Hierarchy As a Moral Category: Notes Towards a Theory of Moral Choice

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Why does it sometimes take so long to bring wrongdoers to justice? There are recent cases, from Harvey Weinstein to Jeff Epstein and Donald Trump, or older ones such as the Khmer Rouge trials in Cambodia or the Nuremberg Trials in Germany, where years, even decades elapse between the public awareness of a wrong and an accounting for the crimes that were committed.

I am interested here in what I call “ethical failure,” where a moral incident is widely known and for which there is sufficient, even overwhelming evidence of wrongdoing, but where the perpetrator suffers few or no consequences. Though luck sometimes brings these wrongdoers to justice, there remain too many travesties where the wrongdoer seems to go on with life, free of the social costs of their misdeeds. What is the cause of this sort of ethical failure? Why, despite our many efforts to prevent them, do these ethical failures seem to keep happening? Why does it seem that sometimes, we simply don’t care?

My argument here will be that this phenomenon happens because traditional ethical theories fail to account for hierarchy as a moral category. Briefly put, my argument is this: all ethical decisions are filtered through our biological brains and placed into a hierarchical position. This means that while some ethical problems (and the people affected by them) are highly important to us, others are less important, and some are not important at all. Our failure to agree on the importance of moral problems is the key reason for ethical failures when agreement over an ethical course of action breaks down.

Identity formation — our sense of “self,” is intimately tied up with hierarchy and how we rank what we desire in the face of a moral dilemma. Although as selves we hold certain wants, these wants shift as circumstances require. For example, in contemplating whom to marry, I may consider a wide range of desires, from the aesthetic qualities of my partner to their professional opportunities to the values of my family. What is not in question here is that there will be contending preferences in such decisions, and that my actions will be determined by a struggle to ensure that some subset of my desires is expressed in my ethical actions. Since I cannot care about everything, I must carefully choose what to care about. My sense of self, who I am, is made from the things I choose to care about. Inevitably, some choices must matter more than others, and so the hierarchy of my moral choices becomes a key way in which I structure my identity, who I most fundamentally am.

Which moral problems we choose and the priority we assign them is not only bound up with our individual sense of identity, but also with the social and institutional structures through which ethical actions are acknowledged and consequences assigned. Institutions, like the individuals who compose them, also have a self, and this collective self, like the individual self, is structured as a hierarchical system that defines itself through what it cares about, through the moral problems it does or does not pay attention to.

Thus, individuals may find that their moral choices are in conflict with the moral choices of the institutions upon which they are dependent for taking ethical action. So, for example, while many women endured decades of abuse at the hands of the sexual predator Harvey Weinstein, it took a slow shift in the institutional moral priorities of the Hollywood system and of the public for Mr. Weinstein’s actions to be punished. This time delay caused immeasurable pain for the victims of Mr. Weinstein’s actions.

Although sometimes our moral hierarchies may align, the varieties of individual experience and how they interact both with other individuals and with institutional structures mean that our moral hierarchies are often incompatible or in direct conflict. My argument here will be that *ethical failure* results when there is a misalignment of moral hierarchies between contending parties, thus making a rational ethical decision impossible. Though humans often share values such as fairness and justice, individuals clash, and an ethical decision often fails when incompatible desires meet values we expect to share.

A first step in addressing the suffering that results from institutional neglect is the development of a theory of *moral choice*, or an understanding of how moral hierarchy structures our ethical decisions.

Let’s begin with an example. Let’s assume I am in love with a gorgeous and popular man; let’s call him Leonard. Because Leonard is a real catch, I’m not the only person in love with Leonard — Leonard has *choices*. Unfortunately for me, Leonard chooses another man to be with. We can now ask a simple question: has Leonard done anything wrong by choosing the other man? Standard, contemporary ethics would generally say “no.” Leonard has done what is right for *him*; he has put himself and his needs first. My pain, my heartbreak as result of Leonard choosing someone else, though it matters enormously to me, cannot be accounted for by standard ethical theories.

Leonard himself might not know why he has chosen someone else. If we were to ask him, he might reply that he simply “preferred” the other man. Effectively, because he has *chosen* A, any concerns he should have about B are no longer of consequence. In placing our moral value on the idea of *choice* and on the right to choose, rather than on the more accurate but morally complex idea that *all* choices take place within a hierarchy of moral options, we neglect the ways in which hierarchy affects how we make ethical choices. Standard moral theories do this by taking the idea of preferences, of simply choosing A over B, as value neutral.

