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# Ethical Reasoning

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## Description

Commentary and Part 5 of the Occidental Engineering Case Study by Michael McFarland, S.J.

## Body

# Occidental Engineering Case Study: Part 5

It is easy enough to accept in theory the duties to help and not to harm others, to keep promises, to treat others fairly and so on. But how do these translate into specific obligations in concrete circumstances? How do they help us choose between competing alternatives? How do we weight our obligations when we cannot satisfy all of them? What tradeoffs can we make?

A number of ethical theories have been formulated to provide a unified understanding and justification of our ethical obligations and to guide their application. We will study several of the most representative systems, because each one offers key insights into the nature and structure of ethics, and each one

emphasizes an important dimension of our concrete obligations.

## **Teleological Ethics and Utilitarianism**

Acts are good if they produce good results, bad if they produce bad results. That is the view of teleological theories. An act, or policy in some cases, is evaluated in view of its consequences, that is, its telos or goal. Acts are not good or bad in themselves, but only through the results they produce. This view sees beneficence, doing good, and nonmaleficence, avoiding harm, as the fundamental ethical principles, subsuming all others. The obligation to fidelity, including keeping promises and telling the truth, is valid only because it brings about good and avoids harm, and binding only insofar as it does so. It is acceptable to lie for a good purpose; indeed one is obliged to do so. The other basic duties, such as justice and gratitude, are regarded in the same way.

In the Occidental case, Deborah's is a good example of a consequentialist position. She argues that the best course of action is to falsify the test data that exposed flaws in the system, even though it means violating an implicit—and probably also a written contractual—obligation to the government. The reason she gives is that no one will be hurt and it will bring benefits to the company and its employees. To tell the truth, on the other hand, would not help anyone in practice, since the system was safe enough as is; and it could cost some people their jobs.

There remain the problems of defining what is good and what is harmful and of comparing different kinds of goods and harms. For example, in Deborah's case, suppose releasing the flawed system would create some small chance of an accident that could lead to the loss of a few lives, but that the probability would be only one in 100,000. Would it be justified to take this chance if it would save two hundred jobs? What about five thousand?

The theory of utilitarianism of Jeremy Bentham<sup>8</sup> addresses these problems. Utilitarianism is a teleological theory, in that it evaluates every act in terms of the effects it produces. Moreover it assigns a quantitative value to all effects according to their goodness or badness. Good effects are given a positive value, and the greater the good the higher the value. Similarly bad effects are given a negative value in proportion to their badness. The moral value of an act is proportional to the sum of the values of all its effects on all the people affected. When choosing between alternative actions, one is to choose the one with the greatest positive value, or the least negative one, if none are positive.

Bentham's version of utilitarianism was hedonistic, meaning that he evaluated all consequences in terms of the pleasure or pain that they gave. He identified seven factors that should go into the calculation of the degree of pleasure or pain produced by an act. They were<sup>9</sup> :

1. Intensity
2. Duration
3. Certainty or uncertainty
4. Propinquity (closeness) or remoteness
5. Fecundity, meaning its likelihood to lead to more pleasure if it is a pleasure or pain if it is a pain
6. Purity, meaning its likelihood of not being accompanied by pain if it is a pleasure, or pleasure if it is a pain
7. Extent, meaning the number of persons affected.

The way to calculate the goodness of an act, then, was to find all the people affected by the act and all the consequences for each one; to assign a value to each consequence according to how much pleasure or pain it would produce, using factors 1-6 above, with the greatest pleasure giving the largest positive value; and to take the sum over all those affected of the sum of all the consequences for each one. When choosing among alternatives, the one with the largest value was the one that ought to be chosen. Formally, if there are M people affected by an act A and A has N consequences, and if  $Pl(i,j)$  is the value of the pleasure produced by consequence j for person i, while  $Pa(i,j)$  is the absolute value of the pain produced by consequence j for person i, then the measure of the "goodness" of A is

$$G_A = \sum_{i=1}^N \sum_{j=1}^M (Pl(i,j) - Pa(i,j))$$

The pleasure that this system attempts to maximize is not necessarily limited only to physical pleasure. It can mean anything that leads to human happiness. John Stuart Mill, for example, in his classic defense of utilitarianism, insisted that the highest human values are those that produce the greatest pleasure and therefore ought to be rated most highly in the utilitarian<sup>10</sup> calculus. These include intellectual and moral sentiments, liberty, and a sense of dignity. Mill quotes approvingly the adage, "Better to be Socrates dissatisfied than a fool satisfied," and feels that utilitarianism's way of calculating pleasure can and should be consistent with this.<sup>11</sup>

Utilitarianism is attractive, particularly as a guide for government policy, which is what Bentham originally intended. There are a number of reasons for this. First of all, it is consistent with some of our fundamental moral convictions and intuitions. As we noted at the outset, two of the fundamental ethical principles are that we must avoid doing harm to others and seek to do good. When we consider alternative actions or policies, we do tend to evaluate them in terms of their effects. Will they be good for people, or will they harm them? Which does the greatest good or the least harm? These are precisely the issues that utilitarianism looks at. Moreover, in taking into account all the people affected by an action, and treating them all equally, utilitarianism demands altruism, that is, a concern for the welfare of others. In this it is quite different from egoism, with which it is sometimes confused. For if I choose a course of action for utilitarian reasons, that does not mean it is the best for me, but that it is the best for everyone. The interests of every individual are given equal weight, so the system is even-handed in the way it treats different populations and interest groups.

