal response, in spite of the delay. (*Indirect-acting contingency*—a contingency that controls the response, but not because the outcome reinforces or punishes that response. To repeat, it is the rule specifying the contingency, not the contingency itself that controls the behavior, because the outcome involved in the contingency is too delayed to reinforce or punish the causal response; a rule might even control behavior, though the specified outcome of that behavior never occurs, as might be the case for religious rules specifying afterlife outcomes.)

This anti-pollution contingency is an analog to a penalty contingency (*Analog to a penalty contingency*—an indirect-acting penalty contingency where the delay between the causal response and the loss of the reinforcer is too great to punish that response.) As indicated earlier, the rule specifying this indirect-acting analog to a penalty contingency can control the causal response, even though the contingency itself does not directly do so.

Again, rules describing contingencies can fail to control our behavior for two reasons: (1) The outcomes are too improbable (e.g., the low probability of the need for a seat belt results in a low frequency of wearing seat belts); and (2) Any single instance of the outcome is too small to be significant,

though the accumulation of many such outcomes would be significant (e.g., the small polluting effect of dumping a single barrel of toxic waste.) Social agencies often attempt to supplement these ineffective natural contingencies with effective performance-management contingencies. In other words, they pass laws that consist of rules describing the performance-management contingencies. The laws are effective to the extent that the contingencies they describe involve outcomes that are both sizeable and probable. If these laws or legal rules are ineffective, it is generally due to their lack of enforcement (the probability of the outcome) rather than the magnitude of the penalty (the size of outcome).

Moral (Ethical) Rule Control

"Ah, ain't nobody lookin.' So I'll just dump this hazardous waste over here and . . ."

"STOP!"

"What? Who's that? Who said that?"

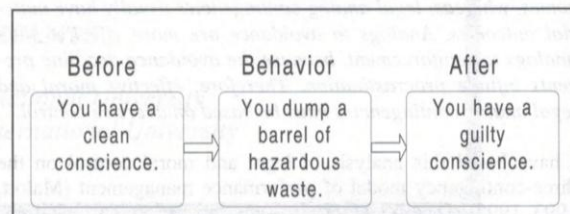
"This is your conscience, brother. Even when the cops aren't around, I'm always here to keep you on the straight and narrow"

"Well, hee hee, I was just kidding. I wasn't really gonna' . . ."

(See Fig. 3.)

Figure 3

A potentially effective performance-management contingency



That is another example of a performance-management contingency: if the person obeys the rule and refrains from dumping, then we have an example of control by a moral rule. (*Moral-rule control*—control by rules specifying added indirect-acting contingencies or added direct-acting behavioral contingencies; moral rules specify social, religious, or supernatural outcomes.) In the present case, the outcome is immediate; thus the contingency would be a direct-acting punishment contingency. However, the aversive outcome (e.g., the guilty conscience) might not present itself until later that night when the person is having difficulty falling to sleep because he found himself contemplating the evilness of his deed. In that case, the guilty-conscience outcome would be delayed, and this would be an indirect-acting contingency, an analog to a punishment contingency. Regardless of whether the contingency were direct acting or indirect acting, it would only suppress the person's polluting behavior, if the person's moral

training were sufficient that the resulting guilty conscience would be both probable and significantly aversive.

"Come on, conscience; it'll cost too much to move these barrels over to an authorized hazardous-waste dump."

"Brother, you dump it here and you'll be a polluter"

"So?"

"Polluters are evil people who don't care about anything but the fast buck"

"Well, for sure I don't want to be an evil person."

"Brother, I knew you'd choose the moral path"

"But still, I've only got a few barrels; and that won't hurt much."

"NO!"

"Why not, conscience, just a few barrels?"

"Because God will not like you. There is no room in Heaven for polluters"

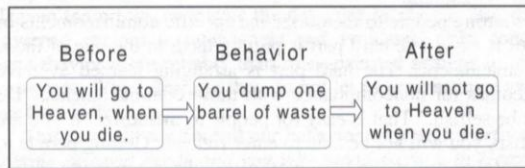
"Are you sure? No room for just one or two?"

"No room for even the little toe of a single polluter. Never!"

"That's heavy." (See Fig. 4.)

Figure 4

A potentially effective performance-management contingency. (Note that in Fig. 2, the delay between the behavior and the outcome (after condition) is indicated by a separate box; however, in this and subsequent diagrams, when the before condition is in future tense, then it seems best to indicate the delay in the before and after conditions themselves, rather than in a separate delay box.)



