

# Our sense of justice: evolutionary accident or hard-wired?

**SMITH LECTURE 2002 | KEN HANDLEY**

I expect you have all asked yourselves some ultimate questions. Why am I here? Is this all that there is? How did life start? What is the origin of the cosmos? Many don't bother to follow up these questions. Like Scarlett O'Hara in *Gone with the Wind* they won't think about that today. They will think about it tomorrow. Many live as though the answers don't matter, others on the basis that there are no answers. One of those questions is: how did we get our sense of justice and our sense of right and wrong?

All functioning human societies, however primitive, have a legal system to maintain law and order. But of course there can be law and order without justice as the history of Nazi Germany, Stalin's Russia and apartheid South Africa demonstrates. We don't get our understanding of justice from our legal systems. That exists outside any legal system and we use it to evaluate a legal system

and its decisions in particular cases.

There is of course no universal consensus about moral values, which differ from society to society and from time to time. There is nevertheless a broad measure of agreement about basic things like murder, violence, rape and theft. An understanding of justice and injustice appears to emerge spontaneously in our children at quite an early age. If we discipline one for what he or she did to a sibling we may be told in no uncertain terms that this was unfair because the other started it.

Not all legal rules have intrinsic moral force. In the abstract it is neither right nor wrong to drive on the left hand side of the road but if we want orderly traffic we need some rule. The rule we adopt may acquire moral force because it is our rule. Thus it may become morally wrong to drive on the incorrect side of the road if this endangers the lives of others. The

rules of rugby union which are not directed to player safety have no intrinsic moral force. There is nothing morally wrong about a knock on. However, we regard some rule breaches as cheating and we apply concepts of justice to decisions of the referee. We think it's unjust if a player is penalized for something

he did not do or is not penalized when he should have been. We also think it is unjust if the referee is biased, and that his biased decisions are unjust.

We don't apply our standards of justice to the physical world. Gravity, electricity and arsenic can kill but we

don't think of them as unjust or morally wrong. If someone dies from a fall or from an electric shock we don't think that gravity or electricity were morally responsible for the death, because we know that those forces could not act in any other way. We don't apply our standards of morality and justice to animals, either. Lions eat other animals and sharks eat fish but there is no such thing in moral terms as a good or bad lion or a good or bad shark. They cannot act differently.

On the other hand we think it is morally wrong for a human being to mistreat a pet. In this and other ways we regard ourselves as different from animals. We take it for granted that we are special. Why is this so? I suggest it is

because we have free will and the capacity to make choices. We can act differently and we do have moral standards.

For the same reasons our concept of rights is confined to human beings or their legal entities. In recent years we have heard about animal rights and even the rights of the environment, but neither can demand recognition or respect for anything and they can't sue anyone. Men and women interested in those matters make demands about them on society and others, and bodies like the RSPCA can prosecute cases of cruelty to animals. But it is really meaningless to speak or think of animals or the environment as having rights.

Where then did our moral standards come from? Education, of course, but who wrote the text book? Some modern thinkers have developed the concept of evolutionary ethics to explain our moral values. Human societies are said to be based on social compacts supported by 'live and let live' patterns of behaviour. Moral values, it is said, have evolved to discourage antisocial behaviour and encourage the opposite. They are said to be merely the product of enlightened self-interest. Ethical values generated in this way can have no intrinsic validity. They are no different in moral terms from the rule which requires us to drive on the left hand side of the road. They are valid for one society but not necessarily for another.

I find the idea horrifying. Are those thinkers really saying that what happened at Auschwitz was only driving on

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the wrong side of the road taken to an ultimate and obscene extreme? Evolutionary ethics show the lengths to which people will go who deny a divine source for our sense of right and wrong. Evolution is said to involve the survival of the fittest. In social terms this will be the strongest and thus we arrive at 'might is right'. Auschwitz itself was a by-product of the anti-Christian and atheistic views of the 19th century German philosopher Nietzsche, who thought that the triumph of the strong was the only ethic for mankind, and that gave us the Master Race.