Another advantage of utilitarianism is that it provides a systematic way of balancing competing interests. As we saw earlier, one of the biggest problems in making an ethical judgement is that in order to gain some benefits or satisfy some duties, one must sometimes forego other benefits or violate other duties. This makes the choice especially difficult. Utilitarianism gives a seemingly objective way of finding the "best" alternative under these circumstances. Even more important, it offers a credible justification for those decisions that appear wrong because they violate some basic duty or deny some benefit. For example, if lying will not hurt anyone, short term or long, and will protect people's lives or bring economic benefits, then utilitarianism says go ahead and lie. Even if there would be some harm from lying, it would be the right thing to do as long as the benefits gained outweigh the harm. As another example, tearing down a neighborhood to build a highway, a stadium, a factory, or some other engine of economic growth, would be justified by utilitarian standards as long as the overall economic benefits were greater than the suffering to those displaced. For policymakers and other public figures, it is especially attractive that utilitarianism gives definite answers, arrived at by a scientific methodology, to these vexing moral questions.

Because of its effectiveness as a tool for ethical analysis and judgement, we use a form of utilitarianism all the time for policy and decision-making, both in government and in the private sector. We call it cost/benefit analysis. The measure we use to quantify all goods is money, which is to be expected given our society's fixation on

wealth and what it can buy. Thus in many cases when the government faces a major decision that has identifiable effects on peoples' lives, whether it is approving plans for a nuclear power plant, changing the regulations for automobile safety and pollution, or building a levee, a cost/benefit analysis is required. All of the effects of the proposed action are identified, and their impacts on the population are calculated in terms of dollars. This would include economic gains and losses, increased or decreased risk to human lives, and to some extent changes in the quality of life. These numbers are added up, and, if the outcome is positive, the proposed action is seen to be beneficial.

For all its advantages, however, utilitarianism does have a number of problems<sup>12</sup>. Some have to do with its implementation. For example how do we identify all the consequences of an act or policy, and how do we decide which ones are relevant enough to merit consideration?

How much of a horizon do we use? Do we just consider immediate and certain effects, or do we include long term and uncertain ones? Do we just look at the present generation of victims and beneficiaries, or their children and grandchildren as well? Telling a lie may not do any immediate harm, but every lie told makes it easier to tell the next one, and if lying becomes widespread, it seriously undermines the trust necessary to sustain a civilized society. How much does that count for, and how much of that loss is assignable to a single lie? Should the government require very costly measures to prevent global warming, when scientists cannot even agree if there is such a thing, and, if there is, how serious it is and what its impact will be? What level of certainty is required before we have to act?

Another problem is how to reduce all possible goods and harms, all aspects of human happiness and well-being, to numbers on a single scale. This means comparing values that are generally thought to be incomparable. How many jobs is a human life worth? How much growth in the GNP would pay for ten children with cancer? How many hours saved by suburban commuters would compensate for a family forced to live in an abandoned car because affordable housing has been destroyed by a freeway?

It seems arbitrary, indeed offensive, to put a dollar value on a human life or on human suffering. Yet it could be argued that we do it all the time. There are several more or less objective methods that are commonly used. One is to consider the economic contribution of a person. For example, we might calculate that an average person in a certain population earns about \$1 million in wages over his or her

lifetime. We could then use that as a rough measure of the value of that life. Or we could do a more careful analysis to calculate how much that person would contribute to the economy minus the resources he or she would use up. We could even pro-rate the figure depending on how much of the person's productive period had already passed. In that case many elderly people could be considered liabilities. Another way to evaluate a life is to look at actuarial figures. Insurance companies have standard tables of damage awards: so much for the death of a young adult, so much for the loss of an arm, so much for paralysis of both legs, and so on. These in turn are related to what juries generally award in such cases, which is another good source of data. Finally we can look at peoples' preferences, in the value they put on their own lives. This can be inferred from the kind of risks people are willing to take in return for some economic benefits. One way to get this is to use survey data. People are asked if they would be willing undertake some hazardous activity, say trying a new, untested drug, with a 1% chance of fatal complications, in return, say, for \$10,000. If the answer is yes, it would indicate that they value their lives at no more than \$1,000,000. The other way to measure preferences is to look at peoples' actual behavior. For example, if someone takes a coal mining job at \$45,000 per year, when the only other jobs available pay \$15,000, knowing that coal miners on the average have a shorter life expectancy than the rest of the population by fifteen years, then it would seem that the extra fifteen years is worth no more than about \$1,000,000 to the person, assuming thirty years in the work force. Or, if people are generally unwilling to spend an extra \$500 for air bags in their cars, knowing that having them would reduce their chance of a fatal injury by one in 10,000, we can conclude that they value their lives at no more than \$5,000,000. Admittedly, in practice the situation is more complicated than this. Many studies have shown that the type of hazard, the degree of risk, and many other factors influence people's preferences, so the exact price we are willing to put on our lives varies. Nevertheless, experience does support the utilitarian's contention that in practice a human life does have a finite value, and that this value can be estimated, at least to within an order of magnitude. (For middle class Americans, it seems to be a few million dollars.)

However, all these cases involve no more than exposing some lives to danger and order to obtain some good. They do not involve a direct and intended attack on specific human lives. A pure utilitarian would argue that there is no moral difference, since the outcome is the same: some lives will be lost. But for most of us, there is a significant difference between accepting some risk for oneself or others and directly attacking human beings with the intent to kill them. The moral quality of an act is

defined relationally, at least in part. The involvement and intent of the agent matter. Accepting foreseeable but unwanted evil as part of the consequences of an act is different from directly willing that evil<sup>13</sup>.

