

THE PROCEDURE OF MORALITY

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DOES morality have a procedure? In some normative realms, such as law, procedural norms are commonplace. In fact, given that law inherently involves lawmaking and law-applying institutions, law's vast web of procedural norms seems almost inevitable. But what about normative realms that are not inherently institutional? Namely, are procedural norms part of moral discourse?

We argue that procedural norms akin to those found in the law are commonplace in morality as well, so much so that you could say that, like law, morality too has a "procedural branch"—what David Enoch has referred to as the "underexplored territory of the procedural law of morality."¹

The view that morality has a procedure is not only underexplored but controversial.² In fact, the mere term "moral procedure" can sound almost oxymoronic. After all, morality lacks institutions and may seem—in its very essence—"substantive" all the way down. Indeed, some are skeptical about procedural moral norms or related notions such as procedural moral rights and duties. For example, Christopher Wellman has rejected the existence of

1 Enoch, "In Defense of Procedural Rights (or Anyway, Procedural Duties)," 49.

2 To be sure, there are discussions in moral philosophy in the neighborhood of our inquiry. For instance, the distinction between "substance" and "procedure" seems related to the distinction between "form" and "content," such as in debates over Immanuel Kant's formalist categorical imperative (e.g., Rawls, *Lectures on the History of Moral Philosophy*, 164–70; and O'Neill, *Acting on Principle*, 111, 136–93). However, our characterization of procedural moral norms is independent of any particular position about ethics or political morality (e.g., Kantian and Rawlsian positions). Accordingly, we do not offer a specific procedural mechanism for generating basic normative principles or practical prescriptions, such as John Rawls's "original position" (Rawls, *A Theory of Justice*) or Kant's categorical imperatives, but rather provide general conditions for what it is for a norm to be "procedural."

The literature on procedural justice is even more directly relevant to our inquiry (e.g., Solum, "Procedural Justice"), as it identifies some characteristics of norms that are pre-theoretically considered as "procedural." However, much of the discussion of procedural justice in moral philosophy focuses on the normative properties of certain procedures (e.g., on what makes them just or fair) rather than on the procedural properties of norms, which is our basic concern here; hence the title of the paper: "The Procedure of Morality."

procedural moral rights, arguing that procedural rights, such as the right against punishing a person without first establishing her guilt via due process, do not exist pre-institutionally.³ Yet others do not reject the very existence of procedural rights but obscure the distinction between procedure and substance, arguing that “procedural rights just are substantive rights.”⁴

In this paper, we offer a theory of procedure for normative domains. We begin by defining what it is for a norm to be “procedural,” suggesting that procedural norms are a distinct normative kind with identifiable general characteristics, distinguishing them from the category of “substantive norms.” The paper is largely conceptual rather than normative, offering insights into the structure and internal tensions of moral discourse. Methodologically, we first test our theory of procedure on instances of legal procedure, ensuring that our theory adequately captures what are commonly and pretheoretically considered paradigmatic instances of the procedural branch of the law. Then, moving from law into the domain of morality, we identify an incompatibility between procedural and substantive norms, raising the worry that procedural *moral* norms are conceptually paradoxical or, at the very least, morally untenable. We then tackle these objections, vindicating the view that morality has a procedure.

The paper is structured as follows. Section 1 is devoted to our account of what makes a norm procedural. Section 2 demonstrates how our account captures norms of *legal* procedure and, along the way, identifies three central types of procedural norms. Section 3 articulates three objections to the notion that morality has a procedure—the *no-institution objection*, the *conceptual objection*, and the *moral objection*. That section then addresses the first two of these objections, leaving the third objection to section 4, where we respond through counterexamples of familiar and intuitive moral norms exhibiting the features of procedural norms according to the account presented in section 1.

1. CHARACTERIZING PROCEDURAL NORMS

We conceptualize procedural norms as involving three related features.⁵ Namely, they are *second-order* norms, they are about *how to engage* with other norms, and they are *outcome neutral*.

3 Wellman, “Procedural Rights.”

4 Alexander, “Are Procedural Rights Derivative Substantive Rights?”

5 We do not define the term “norm.” Rather, we use “norm” more loosely, broadly referring to propositions incorporating normative predicates or operators, such as “ought,” “permissible,” or “justified.”

1.1. *Second Orderness*

Roughly speaking, second-order norms are norms about other norms, that is, providing reasons related to other norms (or to the reasons provided by those other norms). Generally, procedural norms set a normative framework for dealing with other (typically substantive) norms.⁶ For example, rules of evidence are second-order norms in that they instruct courts on how to decide whether the relevant substantive norms governing the case (e.g., of criminal law, torts, etc.) have been violated.⁷

Like first-order norms, second-order norms provide agents with reasons for action (or emotion, or belief), except that unlike first-order norms, which determine the normative status of nonnormative facts (such as actions or states of affairs), we hold that when it comes to second-order norms, the thing whose normative status is at stake is itself characterized in normative terms.⁸ For example, “it is morally wrong to punish a person for an action that is morally permissible” is a second-order norm because the thing whose normative status is at stake—namely, the act of punishing a person for an action that is morally permissible—is characterized in normative terms (“morally permissible”). More formally, second-order norms are expressible by sentences that include a *normative term* within the scope of a normative predicate or operator.⁹ For example, in the aforementioned norm of punishment, the term “morally permissible” is embedded within the scope of the predicate “morally wrong.”

Our definition of “second-order norm” is stipulative, and it does not depend on any correspondence to other uses of the term “second-order.”¹⁰ Nevertheless, we believe that our characterization of second-order norms captures an

6 For similar characterizations of procedural norms, see Malcai and Levine-Schnur, “Which Came First, the Procedure or the Substance?” 69; see also Rosenthal, “What Decision Theory Can’t Tell Us about Moral Uncertainty,” 3089–90.

7 For instance, rule 403 of the Federal Rules of Evidence (as amended December 1, 2022) states:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

This is a second-order norm given that it is about how courts ought to decide on the parties’ compliance with the law’s substantive norms.

8 Malcai, “Second-Order Propositions and Metaethical Neutrality.”

9 Examples of normative terms include “good,” “bad,” “right,” “wrong,” and “permissible.”

10 In particular, what we call “second-order norms” do not require second-order logic for their formulation. For example, second-order norms can perhaps be expressed by conditional sentences in first-order logic.

important feature of the normative discourse (be it moral, epistemological, or legal).

1.2. About the “How”

Procedural norms are one kind of second-order norm. What colors a second-order norm as procedural is the providing of reasons bearing on the “how” of agents’ *engagement* with other norms (or with the reasons provided by other norms). By “engagement” we have in mind something very general, including any instance of agency responding to norms, deliberating on norms, applying norms, and forming norms. These second-order norms warrant the label “procedural” because they are, broadly speaking, about the process of one’s engaging with other norms.

1.3. Outcome Neutrality

Relatedly, procedural norms are in a sense outcome neutral. As norms about how to engage with other norms, procedural norms are about the process of such engagement as opposed to the normative outcome of the engagement itself.

Now, clearly, in bearing on the process of engagement with other norms, procedural norms can also impact the normative outcome of such engagement. Yet, what is crucial to notice is that they only do so *indirectly*, as the procedural norm itself does not bear on the matter. For example, in determining whether it ought to convict a defendant, a court ought to deploy the “beyond reasonable doubt” standard of persuasion. Now, this evidentiary norm can of course impact whether or not a defendant ought to be convicted, but being a second-order norm, it does not bear on which verdict the court ought to reach; it only instructs the court on how to engage with those norms of (substantive) criminal law that *do* determine the normative status of the defendant’s actions.