That is another example of an indirect-acting, morality-based performance-management contingency. In this case it is a religious contingency, because it involves a spiritual or supernatural outcome. Religious contingencies are indirect acting, if they involve a delayed outcome, such as entrance to Heaven or Hell, excommunication, or reincarnation into a higher or lower caste. However, sometimes religious contingencies can be direct acting, such as an immediate lightning bolt from God or an immediate answer to a prayer for intercession. (Perhaps a more precise way to put it is that the relevant religious rules would describe indirect or direct-acting contingencies, regardless of the actual existence of those contingencies.) If the person's religious training is sufficient, control by religious rules will be effective because they usually specify outcomes that are both probable and sizeable, regardless of the delay of those outcomes.

The religious contingency in Fig. 4 is an analogue to a penalty contingency—exclusion from Heaven¹. It could also be an analogue to a punishment contingency if the alternative to eternity in Heaven were an eternity in Hell and not just an eternity in limbo.

Other Examples of More-Rule Control

The hungry Yanomamo hunter goes into the Brazilian forest and bags a monkey. Does he skin it, cook it, and eat it on the spot? No, he takes it back to the village to share with the others. Why? Because he believes that, if he fails to share, the hunting god will take away his hunting skills. In some cultures, hunters even insist that everyone else get a piece of meat before they do, again avoiding the loss of their hunting skills. The rule is "Share it." The religious performance-management contingency is punishment by the loss of a reinforcer (the hunting skills) if the hunter eats the kill before sharing. The ineffective, natural punishment contingency is that, if the hunter eats his fill before returning to the village, there may not be an optimal distribution of the meat. This contingency may be ineffective because one instance of the hunter's eating more than his share of the meat will usually have only an infinitesimal effect on the community's health, though the hunter's consistent eating rather than sharing might result in community harm that is cumulatively significant, significantly aversive even in the eyes of the hungry hunter. Of course, that natural punishment contingency might be ineffective because the hunter is completely insensitive to the well being of his community members; but, as Skinner has pointed out, we should pity such a community that has not inculcated this level of sensitivity, for it shall not survive; in other words, such complete insensitivity to community needs is probably rare in surviving communities. (Obviously, wherever there is the need for a punishment contingency (either natural or performance-management), this means there is probably an effective, natural competing contingency that is reinforcing the undesirable behavior. In this case, the food reinforcement contingency would normally reinforce the hungry hunters immediate consumption of the monkey.

Closer to home, consider the Ten Commandments, for instance: *Thou shalt not covet thy neighbor's wife*. The implicit performance-management contingency is: *If you commit adultery, you will encounter the wrath of God*. The ineffective natural contingency is that one instance of adultery will only infinitesimally harm the family and community, though an

¹ The contingencies described in this article are generalized forms of moral and legal control; of course cultures vary in the specifics of moral control. The use of Heaven and Hell in religious rules comes from Judeo-Christian traditions; other traditions have other supernatural outcomes, such as reincarnation.

accumulation of many such instance will cause serious harm. The rule is: *Do not endanger the stability of the community by committing hanky-panky.* The contingency is punishment by the wrath of God.

Legal Vs. Moral Control

Usually, legal control works well, as long as someone is around to observe the behavior and impose the contingency. But often no one is looking—for example, midnight polluters, or solitary hunters, or married people with roving eyes. In such cases, moral or ethical control is crucial. Therefore, society needs to arrange for individuals to observe their own behavior and apply the punishment and avoidance contingencies (perhaps automatically). That way society can cause people to follow the rules for behaving in the best interests of society, even when no one is looking.

As we have seen, sometimes moral control works when legal control fails. But the reverse also applies. Sometimes legal control works when moral control fails:

"Fellow citizens, you have a moral obligation to your country to preserve our scarce resources during these times of crisis. Therefore, to preserve our oil supplies, I ask that you not exceed 55 mph."

Lots of luck.

"Fellow citizens, we have a new law in this great land of ours. Anyone caught exceeding 55 mph will get a traffic ticket. Collect a few of those tickets, and you'll need to dust off your walking shoes, good buddy."

Another example:

"Fellow citizens, you have a moral obligation to your babies and toddlers under four to secure them in an infant or child restraint seat, when driving."

"Well, I meant to. Be reasonable, I drive carefully. And besides, who are you to tell me what to do; I know what's best for my child, do not I?"

"Here ye, here ye, fellow citizens. It is now a law of the land that all children under the age of four must be buckled into an infant or child restraint seat."

If society cannot observe the behavior or its outcomes, it has no choice but to use moral control. For example, impure thoughts are not illegal, just immoral. If society can observe the behavior and cares about the outcome, it uses legal control. For example, letting your parking meter expire will not cause you to go to confession; but it might cost you a buck or two. If society can sometimes observe the undesirable behavior and sometimes not, it often uses both moral and legal control. For example, stealing may send you both to the confessional and jail.