A pragmatic ethical system can produce what most of us would regard as morally acceptable results on a micro level in families and other small groups where there is reasonable transparency and power is shared more or less equally. Such systems will not work well and their rules will not command general acceptance on moral grounds where there is no transparency and persons or groups are in positions of power. Power elites who act without regard for external moral values act selfishly. Their ethic tends to be to do what you can get away with and don't be found out. Enron, WorldCom and HIH are recent examples.

It is hard to see why social and other structures could generate ethical values that could command acceptance outside those structures, or which could be used to judge them, and act as a catalyst for change. Those in positions of disadvantage in such societies appeal to external moral values from outside their structures. The

slogan of the French Revolution, "Liberty, equality, fraternity" is a case in point.

History records some remarkable examples of long established institutions which were dismantled on moral grounds. I will mention one from the East, and one from the West. Hinduism sanctioned, indeed required, the practice of *suttee*, or widow burning. On the death of the husband his wife or wives were burnt alive on the funeral pyre when his body was cremated. The practice reduced the claims on the deceased's property and was supported by the self-interest of male heirs. It also reflected the subordinate status of women in Hindu society.

When the British began to consolidate their power in India they made the practice illegal and backed up the prohibition by force and moral persuasion. The practice was suppressed, although isolated cases still occur and one was reported in *The Sydney Morning Herald* recently. The British found support for its suppression on moral grounds from all levels in Hindu society. On the other hand their attempts to improve the lot of the small minority of untouchables made little progress against the opposition of the rest of Hindu society. Untouchables are thought by Hindus to have done terrible things in a former life.

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thousands of years. In 1800 there were immense vested interests in slavery and the West African slave trade in Britain, France, Spain, Portugal and their colonies. The slaves themselves were utterly powerless. Slavery had existed in Greece and Rome in classical times and was mentioned in the Old and New Testaments without explicit criticism. However, in the last decades of the 18th century a group emerged within Christian circles in Britain which claimed that slavery was contrary to Christian standards and should be abol-

ished. Moral arguments persuaded the British Parliament to abolish the West African slave trade in about 1806.

The slaves in the British Empire were emancipated by an Act of the British Parliament in the 1830's on payment of compensation of £30 million to the

slave owners, an immense sum for those days. Thus an institution, which had survived in Christendom for over 1,700 years, and was supported by immense vested interests, crumbled in Britain and its Empire within 50 years when challenged on purely moral grounds.

How could moral values, from outside the structures and social compacts of those societies, change the way they viewed entrenched practices and act as a catalyst for change? Why do some moral values appear to be intrinsically superior

to others? Where do we get the yardstick for such comparisons?

Two broad world views are competing for acceptance. One is that the cosmos is a closed system and is all there is. There is no one out there and no absolute moral values. The other is that it is an open system and God its creator is out there and is the source of absolute moral values.

Atheists believe that the cosmos emerged as the chance outcome of the blind undirected laws of physics and chemistry, and that life emerged on this planet and evolved in the same way. They used to say that the cosmos had no beginning because it had always been there, but this theory has been exploded in recent decades by evidence that it began with the Big Bang. The Bible opens with the words, "In the beginning", and for nearly two thousand years Christians have believed that there was a beginning. Only in recent decades has there been scientific support for this belief.

Cause and effect are universal phenomena in the physical world, in the natural order, and in ordinary life. However, when we trace causes back we finally hit a brick wall. What was there before the beginning? Nothing, or a first cause? It is entirely rational for Christians to believe that outside our physical world of cause and effect there is a first cause we call God. If there is no God there really should be nothing at all.

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rected and chance interaction of the laws of physics and chemistry, which can't make choices, how come we, as one of their by-products, can make choices? Since the laws of physics and chemistry are morally neutral, how come their undirected and chance interaction produced human beings with a capacity for moral judgment, and concerned with questions of justice?