To fully appreciate the outcome neutrality of procedural norms, consider the *non*procedural second-order norm that we encountered at the outset: “punishing a person for an action that is morally permissible is morally wrong.” While this norm is a second-order norm—it relies on another norm to set its scope (namely, on those norms that determine the moral permissibility of actions)—it is *not* a procedural norm, as it does not bear on the process of one’s engagement with any other norm. Rather, it directly determines the moral status of the outcome, namely, the appropriateness of the punishment, regardless of the appropriateness of the process by which this outcome is arrived at. As such, this norm is *not* outcome neutral. Accordingly, it is a “substantive (second-order) norm” and not what we here call a “procedural norm.”

One could presumably object to the existence of procedural norms, since there is something contradictory in a norm that is agnostic about what it counts

in favor of. Namely, given that norms by definition provide reason for ϕ -ing, norms are by their very nature not neutral as to ϕ -ing. The outcome neutrality of procedural norms might be taken to conflict with this truism.

Happily, this worry is easily dealt with, as it involves a mischaracterization of the outcome neutrality of procedural norms. Outcome neutrality does not make procedural norms normatively inert. Procedural norms are not agnostic vis-à-vis what they *do* bear on directly, which is a certain *form* of engagement with another norm. Accordingly, the fact that a procedural norm is neutral on the normative outcome of the form of engagement that it counts in favor of does not entail that *that* procedural norm is normatively agnostic through and through. Thus, the outcome neutrality of procedural norms does not negate their normative nature.

1.4. *The Procedure of Morality, not the Morality of Procedure*

To avoid confusion, before turning to elaborate on a handful of different types of procedural norms, it is worth distinguishing our concept of “procedural norm” from other possible meanings of the term. In natural language, the term “procedural norm” comfortably encapsulates types of norms exceeding the philosophical type that we have in mind here. In fact, there are numerous norms advising or prescribing procedures for performing certain actions in a certain manner or order. Examples vary from surgical protocols to the sequenced routines that parents instill in their young children for going to sleep (e.g., bathing, donning pajamas, brushing teeth, then enjoying a lullaby).

In some sense, such norms are also “procedural.” Beyond the fact that they advise or prescribe a certain procedure, such norms also exhibit certain procedural-like features. For one, these norms are about the process and the “how” of reaching certain ends or performing certain overarching actions other than the actions the norms themselves directly prescribe. For example, a parental directive to first bathe, then dress, then brush, and so on prescribes a sequence of actions comprising a process for how children are to perform the overarching action of turning in for the night.

Yet notwithstanding their procedural-like features, these procedure-prescribing norms differ significantly from those norms that we label “procedural.” Notice first that procedure-prescribing norms such as the parental bedtime directive are first-order norms. While referring to such norms as “procedural” might be compatible with natural language, these norms, as far as we can see, do not raise unique philosophical questions similar to those raised by the norms that we label “procedural.” Thus, incorporating these types of procedural-like norms into our picture of procedural norms risks drowning out the normative phenomenon that we aim to elucidate.

We therefore propose a distinction between what we call “procedural norms,” which are the type of norms that we are interested in here (namely, norms about how to engage with other norms), and first-order norms that prescribe following a certain procedure. Although somewhat overlooked in moral philosophy, the fact that this distinction captures a unique normative kind is sharply reflected in the prevailing *legal* distinction between substance and procedure. For example, a legal norm requiring physicians to follow a certain protocol when disclosing medical information to a patient is clearly part not of the procedural branch of the law but rather of the relevant substantive law determining physicians’ duties and patients’ rights. In contrast, what we call “procedural norms” are not merely norms prescribing conduct plausibly labeled “procedural”; rather, they *are* procedural, as they embody the procedure for how to rightly engage with other norms. For example, courts ought to rely on expert testimony about the medical practice and state of the art in determining what is required by the legal standard of care in cases of medical malpractice; this legal norm is procedural because it prescribes *how* to go about determining what the standard of care under (substantive) negligence law is.

A possible objection to our position is to argue that all instances of what we call “procedural moral norms” can also be formalized as first-order norms of only one normative predicate or operator. For example, one might reformulate “in determining whether it *ought to* convict a defendant, a court ought to deploy the ‘beyond reasonable doubt’ standard of persuasion,” as “in determining whether *to* convict a defendant, a court ought to deploy the ‘beyond reasonable doubt’ standard of persuasion.” If so, our formulation of procedural moral norms is artificial, as such norms are reducible to straightforward first-order moral norms prescribing procedures.

Nevertheless, this reformulation in first-order terms obscures the normative quality of the practical matter at stake. Arguably, when a normative system (such as law) prescribes ϕ -ing, it actually prescribes that one *ought to* ϕ (according to that system). For instance, when deciding to convict an accused, the judge is following norms prescribing that under the circumstances the accused *ought to* be convicted according to the law. In contrast, were the judge following the demands of a violent mob to convict the accused, she then might indeed act on a reason for how to rule that is not laden with a norm about how she ought to rule (according to the law).¹¹

11 To concretize, we return to this last objection when discussing one of our examples (section 4.3).

2. TYPES OF PROCEDURAL NORMS

As norms about *how* to engage with other norms, procedural norms vary in the type of engagement that they prescribe. Below, we detail a few central examples, grouping them into three rough categories of norms exhibiting the three procedural characteristics detailed above. We deliberately draw these initial examples from the law, in which the existence of procedural norms is widely recognized.

2.1. Norms of Deliberation

Some procedural norms directly guide one's *deliberation* on other norms, thus bearing on the process of *reasoning* and on the *decision-making* itself. An example is the aforementioned judicial standard of persuasion. For instance, battery—be it the crime or the tort—mostly comprises similar elements.¹² This similarity notwithstanding, criminal law and tort law differ significantly in their procedures. In particular, the standard for persuading courts of defendants' civil liability ("preponderance of the evidence") is lower than the standard for persuading criminal courts of defendants' guilt ("beyond reasonable doubt"). Thus, criminal law and tort law differ less in their similar substantive norms of battery and more in their procedural frameworks governing the court's decision-making processes when applying those largely similar (substantive) norms.

2.2. Norms of the Application of Norms

Procedural norms can also bear on the *manner and means of applying* another norm. Such norms govern *practical aspects* of the process of engaging with other norms. Criminal procedure is chock-full of examples, such as criminal defendants' Sixth Amendment rights bearing on the form and management of criminal trials:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.¹³

12 E.g., in California, criminal battery is any willful, unlawful use of force or violence on the person of another (People v. Pennington, 3 Cal. 5th 786, 792 (Cal. 2017)), while the California tort of battery comprises intentional, unlawful, and harmful or offensive contact by one person with the person of the other (Barbara A. v. John G. 145 Cal. App. 3d 369 (1983)).

13 U.S. Constitution, art. I, sec. 5.

These rights are procedural: they are second-order norms, as they are about other norms (of substantive criminal law); they are about the practicalities (a speedy trial by an impartial jury, etc.) of how to apply those other norms; and finally, they are outcome neutral, bearing on the form of the criminal trial and not (at least not directly) on its normative outcomes.

2.3. *Forming, Shaping, and Validating Norms*

Another mode of procedural norms involves rules regulating the forming and shaping—that is, creating, altering, or annulling—of other norms. In law, these are akin to H. L. A. Hart’s “rules of change.”¹⁴ Consider, for example, the United States Congress’s rules for passing legislation that, among other conditions, require that a bill pass by a simple majority in the House of Representatives.¹⁵ This legal norm is procedural: it is second-order, given that it is about (the creation of) other legal norms; it controls *how* Congress legally ought to form new legal norms; and it is outcome neutral, given its agnosticism about the content of those new norms.