Another problem with the way utilitarianism puts a value on human life and other goods is that it contains significant value judgements. If we use the potential economic contribution of a person or the dollar value insurance companies and juries put on a life, we will end up favoring some groups over others, for example the young over the old, the rich over the poor, and citizens of first world societies over those in the third. For example, a study of the Union Carbide disaster in Bhopal India showed that Union Carbide spent far less on safety measures in the Bhopal plant than in a similar plant in Institute, West Virginia.<sup>14</sup> Even if the system avoids such discrimination, it can still contain more subtle value judgements, such as the extent to which the society is willing to put peoples' lives at risk in order to achieve economic growth. The problem here is not that there are value judgements; ethics always involves value judgements. The problem is that the value judgements are often hidden; and those who make them are not held accountable. Cost/benefit analyses are generally presented as "objective" and "scientific," free of any biases and value judgements; and they are accepted on those terms. This shields the hidden value judgements from the kind of public criticism and debate necessary to ensure that they represent our highest ethical standards. Any official who said in public that the residents in a poor, rural town are worth less than those in a wealthy suburb would be severely criticized, and rightly so. But that kind of value judgement could easily be embedded in a cost/benefit analysis for locating a power plant or a highway.

There are also deeper objections to the assumptions behind utilitarianism. For, even if we are willing to take some risks to our lives for a price, we still have a sense that there are some things that simply should not be done, no matter how beneficial. For example, suppose there was a shortage of organ donors and many young, productive people with families dependent on them who would die very soon without a transplant. A utilitarian calculus would seem to indicate that it would be good to find a homeless, friendless, unhappy, but healthy derelict and cut him up for spare parts, if it would save several lives. Certainly the immediate gains outweigh the losses. Perhaps a more careful analysis would show that in the long run the negative effects of killing the derelict, a diminished respect for life, for example, would tip the balance the other way. But suppose the case could be arranged so that there were no negative effects except on the poor victim. Then killing him would be justifiable

by utilitarian reasoning. Yet there is something objectionable in the willingness to treat him like a used car, valuable but expendable under the right conditions. As another example, it has been argued that many criminals in the United States go free because of all of the procedural protections accorded the accused. We could put more criminals away, and therefore make our society safer and provide more protection for potential victims by relaxing some of these protections, at the cost of allowing an innocent person to be convicted and punished occasionally. Yet we have steadfastly refused, in principle at least, to compromise our protection of the innocent, even if it means a criminal justice system that is less efficient and less effective in dealing with serious crime. Apparently we still believe that there are some things that cannot be sacrificed, even if there is a considerable advantage to doing so.

Another fundamental objection to utilitarianism is that it does nothing to specify how the goods are to be distributed, as long as the action taken achieves the greatest net good. This can lead to policies that are extremely unfair. According to a utilitarian analysis, there is nothing wrong with sacrificing a minority group for the benefit of the majority, as long as the gains to the majority are greater to the loss to the minority. For example, a cost/benefit analysis might show that the best place to build a major power plant to serve the city of Los Angeles is in northeast Arizona, an area that is very sparsely populated, mostly by Native Americans. A few thousand people living near the plant might suffer some increased risk to their health because of pollution, as well as a loss of some of the majestic beauty of their homeland. Some might also suffer from the desecration of what they consider sacred lands. But this would hardly outweigh the substantial economic benefits and enhanced quality of life for millions of residents in the Los Angeles area. The numbers would certainly favor building the plant. Yet this seems unfair, because those being forced to bear the burdens of living near the plant get none of the benefits and would oppose building the plant if they had anything to say about it. The injustice seems even more acute given the long history of oppression of Native Americans by the white majority. There seem to be moral issues here that a purely utilitarian analysis does not account for. Considerations such as these have led the ethicist William Frankena, who advocates a largely teleological ethical system, to acknowledge that such a system is not adequate without some provision that the benefits and burdens of an action must be distributed fairly.<sup>15</sup>

Teleological ethics, and utilitarianism in particular, are helpful in making ethical choices. They help clarify the alternatives and their implications and provide



guidance in choosing greater good. But in themselves they do not do justice to all ethical demands. It is necessary to introduce other considerations. This we will do in the next section.

## **Deontological Ethics**

Deontological ethics recognizes that there are some things that are wrong in themselves, apart from their effects. Thus when in the Occidental case, Wayne says, "I would be lying.... I can't do that," he is making a deontological argument. In his view, lying is simply wrong; it does not matter whether it bring about good results. In a deontological system, therefore, duty is primary. This is what gives it its name: deon is the Greek word for duty. An ethical action is one that is consistent with the basic duties, such as fidelity, nonmalfeasance, and justice. To violate any of these is unethical.

The best known statement of deontological ethics is due to Immanuel Kant.<sup>16</sup> Kant wanted to get to the foundation of ethics, so he began by asking what is good in itself. He decided that it is a good will, that is, the will choosing out of a sense of duty, not because of some advantage gained. For if the will chooses some object because of an expectation of a good result, then there is nothing particularly moral in that. The good is in the result, not in the choosing. It is the pure response to an inner moral law, without regard for the consequences, that is morally good.

The next question, according to Kant, is, what kind of law is it that can be chosen in itself, without reference to its effects? He concluded it had to be a law that was universal, not tied to any particular circumstances, and derivable by pure logic. This led to his first statement of the so-called categorical imperative: "I should never act except in such a way that I can also will that my maxim should become a universal good."<sup>17</sup> This captures Kant's idea that to be good is to be directed by a universal, inner moral law. While this law appears to be strictly formal and without content, Kant maintained that it formed a basis for judging specific behaviors. For example, one can conclude from the categorical imperative that breaking a promise is wrong. For if it were ethical for me to break a promise, I would have to accept that it was ethical for everyone to do so. But if everyone was free to break promises, promises would have no meaning. Thus inherent in the notion of a promise is the duty to keep it. There are no exceptions to this because the moral law is universal, applying to all reasonable beings.