If we test the blind chance hypothesis against ordinary experience and common sense, we can only conclude that it is highly improbable. A stream cannot rise higher than its source, and in the physical world you cannot get out more than you put in. You know the saying about computers, rubbish in and rubbish out.

Scientists have been trying to create life in the laboratory for over 100 years but so far without success. Optimistic forecasts at the start of the 90's that this would occur before the end of the century have not been realized. A scientific breakthrough could occur at any time, but if it did it would not disprove the existence of a creator God, because that new life would have been created by other life according to a plan. In the meantime Christians are entitled to say that the theory that life emerged on this planet spontaneously and that blind evolution did the rest is unproven because, apart from other reasons, its starting point is unproven. You should not make the mistake of thinking that all scientists are unbiased in these matters. Chemist Robert Shapiro has notably written:

Some future day may yet arrive when all reasonable chemical experiments run to discover a probable origin for life have failed unequivocally. Further, new geological evidence may indicate a sudden appearance of life on the earth. Finally, we may have explored the universe and found no trace of life, or processes leading to life, elsewhere. In such a case, some scientists might choose to turn to religion for an answer. Others, however, myself included, would attempt to sort out the surviving less probable scientific explanations in the hope of selecting one that was still more likely than the remainder.<sup>1</sup>

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You certainly can't accuse Shapiro of having an open mind on the existence of God.

In his book *The Blind Watchmaker*,<sup>2</sup> Richard Dawkins defends the theory that the cosmos and all life on this planet are the chance outcome of the interaction of the laws of physics and chemistry. Chance is the blind watchmaker of the title. The belief that this is what happened has no more scientific validity in our present state of knowledge than belief in a creator God, and it requires just as much, if not more, faith. As a wag once said: "If you believe nothing, you

will end up believing anything”.

This is not a new development. Three thousand years ago David wrote in Psalm 14: “The fool says in his heart there is no God”. Nearly two thousand years ago Paul, writing to the Church in Corinth, quoted God’s message to the prophet Isaiah: “I will destroy the wisdom of the wise” and added: “Has not God made foolish the wisdom of the world ... for the foolishness of God is wiser than

men”.<sup>3</sup> More of that later. The sophisticated scientific wisdom of *The Blind Watchmaker* is the ultimate foolishness. Contemporary philosophical arguments against deducing the existence of God from creation date back at least 250 years but they contradict our common sense. Would you buy a watch from a blind watchmaker? If not, why would you buy this theory?

When we look at the physical creation we find that it functions according to laws which we can discover by scientific means. There is regularity and order down to the smallest particles of matter. It all hangs together. Our common sense, without any need for a PhD, tells us that the cosmos and life on this planet, like our watches, were the deliberate work of a creator and not the results of chance.

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There is scientific evidence that our moral sense is centred in a particular part of the brain and if this is damaged the victim’s behaviour will reflect different moral values. The internationally renowned primatologist, Frans de Waal, writes:

... conscience is not some disembodied concept that can be understood only on the basis of culture and religion. Morality is as firmly grounded in neurology as anything else we do or are. Once thought of as purely spiritual matters, honesty, guilt and the weighing of ethical dilemmas are traceable to specific areas of the brain.<sup>4</sup>

De Waal is not a Christian. We recognize that the moral side of our nature is connected with physical and chemical functions in the brain because persons who are significantly affected by alcohol or mind-altering drugs behave differently. Self control and moral inhibitions are progressively lost as intoxication increases. If our morality was simply the result of teaching and experience, you would expect it to be centred in the area of the brain concerned with memory, but this is not the case.