It is important to see that in this example Leonard isn’t necessarily operating according to moral principles. Choosing someone else may not be a utilitarian choice or one that acknowledges any harm principle unless we want to take the idea that all choices are only proxies for utilitarian thinking, for a kind of preference utilitarianism.[1] Leonard has a *preference*, but he may well not have a principle because his choice of someone else is primarily a *desire*. His choice is based not on a rational act of comparison, but simply on a desire that arises in him. His act of choosing is driven not by any wish to maximize his own happiness or minimize harm; rather his *choice***is***his desire*. Nor is Leonard necessarily operating according to ethical imperatives; desires represent possible courses of action but may or may not be connected to a clearly defined value or principle. Because of this, it is also possible that no virtues are being considered in his choice. Leonard may simply *want* the other man.

Though ethical “work” proceeds as if the choice of A over B is always a simple and straightforward choice, in fact, choosing is never that simple. Almost always I will find something to like about B as a second choice, even if B may be less appealing to me than A. But *ethics —*as opposed to simple desire—is the process of justifying moral choices. This application of “reason” and “reasons” to moral choices turns them into ethical arguments and is a convenient, perhaps even necessary way of concealing and eliminating the hierarchy of our choices. We are all hierarchical choosers, but paradoxically, ethics allows us to pretend not to be.

In moving from moral desire to ethical action, Leonard may offer a host of reasons for rejecting me. Certainly, there are some reasons he might give that are not publicly acceptable — if he has rejected me because of my race, for example—but in most areas of choosing, the fact of choice predominates over any qualms we might have about why the choice has been made. Yet it should be obvious that every choice of A, is at the same time a ~B (not B) or ~C (not C), and so on. All of these ~B and ~Cs are not just logical negatives, however; they are also moral rejections of real people whose feelings and desires are bound up with the rejection.

Of course, life requires that Leonard *make a choice,*but does this necessity absolve Leonard of moral responsibility for those men not chosen? The conventional “narrow” responsibility position, much along the lines of the old saw “to thine own self be true,” affirms that in the end the only principle that matters is the integrity of the self. Choices that affect others matter only insofar as they influence the conscience or the reputation of the independent and autonomous self. [2]

Let’s assume the most negative case: Leonard does not choose me, and I go ballistic. Traditional ethical thinking would argue that Leonard’s moral responsibility to me now *decreases.*My actions in going ballistic and leaving behind rationality have broken the possibility of [morals by agreement](https://philpapers.org/rec/GAUMBA). Traditional ethics has no explanation for why I have gone ballistic; I must be merely angry or must have some character flaw that has caused me to abandon rationality.

Kantian perspectives that might see Leonard’s choice as an imperfect duty constrained by the need to create a kingdom of ends that should regulate the form of his rejection nonetheless depend upon conceiving of me as still a member of a moral community. Leonard must be able to form a rationally based maxim about his duties towards me for the kingdom of ends to remain a possibility. But what if, as seems likely, Leonard cannot form such a maxim? My ballistic response is effectively a claim that I wish no part in Leonard’s kingdom of ends. The intensity of my feeling has caused me to abandon any proportional sense of reason or rationality. My relationship with Leonard is now one of *ethical failure*. We have reached an impasse.

However, when we apply hierarchy as a moral category to this problem, we get a different answer about the nature of moral responsibility. Leonard has rejected me, and for good reason, yet my anger at the rejection still makes a claim on Leonard; I still desire *him*. Hierarchical moral thinking allows us to see that my going ballistic can be explained, at least in part, by the fact that Leonard was higher (perhaps far higher) in my moral hierarchy than I was in his. Similarly, the man he chose was also higher in Leonard’s hierarchy than I was. Leonard’s ordinary and commonplace ethical decision has resulted in my effectively experiencing two rejections — one from Leonard’s independent assessment of me, and a second related one, from Leonard’s choice of another. My going ballistic, then, is explained, in part, by the *moral gap* in our hierarchical assessments.

While ballistic responses to everyday romantic rejections are broadly unacceptable, ethical thinking, if it is to do its job, must try to understand the moral frameworks that lead to ethical failure. Leonard’s dual rejection of me is only viewed as ordinary, everyday, and not worthy of a ballistic response because social and institutional hierarchy is an accepted and unquestioned part of our ethical frameworks. Leonard’s preference for a particular partner and for making a choice among his preferred options are conventionally understood as fundamental “rights,” and are ipso facto, ethical. But giving people the right to choose is also and at the same time conferring on them the right to use moral hierarchy without consequence.