At the center of Kant's moral universe is the free and rational subject. That subject follows its own moral law, acting for its own purposes, not for the sake of anything outside of itself. Therefore the subject is an end in itself, not the means to any other end. This suggested a second, more practical statement of the categorical imperative: "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."<sup>18</sup> This principle, which we might call the principle of human dignity, has profound implications for the way we treat one another. It means that we cannot sacrifice the interests of any individual or group, even when there is great benefit in doing so. We cannot simply use someone to accomplish some goal of our own, no matter how good that goal is. For example, a manager cannot simply regard her employees as units of production or information processors, to be used in whatever way is necessary to maximize the firm's profits, without regard to their wishes or needs. Nor can customers be treated simply as consumers of goods and services and producers of revenue. All are in some way partners in the enterprise.<sup>19</sup>

A third principle, or third statement of the categorical imperative, follows from the recognition that it is the will freely following the moral law that makes the subject good. As Kant wrote, "autonomy of the will is universally bound up with it [morality], or rather is its very foundation."<sup>20</sup> It is this autonomy that gives the rational subject its goodness and dignity. Therefore respect for the dignity of a rational being also demands respect for its autonomy. We cannot decide what is good for others, even with their best interests at heart. They must be able to exercise their autonomy. This means, for example, that a doctor, no matter how knowledgeable and well-intentioned, cannot simply decide what treatment to give to a competent patient. The patient must participate in the decision and must give full and informed consent to what is decided.

The system of Kantian ethics is highly abstract and formal, and therefore difficult to apply in practice. The categorical imperative, especially in its first form, has little content, so it is not clear what specific duties follow from it, although the fundamental duties listed earlier in this chapter could probably be justified in Kantian terms. The other problem with the Kantian system is that it gives no guidance about what to do when duties conflict. For Kant all duties bind absolutely. To violate any one is wrong, no matter what good might be achieved by it. Thus if one were harboring a fugitive from an unjust oppressor, and it was necessary to lie to protect him, it would still be wrong to lie.

Any deontological system, precisely because it refuses to reduce ethical values to measurable consequences, will have trouble with choices in conflict situations. There are, however, some ways to ameliorate the problem. The distinction, mentioned earlier, between accepting foreseen but unintended consequences of an act and directly willing evil, is helpful. One might, for example, risk harm to innocent civilians in attacking an unjust aggressor, even though to attack the civilians directly would be wrong, no matter how advantageous that strategy might be. The acceptance of an unintended evil byproduct of a good act is valid, however, only if the good done, or evil avoided, by the act outweighs the evil that accompanies it, and there is no alternative that avoids the evil.

Some deontological systems also allow for a prioritizing of duties, so that when these duties conflict one can choose the most important. This is the approach that W. D. Ross takes, for example.<sup>21</sup> The fundamental duties he lists are prima facie duties, meaning that each one is presumed to hold unless there is a more important duty that overrides it. When duties conflict, one is to choose the most important. In some cases the duties can be given an absolute priority. For example, for Ross the preservation of human life is more important than the cultivation of the life of the mind, so you would be obligated to drop your book and run next door to save your neighbor whose house was on fire, assuming you had the necessary knowledge and ability to help him. In most cases, however, one must decide based on the specific context what duty has priority.

Nevertheless, in a deontological system there are still values that are immeasurable. One cannot, for example, trade one human life for another, or even one for five. As Paul Ramsey writes:

Human, embodied, physical, individuated life is the subject of all values and goods we know. The value or good of life itself should be acknowledged as not to be commensured with all other or higher worths which for that life cannot be if it is not. Moreover, one life is not to be pooled or interchanged with another. Where human lives are concerned, the idea that they compose a net measurable good is a vacuous and a right dangerous notion.<sup>22</sup>

This gives little comfort or guidance in conflict situations where one cannot act without violating some fundamental ethical duty. Its value is that it recognizes those situations as tragic, as having no truly acceptable outcome, rather than blithely declaring good the sacrifice of a thousand lives as long as it saves a thousand and one. In spite of its ambiguities, Kant's ethics suggest three important principles that

help balance the everything-for-sale spirit of utilitarianism and other teleological systems. They are:

1. **Universalizability.** This states that if action X is justified in situation Y, then X is also justified in any situation Z that does not differ from Y in any morally significant way. This principle, which follows from the first statement of Kant's categorical imperative, ensures that moral judgement will be applied fairly, without favoritism or prejudice. There cannot be one set of rules for me or my group and a different set for everyone else. For example in the Occidental case, one way of testing Deborah's judgement that it is acceptable knowingly to deliver software with hidden flaws as long as they will cause no harm would be to ask if she would accept that same attitude from a subcontractor. It is always worth asking, "How would I feel if this were done to me?"[23](#)
2. **Human dignity.** Human beings must always be treated as ends in themselves, not simply as means. This is just the second form of the categorical imperative. This recognizes the primacy of the human person in ethics, as against economic considerations for instance, which are important only insofar as they serve the interests of the human person. It also provides some protection for the individual and the minority group against domination and manipulation by a powerful majority.
3. **Autonomy.** Always respect the autonomy of the human subject. This principle, from the third form of the categorical imperative, asserts not only that people must be given responsibility for their own lives, but that all must have an opportunity to participate as free and responsible subjects in the ethical, social and political life of their communities. There are a number of modes of ethical reasoning that are based on these principles and are therefore at least derivatively Kantian. We will discuss three of them: rights, contracts and justice.