3. IS MORALITY NOT SUBSTANTIVE ALL THE WAY DOWN?

Now that we have a handle on what procedural norms are and are not, we turn to tackle three objections to the view that *morality* exhibits such norms.

3.1. *There Are No Moral Institutions*

Our discussion of procedural norms has thus far gravitated toward the law. This is not surprising. Modern legal systems invariably involve institutions, and institutions generally incorporate procedures as part of their operations and even their constitution. Moreover, typically such procedures are governed by norms, certainly in the case of complex social institutions. Finally, arguably the core function of legal institutions is the formation and application of legal norms. Thus, characteristically procedural norms govern the law-forming and law-applying functions of legal institutions. Accordingly, legal systems typically involve two kinds of norms: substantive norms, which are usually directed outwardly toward the citizenry, and procedural norms, which govern how legal institutions (and those involved with them) ought to engage with (e.g., apply, deliberate, form, shape, or validate) the law’s substantive norms.

14 Indeed, we view Hart’s project partially as adumbrating law’s foundational procedural norms (*The Concept of Law*, 115–17).

15 U.S. Constitution, amend. XI.

Morality is crucially different from the law in this respect. Simply put, there are no institutions of morality, at least none equivalent to those found in the law, such as “moral legislators,” “moral courts,” and “moral advocates.” Accordingly, given the apparent tie between procedural norms and institutions, and given that morality is institution-free (in the relevant sense), there is at least some reason to doubt our notion of procedural *moral* norms.

One possible response to this objection is to reject—on metaethical grounds—the disanalogy between law and morality regarding the role of institutions and procedures. For example, what some label “metaethical constructivism” holds that the criteria for the truth value of moral propositions are dependent on a certain (actual or hypothetical) procedure, such as, for example, what rational agents would agree to under some set of specified conditions.¹⁶ We will not pursue this line of response. Our conception of procedural moral norms is agnostic about the metaethical debate over the role of procedure in determining the truth value of moral propositions. Our concern here is whether there are identifiable procedural norms *within* moral discourse, regardless of the metaethical question of what the criteria for what falls within that discourse are. The arguments proposed here for the existence of procedural moral norms are thus compatible with both constructivist and non-constructivist metaethical views.

Our response to the institutional objection is, first, that, conceptually, there is nothing institutional in our tripod account of procedural norms as outcome-neutral second-order norms about how to engage with other norms; and, as argued below, this tripod account of procedural norms is conceptually sound (section 3.2.1). Second, transitioning from the conceptual response to the moral, while some of our examples of procedural moral norms are justified only assuming some institutional backdrop, the justifications of others (e.g., epistemic moral norms) are institution-free (section 4).

3.2. *The Conceptual and Moral Objections to Procedural Moral Norms*

There are, however, at least two deeper objections to the view that morality involves a procedure, which we label the *conceptual objection* (section 3.2.1) and the *moral objection* (section 3.2.2). These objections arise out of the outcome neutrality of procedural norms. Nevertheless, while acknowledging the complex and even somewhat paradoxical nature of outcome-neutral procedural *moral* norms, we argue that these complications do not rule out procedural norms from populating morality. As a conceptual matter, it is the second

16 For this characterization of constructivism, see Enoch, “Can There Be a Global, Interesting, Coherent Constructivism about Practical Reason?”; Bagnoli, “Constructivism in Metaethics.”

orderliness of procedural norms that unlocks the conceptual possibility of such norms. And, as a moral matter, while we recognize the possible clash between procedural and substantive moral norms, we do not think that such a clash wholly undermines the former. Indeed, this friction between the procedural and the substantive branches of morality is not a “bug” in our theory but rather a vital feature of morality. Or so we will argue.

3.2.1. *The Conceptual Objection*

Recall, procedural norms are outcome neutral; they bear on the form or process of engaging with norms, not on the normative outcome of such engagement. One may object that such outcome neutrality is *suapte natura* inconsistent with moral norms. Arguably, a moral norm counting in favor of ϕ -ing does so in virtue of the morally relevant (factual) properties of ϕ -ing. For example, a norm counting in favor of praising one’s student does so by virtue of whether the student did anything praiseworthy. This supervenience of the moral status of ϕ -ing on the morally relevant properties, which can seem inherent to moral norms, might prove incompatible with the existence of outcome-neutral procedural norms. That is because the outcome neutrality of procedural norms entails myopia toward what appear to be the morally relevant reasons counting for or against ϕ -ing. Accordingly, following a procedural norm can seemingly result in a moral prescription to do something that is itself morally wrong—which has the air of paradox.

Suppose there is a certain procedural norm requiring that you apply a certain decision-making procedure P in order to decide whether, as a moral matter, you ought to ϕ . If ϕ -ing is morally required, it seems to be so in virtue of some morally relevant properties of ϕ -ing *itself*—it increases others’ well-being, it promotes equality, it folds out of a good will, and so on. This is so regardless of whether or not you decided that you ought to ϕ by applying procedure P . Conversely, if independently of applying P , ϕ -ing itself is morally wrong—for example, it is unjust or it causes suffering—it seems that it must remain wrong even if you decided that you ought to ϕ by applying procedure P . Indeed, following a procedural norm can result in an apparent paradox: a moral prescription to do something that is itself morally wrong.¹⁷ Thus, procedural moral norms that are outcome neutral appear to yield a picture of moral discourse that flirts with contradiction. In other words, it could seem that morality must be substantive (i.e., not at all procedural) “all the way down.”

17 The same is true if ϕ -ing is neither morally required nor wrong but rather permissible: the moral status of the action arguably depends on the relevant properties of ϕ -ing itself.

For example, suppose that a certain procedural *moral* norm directs hospital managers to normally settle ethical dilemmas—such as whether or not to approve a dangerous clinical trial—by following the advice of specially appointed ethics committees. Now, it seems that if the clinical trial is morally warranted, it must be so in virtue of the morally relevant properties of the trial itself (such as the extent of the risk to the subjects of the trial). This is so regardless of whether or not the ethics committee's advice is that the trial is or is not morally warranted. In contrast, the procedural moral norm for deciding the case prescribes following the committee's advice *regardless* of such morally relevant properties.

Assume that although the trial is morally unwarranted, the committee advises in favor of it. The dilemma of the hospital administrator, therefore, is choosing between following two conflicting moral norms. On the one hand, there is a substantive first-order norm:

N_1 : The trial ought not to go forward.

On the other hand, there is a procedural second-order norm:

N_2 : Decide whether N_1 according to the committee's advice.

Thus, the administrator appears caught on the horns of a moral dilemma.

Addressing this apparent paradox raised by the idea of a procedural moral norm, notice first that, *formally*, there is no contradiction between procedural and substantive moral norms. For instance, in the example of the clinical trial, norms N_1 and N_2 do not formally contradict each other. While N_1 prescribes *prohibiting* the clinical trial, N_2 prescribes *how to deliberate* on the moral status of the clinical trial.