The ostensibly ethical character of our preferences is reinforced by the idea that some preferences aren’t obviously moral choices. How is the choice of chocolate over vanilla a moral question? Since having preferences is necessary for human functioning, it would seem that *all*preferences must necessarily be ethical. Consequently, opposing them is the height of madness. Yet all preferences express a form of hierarchy — chocolate over vanilla is still choosing to rank A *over* B. Since we *cannot live without hierarchy* either in our individual decision-making processes or in how we structure institutions, to oppose hierarchy must necessarily be irrational. Yet it is precisely the ordinary and ubiquitous nature of hierarchy that makes it unworthy of notice until that moment when someone rebels against it.

Understanding hierarchy as moral category helps us see that Leonard actually has an interest in *increasing*our moral gap. This is simply a complicated way of saying that we find it morally acceptable, even virtuous, for Leonard to advance his own interests (at the expense of others). Yet a[s we know from research studies, *power decreases empathy*](https://www.sciencedaily.com/releases/2022/09/220929132456.htm)*.*Ethically then, we face a moral paradox: society cannot function without power — e.g., the “right” to choose among moral options—but the possession of power decreases empathy.

To justify, to choose by imposing rationality, reasons, and order on our hierarchical desires, to move from the hierarchical complexity of moral feeling to the constrained necessity of ethical action, is at the same time to sever our connection to many others; it is to be required to view most others as instruments in our fundamental need to organize and prioritize our lives.

There is therefore a class of ethical problems — particularly problems that involve emotionally-laden choices, where reason and even the giving of reasons, is largely impossible. Many of these problems nonetheless have moral import, e.g., the choice has particular moral results and can result in the establishment of moral claims upon the party making the choice, but that *have no rational ethical solution*.

These problems are best approached through an understanding of moral hierarchy, or a set of preferential and internally competing desires that we reach for when trying to solve emotionally laden problems.

While it is safe to say that academic philosophy has paid very little attention to moral hierarchy, there are three key innovations we can point to on the road to understanding how moral hierarchy structures ethical actions.

We owe to Lawrence Kohlberg and his celebrated schema of [Stages of Moral Development](https://en.wikipedia.org/wiki/Lawrence_Kohlberg%27s_stages_of_moral_development), the important idea that hierarchy *is* a key function of ethical thinking. Kohlberg’s schema argues that hierarchical moral thinking is used throughout our lives from childhood on through adulthood. For Kohlberg moral hierarchy is not an afterthought, but the key way in which we make ethical decisions.

However, Kohlberg’s schema is deeply problematic and antithetical to real world ethical reasoning because it presupposes a *specific* moral hierarchy. In Kohlberg’s system one moves *up* the hierarchy from a primitive, less developed ethical system to an advanced and more developed system. Kohlberg’s system judges individuals and the ethics of their actions based on where the reasons for their decisions fall on a fixed and unchanging hierarchy of values.

While hierarchy does inevitably inform our desires and determine our courses of action, there is often no fixed or immutable set of values behind our everyday choices. Rather, our moral hierarchies are contingent, adapting and changing in response to the situations in which we find ourselves. Leonard may prefer a wealthy man at one stage of life and a young, gorgeous man at another. This change is not the result of his moving up or down any fixed set of ethical schemas, but of a change in his desires.

The second innovation I want to discuss here is the important work of Nel Noddings and her work on the ethics of caring. Noddings’ contribution to the ethics of moral choice has been to show that subjects need not invoke an ethical principle to make a choice. As she has persuasively argued, maternal (parental) care happens without the need to invoke a rational subject. Caring, Noddings argues, is a form of instinct, driven by our deepest desires. I follow Noddings in my conviction that some fair proportion of our moral decisions don’t depend on rational choice, but I am interested in what we might call the shadow of caring, or in examining why, despite our best selves, we are often uncaring.

The last important innovation towards understanding the role of hierarchy in moral thinking is the work of the philosopher Harry Frankfurt. The central idea of Frankfurt’s that relates to the notion of moral hierarchy is that his work shows that the position of one desire over another is often relative: the priority of one preference often depends upon the ordering of other lower-order preferences.