## Rights

Rights are certain protections people are entitled to simply as human beings. Rights are seen as necessary to safeguard people's interests and autonomy, and thus are rooted in the principles of human dignity and autonomy.

There are a number of rights that are seen as fundamental to human existence.[24](#) They include:

1. **Life.** This includes freedom from violence and torture as well as threats to one's life.
2. **Freedom.** This includes freedom of movement and freedom from arbitrary arrest or imprisonment.
3. **Freedom of thought, conscience and religion.** This includes the ability to express and advocate one's thoughts and beliefs.
4. **Equality.** This means equal treatment under the law and protection from organized racial or religious prejudice and hatred.
5. **Freedom of Association.** This includes the right to participate in the political process.

In addition to these human rights, there are certain economic rights that are recognized, especially in socialist countries, as being necessary to safeguard human dignity.<sup>25</sup> These include:

1. **An adequate standard of living.**
2. **The freedom to organize and belong to trade unions.**
3. **Social security, including social insurance.**
4. **Freedom from hunger.**
5. **Health care.**
6. **Education.**

These are coming to be accepted as important in the first world as well, although it would be inaccurate to say that western governments are ready to commit themselves to ensuring all of these rights for all their citizens.

There are other rights that, while not fundamental like the above rights, are seen as important for safeguarding the fundamental rights. These we call derived rights. Examples are procedural rights, such as the right to a speedy trial, the right to legal counsel, the right to cross-examine witnesses, and so on. Many of the rights listed in the Bill of Rights of the U.S. Constitution are of this sort. They are deemed necessary to protect individuals against the abuse of power by a hostile government, and therefore to guard the life, freedom, and dignity of the individual. Private property is also a derived right. It is possible to conceive of a society without private property that is nevertheless humane and free. In fact such societies have existed, at least on a small scale. Although the idea is not popular today, some have suggested that a propertyless society would by its nature be more likely to nurture human freedom and dignity.

However that may be, it is widely accepted, based on human experience, that private property creates a sphere in which people can pursue their personal interests relatively free of outside influence, protect their lives, and provide for their economic needs. Therefore private property is seen as an important part of the rights package in many societies. Nevertheless, it should be borne in mind that property is not a fundamental human right in the same way that, say, the rights to life and liberty are.

Respect for rights is an important dimension of ethics. Rights guarantee the individual certain personal, economic and social goods that are necessary for a decent human life, and they safeguard individual autonomy against oppressive societies and governments. The original justification for liberal democratic government, with its ideals of limited governmental power and guaranteed freedoms for its citizens, was based on human rights.<sup>26</sup> Moreover rights ensure a certain measure of fairness in that they are meant to protect all human beings, not just those who are economically productive or politically loyal or who belong to the favored religion, race, class or gender. To appreciate the importance of the fundamental human rights, one need only contemplate what life is like in societies that do not respect them.

Nevertheless critics see some dangers in a rights-based ethic. Because rights involve the claims individuals have against society, they can be divisive. They emphasize privileges and protections individuals can demand from society, and not the duties individuals have to contribute to society and to make it work. Understood in this way, rights serve individual interests but not the common good. Those who worry about a "welfare state mentality," in which individuals see themselves as entitled to be taken care of by society without giving anything in return, often attribute it to an excessive emphasis on rights. On the other hand, those who are disturbed by the behavior of some individuals and corporations who pursue their own profit single-mindedly to the detriment of society blame it to an assertion of freedom unbalanced by any sense of social obligation.

Another problem with rights is that they can be so open-ended. It is hard to define where legitimate expectations end and unreasonable ones begin. The temptation is to keep sliding the line further and further out to encompass every possible unpleasantness. Now people are demanding protection against the rude language of second-graders, the freedom to defecate in public, insurance against all job-related stress, and immunity from the consequences of their own reckless activity.<sup>27</sup> All of

these claims, if accepted, as they have been in some cases, create further costs for the rest of society. They also insulate the claimants from having to take responsibility for their own actions. Finally, like the duties in other Kantian systems, rights can conflict with one another, and there is no well-defined procedure for deciding between them. The old adage says, "Your rights end where mine begin," but where do we draw that line? Suppose some parents' religious beliefs compel them to beat their children severely when they misbehave. What takes precedence, their freedom of religion or their children's right to protection from physical harm? What happens when one person's freedom to smoke impinges on another's right to a healthy, smoke-free environment, or when one person's freedom of expression is experienced as racial or sexual harassment by another? Many of the most difficult and hotly contested ethical issues in our society are rooted in rights conflicts. Rights theory itself, because it is based on individual claims, has no reliable way of choosing between them.

Rights language has become the favored mode of ethical reasoning in the developed countries of the west. In fact it is their distinctive contribution, and an important one, to ethical thought and practice. But too much emphasis on rights can lead to excessive individualism and a loss of civility and coherence in society, an acknowledged problem in those societies.

## **Freedom and Contracts**

Another approach, closely related to rights-based ethics, makes human autonomy its supreme value. What is most important in this view is that people be able to do what they choose and choose what they do. They should be free to pursue their own happiness, development and self-fulfillment in whatever way they decide is best. In this libertarian ethic, if people want to take drugs they should be able to do so, no matter what it does to them, as long as they understand the consequences and assent to them, and as long as they do not hurt or inconvenience anyone else. If ten women want to marry the same man, that is fine, provided all agree to the arrangement and no one else is adversely affected. And if a man makes a fully informed and rational decision that his life is not worth living anymore, he ought to be able to end it, although he should be careful not to leave a mess for someone else to clean up.