Yet this is not enough to ensure the conceptual compatibility of a procedural moral norm with its relevant substantive moral norm. As a general matter, the absence of formal contradiction between two propositions does not immunize against other forms of conceptual defectiveness. Specifically, two moral norms, each prescribing an all-things-considered duty, cannot—as a matter of the nature of morality—conflict in the normative practical outcomes (that is, what you ought to do all things considered) of their prescriptions. For instance, if one is obligated to prohibit a clinical trial under N_1 , then presumably N_2 is conceptually impossible, given that the normative practical outcome of following the prescription of N_2 —requiring the clinical trial—is incompatible with the normative practical outcome of following the prescription of N_1 —prohibiting the trial.

Dissolving this conceptual challenge to the idea of procedural moral norms requires rejecting the implicit premise that N_1 and N_2 prescribe

all-things-considered duties as opposed to *pro tanto* duties (or even just *pro tanto* reasons). After all, there is nothing mysterious or problematic about conflicting *pro tanto* duties, and therefore, the occasional friction between substantive and procedural moral norms does not raise any special puzzle. Indeed, we believe that there can be distinct *pro tanto* first-order and second-order reasons, which can conflict with each other—and that the resolution of such conflicts is a moral matter, not a conceptual one.

Yet the interlocutor could object that this response to the conceptual challenge to procedural moral norms is too easy, as at least on the face of things, the paradox of moral procedural norms seems more intractable than a simple case of conflicting moral norms. This is because, seemingly, procedural and substantive norms can both provide *more* than merely *pro tanto* reasons. At least on the face of things, both substantive norms and procedural norms can “claim” categorical priority over one another, apparently leaving no space for balancing between them.

Nevertheless, we can explain away this sense of intractability by looking more closely at these two types of norms and their apparent incompatibility. On the one hand, as demonstrated above, substantive norms of the form “ ϕ -ing is wrong” (e.g., “conducting the experiment is wrong”) are naturally understood as supervening on all the morally relevant properties of the action ϕ itself, as opposed, for instance, to supervening on facts about how one ought to engage with the norm “ ϕ -ing is wrong” (e.g., how one ought to deliberate on whether conducting the clinical trial is wrong). Therefore, substantive norms appear to provide all-things-considered reasons for or against ϕ -ing and are habitually assumed, in that sense, to be independent and categorically prior to procedural norms. That is, procedural norms arguably only bind if the action that they prescribe is itself morally permissible, regardless of the procedure.

On the other hand, given that procedural norms are second-order norms, namely, norms about (how to engage with) other (substantive) norms, balancing them against (let alone subordinating them to) the very same norms that they are about seems strange. This is perhaps most salient in the case of procedural norms of *forming and shaping* norms: it is strange to balance a procedural norm that governs the process of forming (substantive) norms against those very same (substantive) norms that are the outcome of that process. The same is true regarding procedural norms of *deliberation* bearing on the process of reasoning about other norms: seemingly, the norms governing the process of moral deliberation are not balanceable against the substantive norms that are the outcome of that same deliberative process.

Thus, these two types of norms appear incompatible, as they both appear to yield all-things-considered norms that are potentially conflicting. And

discounting occasional moral tragedies or genuine moral dilemmas, moral discourse arguably cannot—as a conceptual matter—include conflicting all-things-considered norms.

In the example above, the hospital administrator is morally bound to adopt the advice of the expert ethics committee, following the procedural norm that “hospital administrators ought to decide ethical questions according to the advice of ethics committees.” This procedural norm seems to stand even when following the committee’s advice would yield an immoral outcome (in the eyes of the administrator). Indeed, administrators typically seem committed to the view that such a procedural norm is an all-things-considered moral edict. After all, were administrators to adopt committees’ advice only when it coincided with their own views, administrators might as well just decide ethical matters on their own accord.

That said, in those cases wherein ethics committees’ advice yields immoral outcomes, administrators, at least in their more reflective moments, do struggle with the unique moral dilemma between either: complying with the procedural moral principle that administrators ought to act in ethical matters according to expert advice, or adhering to the substantive moral norms governing the concrete case and their moral duty to administer their hospital ethically.

Still, allowing for a conceptual space for the coexistence of substantive norms and corresponding procedural norms requires discarding the intuitive assumption that both are all-things-considered norms. How then can we explain away the intuitive pull of this powerful (yet, we think, erroneous) assumption?

The answer, we hold, is found in the fact that substantive and procedural norms inhabit different orders. And, given this difference, it might seem natural to take both procedural and substantive moral norms as supreme over the other—even when that results in incompatible prescriptions. Indeed, the notion of balancing norms of different orders can even seem a misnomer, not unlike comparing apples and oranges. Thus, procedural and substantive norms that are supreme within their respective orders can understandably (yet still incorrectly) appear as all-things-considered norms that apply across all orders.¹⁸

18 A norm is “supreme within an order” if it provides an overriding reason in respect of the specific action that that order is about. For example, in the case of the hospital administrator, there might be various considerations regarding what is the right procedure for deciding the substantive ethical question (whether or not the clinical trial is ethical). And while there are likely different *pro tanto* reasons in favor of certain procedures, there could also be a certain procedure that is the right procedure all things considered; namely, this would be the right procedure given all the (second-order) considerations in favor or against the available procedures. We stipulate that the ethics committee manifests such a procedure. In contrast, a norm is an all-things-considered norm “across all orders” if

This distinction between two types of supremacy helps to flesh out why procedural and substantive norms may mistakenly seem all-things-considered norms and why conflicts between them give rise to a novel type of moral dilemma (unlike standard conflicts between *pro tanto* normative considerations, such as utility and equality). Prescriptions of a norm that is supreme within one order are, in a sense, myopic as to the normative pull of reasons from other orders. After all, if you ask yourself the (second-order) question “What is the right procedure for deciding whether ϕ -ing is wrong?” in isolation (i.e., from first-order considerations), you are prone to conclude that you must (all things considered) follow the prescription of that appropriate procedure.¹⁹ Returning to the hospital administrator’s dilemma, it is the second-orderness of the procedural principle that administrators ought to manage their hospital according to expert advice that makes it appear as an all-things-considered norm functioning as a type of blinder, entirely filtering out from the administrator’s deliberation those relevant moral norms not recognized by the ethics committee. Yet there is no *conceptual necessity* that the norm obligating administrators to follow the advice of ethics committees on certain matters of medical ethics is an all-things-considered norm across all orders. More generally, there is no conceptual constraint ruling out competition among norms across different orders. Accordingly, neither procedural moral norms (such as those discussed in section 4) nor the substantive moral norms that they are about are necessarily all-things-considered norms.²⁰ Therefore, appearances notwithstanding, it follows that there is no conceptual defect in the idea of a procedural moral norm.

3.2.2. *The Moral Objection*

Even accepting that procedural *moral* norms are conceptually sound, the interlocutor might still doubt such norms on moral grounds. Presumably, morally speaking, one ought not to follow a procedure that yields a prescription to do something that is in itself morally wrong. Thus, following our terminology, if it turns out that what we call “procedural moral norms” can contradict what

the action it prescribes is morally justified given all relevant reasons *regardless* of order. For example, if given all the relevant reasons from all orders, the morally right practical outcome is for the hospital administrator to decide as the committee advises, then N_1 is an “all-things-considered norm across all orders.”

19 If the interlocutor finds this analysis unnecessarily complicated, one can replace “all things considered across orders” with “all things considered” (*simpliciter*) and “supremacy [only] within a normative order” with “*pro tanto*,” without altering our conclusion—which is, that procedural norms and substantive norms provide *pro tanto* reasons.

20 Putting aside the possibility of unresolvable moral dilemmas or paradoxes.

we would label “substantive moral norms,” then there appears reason to doubt that the former type of norms are indeed valid moral norms.