The Costs and Benefits of Moral Control

Moral control is hard to establish and maintain. For example, to establish and maintain moral control, the Jewish culture needs the Old Testament and the Christian culture needs both the Old and New Testaments. These cultures also need the continuous efforts of the rabbis with their synagogues and the priests and ministers with their churches.

Religion battles eternally with harmful direct-acting contingencies—direct-acting contingencies that will destroy the temple of our bodies—(e.g., drugs of a rapidly increasing variety, from nicotine, through alcohol, and on to cocaine). Religion battles eternally to prevent the powerful from exploiting the powerless (except when a representative of religion has been bought by the powerful, then religion's function reverses).

Moral control is hard and costly to establish, hard and costly to maintain, and often fails. However, when no one else is looking but you and your conscience² (or you and your God), moral control earns its keep, even though it is often less than optimally effective. The world would be in an even greater mess if we did not have these moral contingencies.

For moral control to work, society must have established a special, learned aversive condition—the thought of the wrath of one's God or the thought of the wrath of one's parents. And those thoughts must be aversive, even when no one is looking; such an effective aversive condition is hard to establish and hard to maintain.

Getting people to memorize the specific commandments or rules is easy. The hard part is putting teeth in the bite of those commandments. The hard part is arranging learned aversive outcomes for noncompliance with those commandments. "Do not be selfish." That is easy for people to memorize. If you are selfish, you will not be able to enter Heaven. Getting people to accept that rule is the hard part, especially when being selfish generates so many sizable and probable reinforcers.

However, it is sometimes easier to establish legal control, because it is easy to establish the fear of legal outcomes as learned aversive conditions: "Steal this, buster, and we're throwing your rear in jail." Children need not go to Sunday school for six years to establish the possibility of going to jail as an aversive condition. And the parents need not go to church the rest of their lives to maintain that possibility of going to jail as an aversive condition. As long as jail is a highly probable outcome, rules involving it will control behavior well. Of course, it all falls apart when jail is improbable.

Yet, there is a trade off. True, it takes most of the efforts of organized religion to establish and maintain our sensitivity to the reinforcing and aversive values of religious outcomes. But

² I beg for poetic license in my use of "conscience" by which I only mean self-observation, self-evaluation, and rule control.

all it takes is God or our conscience to monitor compliance with those moral rules, once society has established a conscience or a belief in God. And we need not pay taxes to support God or our conscience (though we must financially support religion's efforts to maintain our sensitivity to the reinforcers and aversive conditions associated with religious moral rules).

Furthermore, we do pay heavy taxes to support the police and the judges. Also it may not cost us much to establish the thought of jail as an aversive condition, but the jails and prisons themselves add a heavy tax burden. By contrast, we do not have to pay taxes for the maintenance of Heaven and Hell; we just have to support religion's efforts to establish and maintain our belief in those afterlife possibilities.

The Aversive Basis of Moral and Legal Control

Why Do We Need Hell To Have Moral Control?

Why are not the promises of Heaven enough to produce moral behavior from believers? Why do we need the threat of Hell, as well? Why must aversive control play such a large role in our moral contingencies?

It greatly helps that religion invoke the threat of Hell. Here is the problem with using rule-governed analogs to reinforcement based on the promise of rewards in an afterlife (e.g., entrance into Heaven). We can always postpone that difficult walk on the razor's edge that leads to Heaven. We can always sin today and struggle up the straight, narrow, and steep road to Heaven tomorrow, or maybe the day after tomorrow. But rule-governed analogs to punishment and avoidance often control our behavior more reliably than rule-governed analogs to reinforcement. Why? Because they do not let us procrastinate away our lives in sin.

This rule will not control our behavior very well: *Perform a lifetime of good deeds and you will spend eternity in Heaven.* Why not? Because the statement of that rule does not make any one instance of noncompliance a sufficiently aversive condition. It allows us to cop out and procrastinate. It allows us to say, "I am too busy to perform any good deeds right now, but I will perform them when I get time." This is an ineffective rule-governed analog to reinforcement by the presentation of a reinforcer. The ineffectiveness of this rule is most apparent when we do a molecular analysis, when we look at the implications of this rule for any single instance of doing one good deed, rather than at the molar aggregate of many good deeds. While performing a lifetime of good deeds certainly has a supernatural outcome sizeable enough to function as a powerful reinforcer, performing a single good deed probably will not. (See Fig. 5.)