There are of course limits that even libertarians would recognize in how far people can go in pursuit of their own freedom. For one thing we are all constrained by the

limits of the possible. Susan may decide she wants to live to be two hundred years old; but it is not necessarily a moral failure on someone's part if she doesn't make it. Todd may choose to be the next Michael Jordan, but if he is 5'7" with a six inch vertical leap and no shooting eye, neither the Chicago Bulls nor anyone else owes it to him to guarantee that he will achieve his dream. Another limitation arises when one person's freedom interferes with another's, as noted above. Harry may want to marry Joan, but if she wants nothing to do with him, he has no claim on her or the marriage. Steve and his friends may enjoy partying and playing loud music at 3 AM on Sunday; but his neighbors might want to sleep at that time. Someone's freedom is going to have to be limited.

But noninterference is not enough. A view of human life that has every individual pursuing his or her ends in isolation without reference to anyone else, except perhaps to stay out of their way, is an impoverished one. Cooperation is necessary for the realization even of many individual goals. Therefore a libertarian ethic must somehow account for cooperation and the sacrifices it entails. It does so through the mechanism of contracts. In a contract two or more parties agree to cooperate for their mutual advantage, even though it means surrendering some freedom and other prerogatives. When people agree to go to work for a company, they typically agree to work during certain hours, even though at times they would rather be home or out recreating then, and they agree to do certain tasks that they might not do just for their own edification. The company's owners, for their part, agree to part with some of their wealth, sharing it with employees in the form of wages, which they would rather keep for themselves or invest in the company. Ultimately both sides benefit in spite of the sacrifices. The company needs a reliable workforce in order to function; and the employees can make more money than they could working on their own, with whatever benefits come with that. The contract preserves freedom while allowing the limitations on individual prerogatives that cooperation requires, because the obligations people take on are those they choose themselves.

A libertarian ethic has much to recommend it. It recognizes that the human person is the origin and locus of ethical value by protecting every individual's ability to pursue his or her interests. It reverences and guards human autonomy, which is central to the identity, value and uniqueness of the human person. In particular it guarantees that people will participate in the decisions that affect them. It stands as a bulwark against the oppressive power of government and other large institutions that would otherwise use individuals for alien purposes, rather than allowing them to be themselves and serve themselves. Moreover an ethic of freedom encourages



individuality, diversity and creativity. Much of the vitality and flexibility shown by liberal democratic countries can be attributed to their commitment to individual freedom. An ethic that is strictly libertarian, however, does have its problems. Outside of its commitment to freedom, it has no content. There is no duty except to respect the freedom of others and no recognition that human life has certain fundamental values that cannot be contracted away. Anything at all is acceptable, as long as everyone affected consents to it. The ultimate irony is that someone could sell himself into slavery, no matter how abusive, degrading and oppressive, as long as the decision was made freely.

Another problem is that a libertarian ethic has an atomistic view of society. Society is no more than a collection of individuals pursuing individual goals. People cooperate through contracts, but only insofar as they choose and only when it benefits them individually. Beyond this there is no obligation to serve family, community or state. John Locke and other early theorists of liberal democracy tried to compensate for this by postulating a "social contract" by which all people agreed to live in society because it was mutually beneficial to do so.<sup>28</sup> For to live without society and without a government to keep order would be to live in a "state of nature," in which everyone would be responsible for defending his own life and property, and which would therefore be a chaotic, perpetual "state of war." The suggestion was not that our ancestors had on some occasion gathered under a sacred oak and entered into such a contract. Rather it is a theoretical construct meant to convey the idea that it is in our interests to have government, so that if we were given the choice of whether or not to accept the limitations of living in society, we would do it. Thus it reconciles the need to surrender some freedom to government with the conviction that the only obligations we have are those we choose to accept. This is still a very weak account of social obligation, however. It implies that the only demands family or society can make on us are those we accept, which are only those that serve our self-interest.

The other danger of an ethics of freedom is that it only works for those who can understand, choose and promote their own interests. The big question is, who defends the defenseless and who speaks for those who cannot speak for themselves. Because the primary responsibility for promoting a person's interests lie with the individual, and because society is seen primarily as facilitating that, those who cannot act autonomously, because of age, race, mental or physical handicap, gender, or economic or social status, tend to be treated as if they had no interests. Thus those who are most vulnerable and on the margins of society are given the

least protection and treated the worst. For these people human dignity is not well served.

## **Justice**

Justice governs the complex economic, social and political relationships within and between societies and the social structures that sustain them, more than obligations between individuals. Based on the essential worth and dignity of every human being and the principle of universalizability, which says that people should not be treated differently because of morally irrelevant differences, justice demands equal treatment of all human beings. In other words, it requires that the benefits and burdens of society be distributed fairly. Certainly the burdens of society should not fall disproportionately on one group; nor should any group enjoy more of the benefits than it is entitled to. In particular those who are already weakest in society should not be unduly burdened or denied participation in society and a share of its goods. This is a particular concern because those who are already on the margins of society and least able to claim their proper place in it are the most likely to be taken advantage of and denied its benefits. The justice of a society is most clearly shown in how it treats its poor. Consideration of justice is an important part of ethical reasoning because it forces us to look beyond individual relationships, acts and obligations and to consider broader issues, including institutional and societal issues. In the Occidental case, for example, Deborah and Wayne both fail to consider the fairness of their proposed actions. When the government accepted bids on the project, it was with the understanding that the winner would deliver a working prototype by a certain date. This applied to all of the bidders. In bidding low and then trying to compensate by not putting enough resources into the project to guarantee making the deadline, Occidental tried to gain an unfair advantage over its competitors, who presumably bid higher based on an honest assessment of what it would take to meet the requirements. The punishment Occidental is subject to for failing to make the deadline is meant to ensure fairness in the bidding process, and Occidental's attempt to avoid the deserved penalty is therefore unjust. This is one of the strongest arguments, perhaps the decisive one, against Deborah's position. There are a number of ways in which the requirement of equal or fair treatment can be understood. One, the weakest, is simply a prohibition of discrimination against any individual or group based on race, religion, ethnic background or other characteristics for which the subjects are not responsible. People should not be deprived of any good, impeded in the pursuit of their own interests, or otherwise put at a disadvantage for arbitrary reasons, those that are beyond their control and have