The remainder of the paper tackles this objection. Our argument in favor of the existence of procedural moral norms is twofold. First, we offer instances of what intuitively seem like genuine moral norms exhibiting the structure of what we characterize as a procedural norm. Second, space permitting, we shore up these intuitions by sketching possible lines of thought regarding the moral grounding of those procedural norms. In any case, our general point here is existential, demonstrating, in principle at least, that procedural moral norms of the kind described above exist. Hence, our argument that morality has a procedure does not depend so much on whether this or that specific procedural norm is justifiable.

4. RESPONDING TO THE MORAL OBJECTION: EXAMPLES OF PROCEDURAL MORAL NORMS

Above, deploying examples from law, we identified three broad types of procedural norms: norms of the application of norms; norms of deliberation on norms; and norms of forming, shaping, and validating norms. What follows are concrete examples of such types of norms, this time from within morality.

4.1. Procedural Moral Norms of Deliberation

Of the different types of procedural moral norms of deliberation, below we discuss two: norms of exclusion and epistemic norms.²¹

4.1.1. Exclusionary (or Discounting) Procedural Moral Norms of Deliberation

Let us begin with an example. Academic committees tend to believe that they ought to consider *only* certain reasons in favor of granting tenure. Such reasons include excellence in scholarship and teaching, administrative contribution, and collegiality. Let us call these reasons “academic.” In fact, tenure committees typically tend to treat nonacademic reasons as falling outside the purview of their deliberation and official mandate, even if on balance those reasons morally outweigh the academic reasons. At the very least, academic committees tend to discount nonacademic reasons.

For instance, a candidate’s emotional fragility is considered a peripheral or even illegitimate reason for a committee to grant him tenure. This is so even if assuming that on the balance of first-order moral reasons, the candidate’s

21 Other types possibly include, for example, procedural moral norms of deference, consultation, and exclusionary permissions. See Herstein, “Understanding Standing” and “Justifying Standing.”

foreseeable suffering and overall well-being morally outweighs the moral value of the relevant academic reasons. Indeed, even if a candidate's well-being is a weighty moral reason, most academics are of the opinion that tenure committees ought to bracket such nonacademic reasons.

One explanation of this common practice of tenure committees is that the candidate's well-being is considered simply irrelevant to the committee's moral deliberations. Nevertheless, this point about "irrelevance" is patently erroneous. Clearly, as a moral matter, a person's well-being is morally relevant to decisions that may impact his well-being. In fact, on the balance of the relevant first-order moral reasons, avoiding derailing a person's life may often outweigh any negative or suboptimal academic impact that granting him tenure may bring.

A better account of this practice of tenure committees ignoring nonacademic reasons views it as following an exclusionary norm. An exclusionary norm is a norm directing agents to ignore or not act on certain other norms or reasons.²² Exclusionary norms are second-order norms because they are about other norms—namely, they direct one to exclude those other norms. In our example, such an exclusionary norm directs tenure committees to exclude nonacademic norms and reasons from deliberation.²³

But is this exclusionary norm *procedural*? As argued at the outset, second-order norms are not necessarily procedural. Arguably, the same is true of exclusionary norms, which are a type of second-order norm. A *substantive* exclusionary norm may, for instance, direct that when confronted with two competing first-order norms, one ought to prioritize one norm in favor of the other. For example, assume that parents have both a reason to provide their child with food that the child finds tasty—such as a hamburger—as well as a reason not to partake in the exploitation of animals. Some believe that in this type of clash, considerations of one's child's culinary delights ought to be excluded entirely rather than weighted against considerations of animal rights.²⁴ Such a second-order norm is substantive rather than procedural, given that it bears on the normative relationship between the two first-order norms—for example, assigning lexical priority to one norm over the other—and not on the *process of how* to engage with those norms.

We argue, however, that some instances of exclusionary norms are only defensible if taken as procedural rather than substantive. Such is the case in our

22 Raz, *Practical Reasons and Norms*, 35–48.

23 Enoch explores such exclusionary norms under the heading of "quasi-protected reasons" ("Authority and Reason-Giving," 321).

24 Adams, "In Defense of Exclusionary Reasons."

example of the tenure committee, which is crucially different from the norm we discussed in the aforementioned example of the hamburger.

Notice first that the exclusionary norm guiding the tenure committee bears the hallmarks of a procedural norm. Recall that a second-order norm is procedural if it bears on *how to engage* with other norms. That is, as explained, procedural norms are in a sense outcome neutral—they are about the process of such engagement as opposed to the outcome of the engagement itself. The case of the tenure committee exhibits these procedural hallmarks: when excluding nonacademic reasons from deliberation, tenure committees are acting on a norm that does *not* bear on the matter of whether or not to grant tenure, unlike the example of the hamburger, where the exclusionary norm assigned (lexical) normative priority to one norm over the other, in the case of the tenure committee, the norm is to simply ignore one norm *despite* its relevance and apparent greater moral weight. In that sense, this exclusionary norm is outcome neutral and, therefore, procedural.

But what can justify excluding relevant and even weighty reasons from deliberation? Presumably, all reasons bearing on a practical matter ought to be part of the practical deliberation pertaining to that matter. What, in other words, makes such a procedural norm moral? In the context of our example, one path toward understanding the justification for such exclusionary norms begins with observing certain similarities they share with what is known as “role morality.” As T. M. Scanlon puts it, being a good teacher, for instance, involves bracketing and reordering the reason-giving force of some norms that otherwise might be quite relevant.²⁵ An exclusionary procedural norm of deliberation and the idea of role morality thus share a key feature—namely, bracketing relevant reasons. This suggests that perhaps certain procedural norms and certain instances of role morality stem from the same moral grounds. Moreover, viewing role morality through a procedural prism suggests that it has an overlooked procedural dimension.

A plausible account of role morality is that its justification is tied up with the value of the relevant social institution the role is couched in. For instance, returning to our example, perhaps the role morality of academics derives from the value of the institution of academia. But why does realizing the value of academia require the exclusion of relevant nonacademic moral reasons in the workings of tenure committees? After all, presumably, were a tenure committee to promote a mediocre candidate on the grounds of nonacademic reasons, the institution of academia would not as a whole suffer any significant setback.

25 Scanlon, *What We Owe to Each Other*, 52.

Notice first that if taken as a *substantive* exclusionary norm, such a norm seems morally invalid. For instance, suppose that the tenure committee's members took themselves to be subject to a substantive norm of exclusion, assigning lexical priority to academic reasons over nonacademic reasons. It would then follow that such committees were following a morally invalid norm, because as we already argued above, in each particular case, derailing a person's life is *not* lexically inferior to the utterly negligible disvalue that adding yet another mediocre academic would have for the institution of academia. Accordingly, understanding such exclusionary norms as substantive implies that they are invalid. Thus, if such exclusionary norms are possible, they are only so if they are procedural.

Beyond this transcendental argument, notice that the view that the moral norms at hand are procedural is plausibly supported across different approaches to normative ethics. One justification for such exclusionary norms has a rule-consequentialist flavor. Although in every particular case a tenure committee morally ought to consider nonacademic reasons, over time, in aggregate, the overall academic quality would greatly erode. Such a rule-consequentialist justification of exclusionary norms only justifies them as *procedural* norms of exclusion, because were tenure committees allowed to deliberate substantively in the case of every subpar candidate, then in each particular case the appropriate moral decision would be to grant tenure. This is because every *particular* case of granting tenure to an undeserving candidate is negligible in terms of eroding the overall quality of academia, not justifying the harm to the individual candidate, and the committee's granting of tenure to an undeserving candidate does not make it more likely that other tenure committees would do the same. Thus, morally correct *substantive* reasoning leads to morally suboptimal results—calling for a procedural norm blocking this type of reasoning.