There is therefore scientific evidence that we are hard-wired with the capacity to make moral choices, as Christians have always believed. Paul, writing to the Church in Rome, said that the requirements of God’s law are written in our hearts.<sup>5</sup> If we are simply physical matter,

why should it even occur to us that there is life after physical disintegration? Yet 3,000 years ago King Solomon wrote in Ecclesiastes that God has put eternity in our hearts.<sup>6</sup>

The chimpanzee is our closest living relative and we have something like 98% of our DNA in common. Nevertheless there are enormous differences between us, and the mind of the chimpanzee is fundamentally different from our own.<sup>7</sup> One of the most remarkable aspects of our minds is our consciousness or subjective awareness. Our minds can record and react to external stimuli, such as light or sound, that we can understand. But they also generate ideas without external stimulation when we want them to, when we remember something or imagine something we have never seen or heard. Our minds can also make choices, initiate action, and develop abstract ideas such as aesthetic beauty, goodness, compassion, love, duty, right, wrong and justice. Scientists do not know how the physical structures in our brains produce our consciousness, but evolutionary materialism seems an implausible explanation.

David Chalmers, one of the leading thinkers in this field, who is not a Christian, has written: “No explanation given wholly in physical terms can ever account for the emergence of conscious experience”.<sup>8</sup> Some atheist thinkers are still confident that a scientific, materialist explanation will be found, but it has not been found yet. Even if scientists dis-

cover the physical or chemical processes which occur during our conscious experiences, this will not explain why those processes are accompanied by conscious experience. A lot of physical and chemical activity goes on in our minds without any corresponding conscious experience, for example during sleep. There seems, in other words, to be dimensions to our mind which are not purely physical or chemical.

People believe that justice requires that the innocent be acquitted, and the guilty convicted and punished. Justice without punishment is a nonsense. Punishing wrongdoing involves identifying the relevant rule of conduct, making a judgment on what happened and why, and fixing the punishment. The hardest thing is to decide what happened and why. Many guilty people escape justice in this life because of the difficulty of determining what really happened and the motivations involved. There may be no witnesses and even when there are the accused must be given the benefit of the doubt.

Apart from justice, guilt and punishment, there is also mercy. This is a feature of many legal systems, and our own makes provision for leniency to be extended to first offenders and the young and gives the Judge a discretion on sentence. We recognize that justice and punishment rigidly enforced without any

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mercy could be intolerable. The Bible instructs us to show mercy. The prophet Micah wrote: "What does the Lord require of you, but to do justice, and to love kindness, and to walk humbly with your God".<sup>9</sup>

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standable if, as the Bible claims, we were created by a holy and just God in His image. However, the initial hard wiring is not enough. Like other hard wiring ours needs power to work properly, the power that can come to us from God. We need to know and follow the manufacturer's instructions.

The Bible has some remarkable things to say about human justice. God says to Moses: "You shall do no injustice in court. You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbour".<sup>10</sup> Even more remarkable is the passage in Deuteronomy: "Hear the cases ... and judge righteously, between a man and his brother Israelites or the alien who is with him. You shall not be partial in judgement. You shall hear the small and the great alike".<sup>11</sup>

These statements could not have been

man-made. Evolutionary ethics would not suggest justice for the weak and the powerless. Enlightened self-interest would favour the rich and powerful over the poor and powerless, and the Israelite over the alien. We have here absolute and impartial standards of justice which were and still are revolutionary. They certainly did not reflect contemporary standards in Egypt or other Middle Eastern societies three and a half thousand years ago. Even today many legal systems fail to meet these standards, yet we instinctively recognize their validity. Why is this so? Do they resonate with our hard wiring? What is the materialist explanation? The Christian explanation is that these statements came from God and reflect His nature, His commandment to love our neighbours as ourselves, and Jesus's golden rule that we do to others as we would have them do to us.

How come, then, there is so much injustice, and so many unjust structures? The Christian explanation is that our free will enables us to reject God. If societies do this, and in particular if their power elites do this, and continue doing it, those societies will move further and further away from God's standards.