nothing to do with their merit or worth. This discrimination can take many forms, from attacks on people's lives, to denial of equal protection under the law, to denial of religious freedom, to economic and job discrimination, to social ostracism and other forms of demeaning treatment.

Certainly the protection from discrimination is an important part of justice. Any society that failed to provide it would have to be judged unjust. The question is whether it is enough that society not interfere with individuals' rights and freedoms. For even when people are not victimized by direct discrimination, they can be at a disadvantage because of a past history of discrimination to their race, religion or ethnic group or because of randomly occurring and unmerited factors such as intelligence, appearance, health, family background and so on. Even without interference society's goods end up being distributed very unequally. Is there an obligation to do something positive to even it out? If so, in what way, to what extent, and according to what criteria?

Some, such as the contemporary philosopher Robert Nozick, would argue that there is no such obligation.<sup>29</sup> He points out that there is no central distribution system for all of society's benefits. Different goods are controlled by different people and they are transferred by trade or by gifts. To force a change in the existing distribution of goods or to try to control how they are transferred would be to violate the liberty of those who hold them and therefore would itself be unjust. The existing distribution is just as long as it has been reached by legitimate means, without fraud or force or any other interference in the free acquisition and exchange of goods. Thus for Nozick the free market is the best guarantor of justice, and the government should not try to force any particular pattern of distribution in society. While this view of justice may, in some formal sense at least, uphold the freedom of the individual, it leaves many individuals, through no fault of their own, unable to pursue their own interests or to participate as they would like in the life of society. Moreover it tolerates enormous inequalities in the way people are treated and in the advantages they enjoy and the burdens they have to bear. Some families can be living in abject poverty, crowded into dismal housing, their children starving, with no hope of improving their lot, while others amass enormous wealth, more than they could ever use; and that would be considered acceptable as long as it could be shown that there were no explicit acts aimed at further depriving the poor or blocking their attempts to help themselves. This hardly seems like equal and fair treatment. Nor does it recognize the fundamental duty to help those in need.

This has led many to define justice in such a way that it includes the obligation to narrow the inequities between rich and poor. This has been done in a number of ways. One approach, like Nozick's, does not focus on equality of results, the actual distribution of society's goods, but on equality of opportunity. Unlike Nozick's, however, it recognizes that many are impeded in their ability to participate in the life of society and share in its benefits by factors that, while they may not be the result of discrimination or malfeasance, still are not chosen or deserved by the subjects. This includes inequality in natural gifts, family background, education and so on. This view recognizes that society has the obligation, to the extent that it is able, to help compensate for these inequalities. Thus society would have an obligation to provide compensatory education, job training, health care, day care and so on, so that those who start out deprived will at least have a chance to compete for decent jobs, housing and so on. This definition still tolerates large discrepancies in the actual distribution of goods, but at least it recognizes some form of social obligation to help those most disadvantaged.

Other theories of justice focus on outcomes. They insist that the actual distribution of benefits and burdens in society should conform to certain rules. These usually take the form of "to each according to his/her X," where X could be merit, contribution to society, or need. The first two envision some sort of rewards system, where people are compensated for hard work, character, ability, and what they are able to do for others, but are not allowed to accumulate or hold undeserved wealth. The third leads to a communist society that simply distributes goods as needed to give everyone the same level of benefits regardless of merit. In any case this kind of justice requires strong social control over economic activity, which does diminish individual liberty, as well as the flexibility and creativity of the economic system. Furthermore, to the extent that need rather than merit dictates distribution, there is less individual incentive to contribute, especially in a large and diverse society, which in practice generally leads to less economic output and fewer goods to distribute.

Neither equality of opportunity nor equality of result seems entirely satisfactory. In practice most societies combine the two. They define a certain minimum of essential goods that everyone is entitled to, in income, education, housing, health care, and so on, and recognize that society has an obligation to provide that minimum. Beyond that, they allow great freedom in economic, social and political activity and accept whatever distribution of goods results. This of course is the foundation of the modern democratic socialist state. Philosophically this solution is incoherent and

therefore not very satisfying.<sup>30</sup> And it leaves open many practical questions, such as what minimum of goods is acceptable, how society is to provide and pay for this, and so on. But it does seem to provide the foundation for a workable solution.