On this account, then, such exclusionary norms are not justified by the properties of the action itself. Indeed, were the agent to apply good moral reasoning in deciding whether or not to perform an action, her inevitable conclusion must be that she ought to violate the exclusionary norm and act according to all the moral reasons relevant to the action—which is not what morality “wants.” It seems, therefore, that in cases such as the tenure committee example, the justification for the exclusionary rule is, in a sense, normatively inaccessible to the agent who is occupying the first-person perspective. Our point is not that the agent cannot reflect on the dilemma from the third-person perspective or that she is unable to comprehend the reasons in favor of the general exclusionary rule. Rather, even in the face of such awareness, when acting from the first-person point of view in a particular case, it seems that one cannot morally dislodge oneself from that point of view such that one ought

not to obey such procedural norms. More generally, if we are correct about the existence of such procedural moral norms, it follows that the moral status of actions turns on more than just the properties of the action itself, such as the action's consequences (both direct and indirect), the agent's intentions and other mental states, and so on. Accordingly, procedural exclusionary norms impact the moral status of actions in ways that are, in that sense, inaccessible from the first-person point of view of the moral agent.

Such procedural exclusory norms are also plausibly justifiable within other paradigms of moral theory, such as approaches with a more Kantian flavor. What we have in mind here is the conviction that agents ought to rely on an impartial and general point of view to morally guide their actions. Returning to the example of the tenure committee, including morally relevant nonacademic reasons in their deliberation is only morally allowed if the members of such committees can at the same time will that it become a "universal law" governing all tenure committees. That is, tenure committees ought to act impartially, treating the specific tenure candidate before them as they believe any and all such candidates ought to be treated under similar conditions. And presumably, such an impersonal and general view could mandate excluding nonacademic yet morally relevant reasons from the committee's deliberations on whether to grant tenure.

Procedural exclusionary moral norms may also find grounding in approaches to normative ethics focused on values that seem neither rule-consequentialist nor Kantian. Consider Bernard Williams's position that deep personal attachments can permit and even mandate certain actions. In Williams's well-known example, a man is faced with the dilemma of choosing to save his wife or a stranger. Most people intuitively believe that the man is permitted or even obliged to act partially toward his wife. Williams points out the inadequacy of explaining this intuition from an impartial paradigm in morality, a criticism applicable both to a Kantian and a rule utilitarian. For Williams, the man is permitted (or even obliged) to save his wife over the other person for the straightforward reason that *she is his wife*. Were we to ground this permission in further moral reasons—such as that it would bolster the institution of marriage (a rule-utilitarian reason) or some universal permission or duty to prioritize one's spouse (a quasi-Kantian reason)—it would fail to express and even offend against the man's deep personal attachments. For Williams, this would count as "one thought too many."²⁶

Under an approach such as Williams's, what grounds the exclusion of morally relevant reasons is that their *mere consideration* is objectionable. This

²⁶ Williams, *Moral Luck*, 18.

makes Williams's exclusionary norm procedural, as it is directed at the process of engaging with reasons and norms as opposed to their substantive weighing. Such procedural norms embody a principle of what may be coined "moral inadmissibility"—the very admittance of the reason into one's moral reasoning is what is morally deficient—reminiscent of the legal inadmissibility of probative yet illegally obtained evidence, the very admittance of which mars the integrity of the judicial process.

One may object to our notion of procedural norms by claiming that it collapses into norms of role morality. Relatedly, norms of role morality appear analogous to norms of legal procedure, as the latter are directed toward legal officials fulfilling various roles, such as judges and legislators. If true, this would suggest that procedural norms are always role-oriented norms, making our project of unearthing such norms in morality somewhat trivial or even merely terminological.²⁷

In response, while maintaining a measure of overlap, it is the case neither that all norms of role morality are procedural nor that all procedural norms are part of role morality. For example, the norm that "members of tenure committees *qua* members ought to grant tenure based on the candidates' academic record" is arguably one of role morality, yet it is substantive rather than procedural. Conversely, the categories of procedural moral norms detailed below contain many instances of norms that are not part of role morality.

4.1.2. Procedural Epistemic Moral Norms

Presumably, in moral matters we have a moral reason to act on the best available evidence.²⁸ And such moral reasons may ground certain *epistemic* procedural moral norms of deliberation.²⁹ In fact, we have already encountered such a norm in the example of the medical ethics committee. One plausible justification for the second-order norm to follow the advice of the ethics committee is the committee's superior medical and putative moral expertise,³⁰ providing

27 For objections along these lines, we are grateful to the anonymous reviewer for this journal.

28 Incidentally, this reason is procedural. It is about how one ought to decide how one ought to act—namely, on the best available evidence. And it is outcome neutral, as it bears not on how one ought to act but on how one ought to determine how one ought to act.

29 "Epistemic moral norms" are distinct from "epistemic norms." While the latter are about what one ought to believe, the former are about how one ought to act given certain epistemic conditions.

30 The justification of a norm prescribing the hospital manager to follow the advice of the ethics committee might rely on the epistemic advantages of the particular committee or on rule-consequentialist grounds: that following the advice of ethics committees brings about morally better consequences in general, even if in some particular cases hospital managers relying on their own moral judgment yields morally better outcomes.

the best available *evidence* on the matter.³¹ Another example of a procedural epistemic moral norm is drawn from the debate on procedural rights. Enoch has recently defended procedural moral rights, offering the following example in response to Wellman's view that pre-institutional procedural rights do not exist: a colleague spreads malevolent rumors about you at work.³² While you do not know which of your colleagues it was, you randomly pick one of them, blame him, resent him, and stop inviting him to lunch. Providentially, it turns out that it was indeed he who had spread the rumors. Yet notwithstanding the colleague's blameworthiness, Enoch argues that in blaming him without sufficient evidence you still wrong him (though, perhaps, he is not in a position to complain about your treatment of him).

Indeed, it makes perfect sense that morality would contain norms about how agents ought to act when faced with epistemic uncertainty. Presumably, it is agents' epistemic shortcomings that invite procedure into the moral discourse, as we are regularly (perhaps always) called upon to decide how we ought to act under conditions of evidentiary or other epistemic imperfection. In fact, in an epistemically ideal world, where all moral truths and all morally relevant factual truths are readily known to the agent, there appears to be no room for epistemic moral norms. More generally, arguably, one explanation of the existence of procedural norms in morality is that morality is for agents who are by their very nature imperfect. Thus, in epistemic procedural moral norms (such as in the examples above) the moral status of an agent's action may depend on her mental state and not only on the objective state of the external world.

This realization invites the objection that the distinction between procedural and substantive norms collapses into the familiar distinction between objective and subjective oughts. An objectivist view about norms (e.g., oughts, duties, and rights) is that what determines what one ought to do is the objective state of affairs of the world, whereas under a subjectivist view what matters are one's *beliefs* about that state of affairs. For instance, in the case of the slandering colleague, subjectivism implies that whether you violated your colleague's rights turns not on whether he is in fact guilty of spreading the rumors but rather on whether or not you believe he is guilty. Of course, assuming subjectivism about ought, randomly picking the colleague to be blamed violates his rights even if he is in fact guilty. Thus, the objection is that procedural moral norms

31 While the category of epistemic procedural moral norms (on which we focus here) is underexplored, there are discussions of moral norms prescribing epistemic procedures. See, e.g., Rosen, "Skepticism about Moral Responsibility," 301.