And what about this rule? *Commit a single mortal sin, and you will spend eternity burning in Hell.* Unlike the previous rule, the statement of that rule does make noncompliance a sufficiently aversive condition (for believers). Therefore, this is an effective rule-governed analog to punishment. (See Fig. 6.)

Figure 5

An ineffective, rule-governed analog to reinforcement by the presentation of a reinforcer

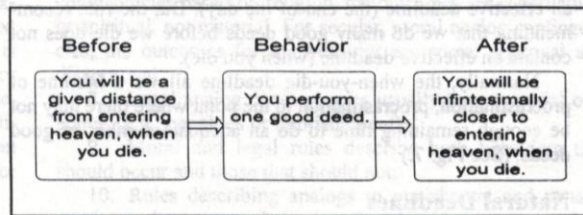
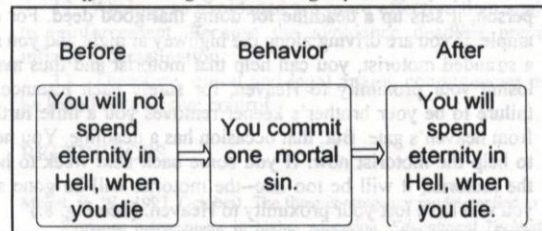


Figure 6

An effective rule-governed analog to punishment



What Is The Role of Heaven in Moral Control?

You might say however, moral control is not all that aversive. People think of Heaven as an afterlife rich with reinforcers. I agree that Heaven, rich with reinforcers, can be crucial to religious moral control but not because Heaven is the end result of procrastination-tolerant reinforcement contingencies.

Then what role does Heaven play in supporting our moral behavior? Heaven gives us something to lose. If you do too many evil deeds (sins of commission), you will not get the reinforcers of Heaven (a rule-governed analog to punishment by the prevention of the presentation of reinforcers). And if you fail to do enough good deeds (sins of omission), you also will not get the reinforcers of Heaven (a rule-governed analog to avoidance of the loss of reinforcers).

With analogues to avoidance, come procrastination battling deadlines. For example, at one time, parents instructed their children to perform the following prayer: "If I should die before I wake, I pray the Lord my soul to take." The parents said or implied something like this: "Say your prayers before you go to bed (deadline), so you will avoid harm to your soul, should you die before you awake."

A similar precautionary rule might be: "Do a good deeds every day to ensure the salvation of your soul, because you never know when you may die." (In this case, the deadline is the end of the day, by which time you should have performed your good deed.) But this is similar to the analogue to rein-

forcement contingency I discussed earlier; so why would this analogue to avoidance contingency control behavior when the simple instruction to perform many good deeds (analogue to reinforcement) would not? Because the daily-deed rule contains an effective deadline (the end of the day). But the rule recommending that we do many good deeds before we die does not contain an effective deadline (when you die).

Normally, the when-you-die deadline allows a lifetime of procrastination, procrastination to the point where there may not be enough remaining time to do an adequate number of good deeds. (See Fig. 7.)

Natural Deadlines

Deadlines that fight procrastination may also be established in other ways. When an occasion for a good deed is presented to a person, it sets up a deadline for doing that good deed. For example, if you are driving along the highway at night and you see a stranded motorist, you can help that motorist and thus avoid losing your proximity to Heaven, for surely each instance of failure to be your brother's keeper removes you a little further from heaven's gate. But, that occasion has a deadline. You need to help the motorist now. If you come back next week to help the motorist, it will be too late—the motorist will be gone and you will have lost your proximity to Heaven. (See Fig. 8.)

Figure 7

An effective, rule-governed analog to avoidance of the loss of the opportunity for a reinforcer. (Note that, only for the moment, are you avoiding the loss of the opportunity to enter Heaven. Performing one good deed does not provide a perpetual guarantee for Heaven's entrance. The later commitment of a sin or the failure to do a good deed on another day can also void your entrance to Heaven. Also, note that the time before the deadline functions as an S^D, a stimulus condition in the presence of which a behavioral contingency is in effect. Although, we need deadlines for avoidance contingencies, for punishment contingencies, a deadline for the occurrence of the behavior is usually not needed.)