A contemporary philosophical approach to justice that attempts to reconcile the demands of equality and freedom is found in John Rawls' *A Theory of Justice*.<sup>31</sup> Rawls begins, like John Locke before him, with the primacy of individual freedom, and derives from it a justification for accepting one's obligations to society. What is right for Rawls is what the reasonable person would choose if fully informed and fully free. Therefore he begins with what he calls "the original position." In this hypothetical construct, a group of people who are to form a society meet to decide by what principles their society is to be governed. To make the choice fair and free of self-interest, each person is assumed to be behind a "veil of ignorance," with no knowledge of his or her natural gifts, class, race, family background, or other naturally occurring advantages or disadvantages. Thus no one will seek to maximize his or her advantages under the system, and everyone will take special care to ensure that the situation of those who are worst off will be tolerable, because they might end up in that position. Rawls argues that a group of people in the original position would decide on the following two principles:

1. "Each person is to have an equal right to the most extensive total system of equal basic liberty compatible with a similar system of liberty for all."
2. "Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged ..., and (b) attached to positions and offices open to all under conditions of fair equality of opportunity." Rawls also gives rules for prioritizing these principles when they conflict. The first principle, the protection of liberty, is to have priority over the second, and a liberty can be limited only when it strengthens the overall system of liberty. Furthermore equality is to have priority over maximizing the advantages of all in society and equality of opportunity is to have priority over the allowance of inequality for maximum advantage.<sup>32</sup>

As can be seen, Rawls seeks to integrate many of the concerns and values advocated by the various theories of justice discussed above. Individual liberty has priority, not only as his conceptual starting point but also in the resulting system of justice, because without it there can be no political justice. However in the distribution of society's goods, especially in its economic life, he insists on equality except where inequality will benefit those who are most needy. This equality

encompasses both equality of opportunity and equality in the actual distribution. Thus Rawls allows the free market system because it can produce more goods to be shared, but only when it is structured so that the poor can participate in its benefits.

Rawls's system can be criticized from both sides. Libertarians would be uncomfortable with the attempt to put limits on how society's goods can be distributed. On the other hand, those with a more communitarian view of justice would want to see the obligation to serve the good of the community given a higher priority, rather than being secondary to, and derived from, individual freedom. Nevertheless, Rawls's system is an important achievement, not only as an intellectual tour de force, but also for the practical guidance it gives in how to integrate and balance the various elements of justice.

## **Virtue Ethics**

The systems considered above looked at individual acts, judging them either according to their consequences (utilitarianism and similar systems) or by whether they satisfy certain rules and requirements (deontological systems). Another approach considers not so much the acts themselves as the one who performs them, the agent. Good acts come from a good person, that is, one with the proper character and disposition. This approach, which goes back to the classical Greek philosophy of Plato and Aristotle, seeks to understand ethics in terms of the qualities that make a person good.

In general something is good if it fulfills its purpose in the best possible way. Thus, since the purpose of a book is to inform and entertain, a good book is one that informs and entertains us. The purpose of a saw is to cut wood. Therefore a good saw is one that cuts wood effectively and efficiently. To use one of Aristotle's analogies, the purpose of a physician is to produce health, so a good physician is one that can make patients healthy. This may seem obvious; but it is worth noting that we often overlook it and judge physicians on their salaries, the elegance of their offices, their knowledge, or even their appearances. Sometimes the obvious, common-sense truths are the ones we need most to hear.

In seeking to understand what makes people good in general, Aristotle, in the *Nicomachean Ethics*, asked what the purpose of human life is, and decided it was happiness, since that is what we all seek for its own sake. Furthermore he decided that the happiness that was our ultimate purpose could not come from sensual pleasure, adulation or similar factors, because these depend on external elements

over which the subject has little control. Therefore they could not produce lasting happiness. Genuine happiness and fulfillment are intrinsic and come from attaining those qualities that are most pleasing and praiseworthy in a human being. These are what Aristotle called the *virtues* or "excellences" of the human person, and included such qualities as temperance, courage, generosity, and especially justice and friendship. The good person is the one that possesses these qualities, and good actions are the ones that follow from them.

Virtue ethics provides a valuable complement to the other systems. In focusing on the agent, it looks at the source of ethical behavior and how and why it comes to be. Virtuous people generally do know the right thing to do, and find a way to do it. Furthermore it emphasizes the very important insight that ethical acts have a significance for the one who performs them, not just for those on the receiving end. Finally it provides a more positive and expansive view of human behavior. Rather than concentrating on following the rules or producing the right results, it urges us to live nobly, to reach for what is best and most fully human in us.

The main problem with virtue ethics is that it has limited usefulness in deciding difficult issues or resolving ethical conflicts. Like many of the deontological systems we studied earlier, it has no way of weighing and choosing among competing values, and it does not offer a framework for analyzing complex moral dilemmas. In its purest form, it depends on the moral intuition of those who are virtuous to provide guidance. That can go along way; but finding one's way through the moral mazes encountered when one faces unfamiliar situations like those created by new technology, requires more systematic analysis. For example in the Occidental case, Deborah shows an unselfish concern for her employees, which for Aristotle would be an especially commendable manifestation of friendship. She also has a strong loyalty to her company and considerable fortitude in holding her ground. On the other hand, she falls short on some aspects of justice and seems less than completely honest. Wayne, conversely, is praiseworthy for his honesty and his sense of fairness, but perhaps lacks courage. Applying these categories does give some insight into the character and motivation of the two principals; and it even suggests how each could do better. But it does not help choose between their two positions. Most importantly it does not provide much guidance for someone faced with the same decision, since different virtues lead in different directions. However, it does at least help clarify the choices. For example, if one puts care for those with whom one has a direct relationship first, a position often identified with feminist ethics, then one would tend to side with Deborah. Conversely, if one was committed to more

abstract and general values like honesty and justice, a more Kantian position, one would see Wayne as being in the right.

### Next "[Derived Sources of Ethical Wisdom: Part 6](#)"

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29. Robert Nozick, *Anarchy, State and Utopia*, New York: Basic Books, 1974.<sup>^</sup>
30. But see Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, New York: Basic Books, 1983, for an argument in favor of pluralism in the definition of justice.<sup>^</sup>
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## Notes

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