32 Enoch, "In Defense of Procedural Rights (or Anyway, Procedural Duties)"; and Wellman, "Procedural Rights."

exist only if we assume subjectivism about ought, but then, the objection continues, procedural moral norms are simply substantive norms with subjective oughts.³³ For example, if the “ought” in the procedural norm “you ought not to blame your colleague without sufficient evidence” must be a subjective ought, then this norm seems to have the same meaning as the norm “you ought not to blame your colleague” (with the “ought” understood as subjective), which is arguably a *substantive* norm only with a subjective ought. Indeed, it might ostensibly appear that the nature of the “ought” in procedural epistemic moral norms (such as “one ought to make moral decisions based on good evidence”) must be subjective. This is wrong, however, as becomes apparent once we formulate the relevant procedural norm as a fully fleshed out procedural norm, that is, a second-order norm bearing on the engagement with another norm.³⁴

For instance, in the case of the slandering colleague, the relevant procedural norm is “you *ought not* to decide whether you are morally *permitted* to blame or punish your colleague without sufficient evidence.” In this example, each of the two normative terms found in the procedural norm may take either an objective or a subjective form. Accordingly, there are four possible combinations of such normative terms in procedural norms: the “procedural ought”—namely, the external ought referring to the decision-making—may be objective or subjective, and the same is true of the internal normative term “permitted” embedded in the scope of the procedural (external) ought. Of the four combinations, what we wish to stress is that the pairing of two *objective* normative terms is a possible and even plausible account of many procedural moral norms. For example, the normative terms in the norm “you *ought not* to decide whether you are morally *permitted* to blame or punish your colleague without sufficient evidence” are plausibly both objective: the internal normative predicate (“morally permitted”) can be objective because the aim of your moral deliberation (determining whether you are permitted to blame your colleague) is finding the objectively correct moral answer (is he blameworthy for spreading the rumors?); the procedural (external) ought is *also* plausibly objective, for it plausibly prescribes deciding based on the best available evidence, not what you *believe* is your best available evidence.

To conclude, looking at these intuitive procedural epistemic moral norms, we learned that procedural moral norms are compatible with objectivism about

33 For a similar objection—raised against the idea of pre-institutional procedural rights—see Wellman, “Procedural Rights.”

34 For different responses to Wellman, see Enoch, “In Defense of Procedural Rights (or Anyway, Procedural Duties)”;

Adams, “Grounding Procedural Rights”; and Stewart, “Procedural Rights and Factual Accuracy.”

“ought” and, therefore, the objection that procedural moral norms are in fact substantive norms with subjective oughts fails.

4.2. *Procedural Moral Norms of the Application of Norms*

Moving on from norms of deliberation, another type of procedural moral norm bears on the manner and means of *applying* another norm, thereby governing the practical aspects of engaging with such other norms. As we saw, in the law, the proliferation of such procedural norms seems almost trivial. Our view is that morality too contains such norms.

Consider, for example, an editor of an academic journal charged with deciding whether or not to accept a submission written by her PhD student. Presumably, the editor is subject to a moral norm according to which editors ought not to decide whether a paper authored by someone close to them ought to be accepted. This norm is a procedural moral norm of application: it is second-order, as it is about applying the norms determinative of academic quality; it is about the “how” of engaging with those norms, namely, determining when one ought to disqualify oneself from deciding how to apply those norms; and it is outcome neutral, given that it is agnostic as to whether or not the submission is worthy of acceptance. Such procedural moral norms for avoiding conflicts of interest can be justified on epistemic grounds. Yet even if making such normative judgments under a conflict of interest does not pose any epistemic deficiency, doing so still seems morally problematic.

Another example is moral norms of hearings. In law, norms mandating hearings are plentiful and uncontroversial, appearing at least partially grounded in counterpart moral norms of hearings. Indeed, like legal principles against conflicts of interest, legal norms of hearings are labeled principles of “natural justice,” suggesting that the law in a sense transplanted them directly from pre-institutional morality.³⁵

To demonstrate that procedural norms are not exclusively institutional, here is an example of a norm of hearing from a purely interpersonal context. Consider the following two norms. “One is at liberty to sever a romantic relationship” seems like a morally sound, first-order norm. And the following norm also seems sound: “at least sometimes, one ought not to exercise one’s moral permission to sever a romantic relationship without first hearing one’s lover’s response prior to the separation.”³⁶

35 Shauer, “English Natural Justice and American Due Process.”

36 To be clear, we do not claim that such norms obtain when exiting all romantic relationships, such as in the case of abusive relationships.

The latter norm is procedural. First, it is second order—the thing the normative status of which is at stake (exercising “one’s moral permission to sever a romantic relationship without first hearing one’s lover’s response prior to the separation”) is defined in moral terms (“exercising one’s moral permission”). Here the second-order norm is about the manner and means of applying the former (first-order) norm, namely, prior to acting on the norm permitting breaking up with one’s lover, one must grant her a hearing. Second, this norm is about the “how” of engaging with another norm. Namely, it sets conditions for how to apply the norm permitting one to sever a relationship, mandating granting a hearing prior to exercising one’s permission to separate. Finally, it is outcome neutral—the norm does not directly bear on whether one ought to exercise one’s permission to separate, only on how one ought to do so.

Now, hearings mainly have two normative roles. First, hearings typically fulfill an epistemic function. In our example, a hearing potentially provides relevant evidence of one’s reasons for the breakup. In that sense, norms mandating hearings are procedural (epistemic) norms of deliberation similar to those discussed above. Second, seemingly, hearings also carry normative significance not reducible to their epistemic virtues. In our example, we can stipulate that one unequivocally knows all the relevant facts for the decision to separate, and *still* she ought to hear out her lover prior to breaking up with her. Indeed, nonepistemic norms demanding hearings are ancient, presumably present even at the genesis of humanity, as God himself—who is presumably omniscient—provided Adam and Eve with a hearing, allowing them to confess and explain their sins before he banished them from the Garden of Eden.³⁷

Although intuitive, explaining the nonepistemic moral significance of hearings is not trivial, be it in law or in our more interpersonal context.³⁸ Here we can only gesture toward a justification, such that when severing a meaningful relationship, delaying one’s final decision until after a hearing expresses respect toward one’s lover and what they shared. Such a norm prescribing a delay to the decision to break up would be outcome neutral and relevantly similar to *legal* norms of hearing. A different norm may prescribe no delay to one’s final decision to break up but a delay to the act of breaking up itself (or of announcing the decision) until after a “hearing.” Possible justifications include softening the blow of the breakup, providing the opportunity for “closure,” and acting in a manner that is less cold and humiliating. While such delays are sometimes required, one can object that a norm prescribing giving one’s spouse her say prior to effecting the breakup but after having made the final decision to do so

37 Gen. 3:8–13.

38 In favor of hearings in public law, see, e.g., Harel, *Why Law Matters*.

is a *substantive* (second-order) norm. This is because it does not bear on the process of one's engagement with another norm and is not outcome neutral but rather provides a direct prescription regarding the final action (the breaking up). Yet while we acknowledge that there might be norms that are not easily classifiable as procedural or substantive, this norm *is* plausibly conceived as procedural, for it does not bear directly on the content or scope of the right to break up but only on the manner and means of how this right ought to be exercised.³⁹

4.3. *Procedural Moral Norms of Forming, Shaping, and Validating Norms*

While it is perhaps less surprising to encounter procedural *moral* norms of application and deliberation, such as natural justice norms or the epistemic norms explored above, the notion that morality involves norms bearing on the procedure of forming, shaping, and validating other moral norms might seem especially puzzling. After all, there are no "parliaments of morality" engaged in the formation of moral norms. Likewise, unlike legal norms, the validity of moral norms seems independent of meeting procedural conditions, certainly when it comes to mundane procedures such as convening the requisite quorum in the House of Representatives.