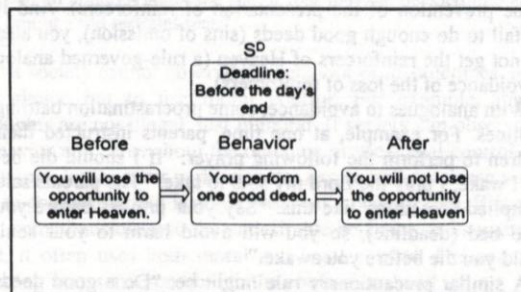
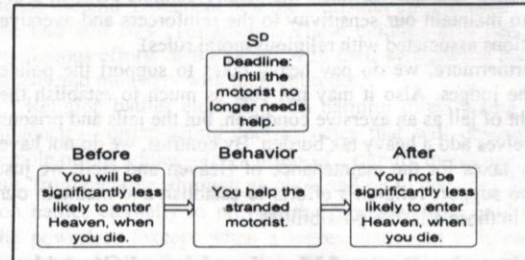


Figure 8

An effective, rule-governed analog to avoidance of the loss of the opportunity for a reinforcer.



In sum, moral rules control sins of commission (committing bad deeds), when they are stated as analogs to punishment. And they control sins of omission (omitting or failing to do good deeds), when they are stated as analogs to avoidance. This suggests that moral control is exclusively, or almost exclusively, aversive control. In the case of religion, that aversive control uses rule-governed analogs to punishment and avoidance. Hell (or something like it) is the aversive condition to be presented, and Heaven (or something like it) is the paradise to be lost.³

When Does Moral and Legal Control Fail?

As I said before, if we did not have moral and legal control, our world would be in an even bigger mess than it is now. But

³However, some argue that once you are saved, once you accept Jesus Christ into your heart, you are going to Heaven, automatically. Perhaps, but surely, only if accepting Jesus Christ means that you stop sinning and dedicate yourself to a life of good deeds. In other words, how do we know you have truly accepted Jesus? We know people not simply by their words, but also by their deeds. To accept Jesus Christ into your heart means you walk the walk; you do not just talk the talk. If you claim to accept Jesus but continue in extremely sinful ways, surely Heaven's gates would not open for you. Heaven is so difficult to access that Jesus felt compelled to warn that the burden of a sack of gold across your back will keep you from passing through Heaven's gate more surely than the burden of the hump on the back of a camel will prevent it from passing through a needle. Again, it seems like Heaven is entered only by those who live a righteous life, not by those who merely say they have accepted Jesus Christ. There is also the more predestinationist Christian view that states that Jesus died to save us from our sins, that whether or not we sin, it has been preordained that we either will or will not enter to Heaven. However, if you sin, in spite of what Jesus has done for you, you are a disappointment, even though you may have been predestined to sin and be a disappointment. And it might be that this knowledge that you will be a disappointment also sets up analog avoidance and punishment contingencies that are part of the predestinationist system that prevents you from sinning.

one reason we are now in such a mess is that moral and legal control often fail. Why do these control systems fail? Often, for legal rules, the penalty for each act is too improbable (for example, you probably will not be caught speeding during the next minute). Often, with religious rules, the penalty for each act is too small. For example, "Surely one small sin of commission or omission won't matter that much in the eyes of a forgiving Jesus." Also, we are adept at rationalizing exemptions from religious and moral rules: "It says we're not supposed to kill, but God didn't mean we should do away with the death penalty for hideous crimes."

SUMMARY

1. Immoral behavior and illegal behavior do not differ fundamentally. Both usually harm society.
2. Society must add both moral and legal contingencies to counteract the natural contingencies of reinforcement and punishment that support immoral and illegal behavior.
3. Both moral and legal contingencies are usually indirect-acting analog contingencies; therefore, they control behavior only when described as moral and legal rules.
4. Though immoral and illegal behaviors do not differ fundamentally, in practice, it is harder to observe some behaviors than others.
5. Generally, society adds moral analog contingencies to control behavior that is harder to observe and legal analog contingencies to control behavior that is easier to observe. Therefore, behavior we call immoral is usually harder to observe, and behavior we call illegal is usually easier to observe.
6. We often combine moral and legal contingencies, when we can sometimes observe and sometimes not observe the same behavior.

7. Moral analog contingencies usually have outcomes that do not materially affect the behavior. For moral analog contingencies based on religion, the outcomes are supernatural or spiritual, not material. For secular, moral analog contingencies, the outcomes for the behavior are social approval and disapproval.

8. Legal analog contingencies usually have material outcomes (e.g., penalties or imprisonment).

9. Moral and legal rules describe both behaviors that should occur and those that should not.

10. Rules describing analogs to punishment and penalty contingencies suppress behaviors that should not occur.

11. Rules describing analogs to avoidance support behaviors that should occur.

12. Analogs to avoidance are more effective than analogs to reinforcement, because the avoidance deadline prevents infinite procrastination.

13. Therefore, moral and legal analog contingencies must be based on aversive control.

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Author's Notes

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