Frankfurt’s work on ethics and the way desires intersect is revolutionary, but he views these intersections not so much hierarchically (though he does use that word) as structured in a relative manner, [where secondary desires enable but do not morally affect primary desires](https://doi.org/10.1080/096725598342118). Frankfurt’s philosophical reasoning would argue, for example, that Leonard can *choose* to be responsible for those he rejects even if that is not his primary desire. This second, higher-order desire in Frankfurt’s schema — the choice to go against his primary desire, makes the secondary desire a tool for enabling an ethical action. But Frankfurt is mute on how choosing is itself a form of moral hierarchy.

To me, the implications of Frankfurt’s argument mean not only that Leonard is responsible for the choices he made, but also for the choices *he did not make*. In other words, proper moral responsibility for choosing man A requires accepting responsibility for *not* *choosing* men B, C, D, and so on. Choosing to be responsible for our choices is not the same thing as being responsible for what we *did not choose*. Responsibility for our choices is simply to accept a duty to act in a certain way. To be responsible for what was not chosen, however, requires an acceptance of our own moral hierarchies, of an acceptance of the fundamental immorality involved in the ethics of making a choice. It is an awareness of the gap between morality and ethics, between what is felt and what is rationally justified.

Frankfurt’s arguments about the intersections of desires also help show how complex moral hierarchy can actually be. For example, for Leonard, choosing man A might be less appealing than the possibility of having both man B and man C as lovers. Man C might be willing to accept such an arrangement, but man B would not. Consequently Leonard, who would prefer B if and only if he could have C, ends up choosing A.

Choices are not only constrained by individual desires, but also by the reality of institutional choices and desires. Philosophy has been preoccupied with notions of individual choice, but not often with the ways in which institutions have selves and desires that determine individual choices. Let’s say that Leonard wants to get married. His choice of A may be determined by the fact that choosing both B and C to marry is not allowed. Yet any theory about Leonard’s *free will* to choose A must also contend with his rejection of choices B and C, as A is chosen only because B and C are not available together.

Leonard’s choice, however, is not just an ethical action since B and C still make a claim on Leonard’s desires. B and C may represent Leonard’s desire, but for reasons of institutional constraint, not his choice. Leonard’s ethical choice of A, however, still influences B and C’s desires. In essence, I am arguing that moral responsibility is bound into the very nature of choice. A is a choice, and so is ~A (not A). A proper theory of moral choice would see that Leonard is responsible for all possibilities within his *universe of choices*. Frankfurt is correct that that secondary, lower-level desires can directly influence choices, it’s just that this does not always happen in the direct, rational way that Frankfurt explains.

It would certainly be convenient to ignore the effects of moral choice on those subjects not chosen, but to do so is to deny that there are such effects. Yet I submit that this is not a position we want to take. Harassment by a spurned lover may be ethically wrong, but his stalking of the woman who rejected him matters enormously to her. Admitting students into a university through affirmative action may well be necessary to social justice, but it has powerful and pervasive effects on the rejected students. In both cases the ethical decision has come about as a result of a moral hierarchy, a preference for one choice *over* another. Yet ethical theory has largely ignored the implications of these kinds of choices by focusing on ethical justification for the choices made instead of looking at the moral effects on the rejected parties.

Combining the ideas of Kohlberg, Noddings and Frankfurt provides the outline of a theory of moral hierarchy that is able to address real cases of ethical failure. The outline would look something like this: all ethical decisions are the result of the use of a system of contingent moral hierarchy that helps us decide what to care about and what *not*to care about. While ethics itself and the justification for an action depends upon a set of organized principles, e.g., a rule or concept, there is a large category of decisions that involve moral questions and raise moral issues, but for which no rational reasons can be given. These decisions are often resolved without any ethical justification, but simply through a preference applied to hierarchical moral desires. The hierarchical application of preferences to ethical decisions is both contingent and relative, such that preferences are related to each other *and*affected by the situation and the context.

**Notes and references**

[1] In this sense, I am following Hume’s argument that preferences are not utilitarian choices. As Rayner, (2005) explains, “Hume does not believe that utility imparts a moral *ought*to us.” Like Hume, I am arguing that the absence of this ought for preferences means that at least some preferences are not utilitarian choices.

[2] One way to think about this project is as a kind of “preference theory.” Preference theory was developed by the British sociologist, Catherine Hakim (1998) to explain women’s preferences about working and child-bearing. My feeling here is that something like “hierarchical preference theory” is the right term.