Nevertheless, our view is that morality does involve such procedural norms. Notice that we do not argue that *all* substantive moral norms are products of procedures for the forming and shaping of moral norms. In fact, it seems to us plausible that there are basic moral norms the content and validity of which are independent of any procedure whatsoever. That said, there are of course those who do believe that the ultimate criteria for moral validity or for political morality are at their core, procedural and outcome neutral.⁴⁰ As already noted, we do not delve into this philosophical divide, as our aim is to offer examples of procedural moral norms of forming, shaping, and validating norms agreeable to both metaethical camps.

Suppose that the founders of a philanthropic foundation are considering investing the foundation's resources in one of two worthy causes: reducing

39 In that sense, this norm is different from second-order substantive norms such as the norm "punishing a person for an action that is morally permissible is morally wrong," which bears directly on the moral permissibility of the punishing itself rather than merely on the *process* of one engagement with any other norm (see section 1.3).

40 E.g., Rawls derives his two principles of justice by employing a hypothetical choice procedure (the "original position") designed to "incorporate pure procedural justice at the highest level" (*A Theory of Justice*); see also Rawls, "Justice as Fairness." Some even hold that moral validity in general is dependent on certain procedures (see, e.g., Korsgaard, "The Normative Question").

extreme poverty or curing infectious diseases. Let us assume for the sake of argument that reducing extreme poverty is the morally right choice under these circumstances. However, the founders cannot reach a consensus on which goal the foundation ought to adopt. To break the deadlock, the founders opt to resolve their disagreement by voting, and the majority votes that the foundation ought to adopt curing infectious diseases as its morally superior goal. Suppose that you are the foundation's CEO. You now face a dilemma between following one of two norms: the first-order, substantive norm, "the foundation ought to support reducing extreme poverty"; and the second-order, procedural norm, "the foundation *ought* to follow the results of the vote on whether the foundation *ought* to support reducing extreme poverty or curing infectious diseases."⁴¹

This moral dilemma exposes the curious tension we already encountered between procedural and substantive norms. Prior to the vote, you ought to have pursued a policy of reducing extreme poverty. Yet after the vote, what you ought to do is less clear. At the very least, you have some moral reason to comply with the procedural norm: that is, the vote created a new moral reason for favoring curing infectious diseases over reducing extreme poverty. Accordingly, the procedural norm at play prescribes complying with the results of the vote regarding what the foundation ought to do, functioning as a procedural moral norm for forming new norms.

A possible objection to our formulation of the above procedural norm as second-order is that it is artificial, overly stretching natural language. After all, why not articulate this norm as "you ought to follow the results of the vote on what *to do*" rather than as "you ought to follow the results of the vote on what you *ought to do*." Under this objection, the founders' vote is not normative; that is, it is a vote about what the foundation *will* do, not about what it *ought* to do. And if so, the procedural norm prescribing following the results of the vote involves only one "ought," and therefore there is no second-order norm at play here, thus dissolving the tension we alluded to above.

However, although our articulation of the norm as second-order may appear artificial, we stand by it. First, it is true that the founders' vote yields a practical decision and is not a vote on a theoretical question (such as the questions discussed in an academic course on normative ethics).⁴² Yet the founders

41 Further examples of voting procedural norms are plentiful in morality. Such norms can be noninstitutional and are not necessarily instances of role morality. For example, children regularly decide what game they ought to play by majority vote.

42 A procedural norm prescribing voting for resolving a purely *theoretical* moral disagreement (as opposed to a practical one) is an epistemic norm about what one is justified in believing rather than a moral norm about what one ought to do.

are engaged in a moral deliberation exactly about what the foundation *ought* to do, and the vote is the procedure for settling *that* question. Moreover, the vote is a process for settling a moral disagreement on a practical question *normatively*. As such, voting is morally laden. It is not like settling a moral conflict by rumble. As discussed above (section 1.4.), embedded in a vote on “what to do” is a determination of what “one ought to do” by the very fact that the matter is settled by vote. Accordingly, there is a procedural norm at play here.

Moral justifications in favor of voting as a process for collective moral decision-making are many. Briefly zeroing in just on our example, voting seems a morally sound process for deciding what the foundation ought to do. Obviously, there are instrumental justifications for voting, such as securing coordination among the founders and assuring that the philanthropic venture at least gets off the ground. Another possible justification is epistemic, at least if assuming that the founders are epistemic peers, and in the absence of other superior experts on the matter, voting indeed seems epistemically rational and for that reason morally justified.⁴³ Whether noninstrumental justifications also obtain in our case is less obvious, because unlike the context of democracy, where typically the moral patients of the vote largely overlap with the electorate, in our case there is a complete separation between the voters and those whom the vote impacts. Thus, justifications from consent, liberty, fairness, equality, and membership appear less fitting.

Other examples of forming procedural moral norms are norms prescribing conducting lotteries as a way of settling questions of allocation.⁴⁴ For example, suppose *A* and *B* are equally deserving claimants to a certain indivisible good. Many believe that in such a case one ought to allocate the good by lottery. The moral norm prescribing this process of allocation cannot be first-order—for as stipulated, there is no moral reason to prefer the claim of one claimant over the other’s. Rather, the moral norm prescribing the lottery is necessarily a second-order norm along the lines of something like “one *ought* to conduct a lottery to determine how one ought to allocate an indivisible good between equally entitled claimants *A* and *B*.”

Now, suppose that *A* wins the lottery. While prior to the lottery there was no reason to prefer *A* over *B*, after the lottery there is such a reason. The lottery therefore forms a new moral reason. And, accordingly, the second-order

43 For epistemic justifications of voting and democratic procedures, see, e.g., List and Goodin, “Epistemic Democracy”; and, Estlund, *Democratic Authority*.

44 In fact, Rawls viewed lotteries as the paradigmatic case of what he calls “pure procedural justice”—namely, the case where “there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair” (*A Theory of Justice*, 75).

norm prescribing *how* to create such a reason—namely, by the procedure of lottery—is a norm-forming procedural norm. Relatedly, further reflecting its procedural nature, this norm is outcome neutral in the sense that it bears on the *process* of forming the first-order norm (“you ought to allocate the good to A”), *not the content* of that norm. The second-order norm is indeed agnostic as to whether it is A or B who should receive the good. It determines this normative outcome only indirectly.⁴⁵

5. CONCLUSION

Unlike law, morality is arguably neither posited nor institutional. And still, much like law, morality not only prescribes various procedures (which seems uncontroversial) but also contains norms that are themselves procedural. Although the coexistence of procedural norms alongside substantive norms might at first blush seem paradoxical, we argued both that the idea of procedural moral norms is conceptually sound and that some such norms are morally grounded. In this respect, morality is not substantive through and through and, therefore, is more like law than what one might have expected.⁴⁶

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- 45 Justifications for lotteries vary. One common justification of allocation by lottery is grounded in assuring impartiality. For instance, Peter Stone (in *The Luck of the Draw*) argues that impartiality animates a second-order norm (which he calls a “meta-principle”) justifying those lotteries that sanitize distributions from morally irrelevant or corrupting considerations.
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