Our hard wiring cannot work properly without external power. When in the Lord's Prayer we ask God for our daily bread we are asking for His spiritual food as well. Just as we become physically weak if we are not physically nourished, you and I become spiritually weak if we are not spiritually nourished.



We need to plug into God's power to reach our moral potential.

**U**p to this point I have concentrated on justice at the human level, what I may describe as horizontal justice. But what about the evil men who die in their beds while still in power, like Stalin or Pol Pot, or the staff at Auschwitz or similar camps, who escaped detection and punishment? What about those like Hitler who escaped human justice by committing suicide? Did Hitler simply disappear into oblivion? We feel strongly that there ought to be a next life so that people like this can receive the justice they escaped in this life. The Christian view is that there is justice in the next life, what I may describe as vertical justice.

As parents we want our children to treat each other properly and to show us love and respect. God the Father wants us to do likewise and thus we have the Ten Commandments and Jesus's summary of them which speak of our duty to love God and our neighbour. If there is a God whom we should love and respect, we should expect there to be a vertical justice system.

The Bible tells us that there is such a system with laws, a judge, justice, judgment, and punishment. Thankfully there is also mercy. We are told that God will judge us impartially and that He knows exactly what we did and what our motives were. In the vertical system there will be no error and no such thing as the benefit of the doubt. I know

enough about myself to know that my conduct could not withstand the scrutiny of an impartial, infallible, all knowing, and utterly holy God. My only chance lies in God's mercy.

God invites us to put our faith and trust in His son, Jesus, and if we do He accepts us, in the beautiful words of the Anglican Communion Service, "not weighing our merits but pardoning our offences". The method is simple and is available to children and persons with little or no education and of modest intelligence. It is also available to well educated intelligent adults. There is no discrimination and no favouritism. It is available to you.

Although he loves us, God cannot simply overlook the way you and I have treated him and our neighbours. Somehow the demands of justice for the way we treated God and our neighbours had to be met, somehow the penalty had to be paid.

If we were not going to pay it someone else had to. Jesus, the son of God, volunteered to take our place and pay the penalty. Only he was good enough, only he was blameless. Jesus on the Cross shows us not only how much God loves us but also how much he hates the way we have treated him and our neighbours. God's mercy came at a great cost, and he paid it.

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our attitude to Jesus and what he did on the Cross. We have to recognize that he did this for us and that we have a problem which he has solved. If we don't think we have a problem we won't understand the solution. If we know

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we have a problem but don't take advantage of the solution we will end up rejecting God's Son and God's mercy. We cannot expect to find some other way to God.

If the problem was so bad that only the son of God could fix it there can't be any other way.

That is how in the vertical justice system mercy and perfect love have been reconciled with perfect justice. Down the centuries from the very beginning of the Christian era many have thought the whole idea foolish but God in his wisdom does not weigh our merits but through Jesus he can pardon our offences. **K**

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*Justice Ken Handley is a Judge of the New South Wales Court of Appeal.*

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## ENDNOTES

- 1 Robert Shapiro, *Origins: A Skeptic's Guide to the Creation of Life on Earth*, Heinemann, London, 1986, p. 130.
- 2 Richard Dawkins, *The Blind Watchmaker*, Penguin Books, London, 1986.
- 3 1 Corinthians 1:19-25.
- 4 Frans de Waal, *Good Natured: The Origins of Right and Wrong in Humans and Other Animals*, Harvard University Press, Cambridge, Mass. and London, 1996, pp. 217-18.
- 5 Romans 2:15.
- 6 Ecclesiastes 3:11.
- 7 Stephen Mithen, *The Prehistory of the Mind: A Search for the Origins of Art, Religion and Science*, Thames and Hudson, London, 1996, p. 16.
- 8 David Chalmers, *The Conscious Mind: In Search of a Fundamental Theory*, Oxford University Press, New York and Oxford, 1996, p. 93.
- 9 Micah 6:8.
- 10 Leviticus 19:15.
- 11 Deuteronomy 1:16-18.