SMU Ethics Toolbox:
A Course Module
with Instructor Resources

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SMU | CARY M. MAGUIRE CENTER FOR
ETHICS & PUBLIC RESPONSIBILITY

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Introduction

Why Applied Ethics

Moral choices confront us everywhere. As you see a homeless person asking for help at a traffic light, while you sit in your car waiting for it to change. When an email arrives in your inbox asking you to sign a petition, support a political campaign, or forward a potentially offensive joke. As you speak to your boss, who asks what you think of some co-worker or client. When you observe some wrongdoing by another in the workplace or at school. At the grocery store as you choose which meat or fish to buy (or decide whether or not you should eat animal products at all). When your friend asks you "Do I look good in this?".

The centrality of morality to all aspects of life is highlighted by the fact that any time we interact, directly or indirectly, with another (be it a person or an animal), we make moral choices. Many of these choices are unconscious, reflexive, or driven by habit; but they are no less moral for that. A life becomes more aware, more "examined" as we consciously and conscientiously engage with these choices. Bringing these choices into the open and consciously questioning and examining them makes us better professionals, better citizens, and better people.

Teaching the tools of ethics—those principles, methods, theories, and codes that constitute the ethical analysis of a case—is a crucial part of educating those who will be future leaders, citizens and "world changers". This is particularly important in the workplace. The most recent National Business Ethics Survey (2011), shows an alarming trend in ethics in the workplace. In 2011, 45% of US workers observed misconduct in the workplace. Of these 62 million Americans, 65% of them reported the misconduct. These measures both reflect improvement over the previous survey in 2009. However, 22% of those who reported misconduct suffered some kind of retaliation, a 7% increase over 2 years ago. 13% of employees perceived pressure to compromise standards in order to do their jobs, a 5% increase over the level in the 2009 survey. All of our students are entering a world in which they will constantly confront moral choices. The share of companies with a weak ethics culture is at 42%, very close to the all-time high. All of these indicators highlight the importance of ethics education, both in general and within the professions.

The aim of this toolkit is to give you the resources and a roadmap to thoughtfully and comprehensively integrate an ethics component into your course.

What we are (and are not) doing here

Ethics, or moral philosophy, is an activity: it consists in systematic reflection on the nature and content of morality. It is not merely a body of knowledge that can be taught. It is also a skill that must be cultivated. Neither can the diverse methods that moral philosophers have employed, nor the diverse ideas and arguments that they have developed, be studied in any single course of study. Here we are not attempting to give a comprehensive course in ethics, nor even the background for

such a thing. The focus of this module is the application of ethical theories, principles and codes to various areas of inquiry. The aims of this module are modest in the extreme. The first is to give instructors a sense of the various kinds of ethical theories and approaches to applied ethics, so that they may choose for further consideration those that seem most appropriate to the contexts of their disciplines and courses. The second is to outline a method for the systematic reflection that is at the heart of ethics, and to give a format for instructors to introduce to students, some basic concepts of and approaches to applied ethics. **This course module is not a substitute for a course in applied ethics!**

How to use the toolkit

The toolkit provides a step-by-step guide for ensuring that you are focusing on ethical views that are helpful for highlighting the morally significant areas in your discipline. The first two steps in constructing an introduction to applied ethics in your discipline is choose the right cases and theories. To begin, you need to select several cases that elicit moral puzzlement in your area. You then use these cases to choose a few theories, principles or codes that are likely to highlight the morally significant factors that generate this experience of moral puzzlement. The various normative theories, moral principles, and appropriate codes of ethics presented here are intended as mix and match elements of a toolbox that can be used to gain a better understanding of the ethical implications of policies, practices, organizational structures and actions. Most of the resources presented here are intended to help you take these crucial first two steps. The third step is to introduce your students to basic concepts in ethics, and the general process of moral inquiry. You will find an outline for an interactive lecture appropriate for all disciplines that will do exactly this. The fourth and final step outlined here is a method for applying the theories to the cases in a systematic way. This method is a first step that can be taken in teaching the skill at the center of ethics, how to systematically reflect on the nature and content of morality. Note that what you will find here is more of a road map and toolkit, than a plug and play lesson plan.

Terminology

The term "ethics" is used herein to refer to the philosophical study of morality (i.e., moral philosophy), rather than to the subject matter of that study (i.e., morality). And the terms "ethical" and "moral" are used synonymously.

"Morality" is here used in its normative sense, rather than its descriptive sense. Thus, it does not refer to the morality or moral code of a particular society, group, or individual. Nor does it refer to psychological or social phenomena, such as moral judgment or moral practice.

Perhaps any definition of morality in the normative sense would be controversial. But it might be characterized as that set of moral obligations, rights, principles, etc. that one should accept, or that one would accept if one were reasoning correctly. This formal characterization leaves open many difficult—and contested—philosophical questions, including which moral obligations, etc. one should accept; whether there is one set of moral obligations, etc. that everyone should accept; and

what it is to reason correctly about such matters. Thus, it allows us to say that institutions such as slavery or practices such as female genital mutilation can be morally impermissible even within societies or cultures, or for individuals or groups, whose moral codes permit them; but it does not rule out sophisticated forms of moral relativism and moral subjectivism—i.e., those that do not identify (or conflate) morality in the normative sense with those moral obligations, etc. that are, in fact, accepted by particular societies, groups, or individuals (morality in the descriptive sense). And it is, of course, consistent with the view that there is a set of moral obligations, etc. that everyone should accept (a single true morality, if you like), which—it should be said—is alive and well, at least within Anglophone moral philosophy.

A Method-Based Approach to Moral Judgment: how to put ethical theories, codes and principles into practice.

When you are applying ethics, you generally start with one or more theories, principles or codes that are relevant to your area, some controversial cases, and some procedure for arriving at better or worse answers about the morality of particular actions, policies, structures, or agent(s).

To take a moral perspective on a particular area of practice or inquiry, you choose the cases and ethical theories, principles and codes appropriate to your particular area, and then use the method to apply the theories to cases. This section offers guidelines for case and theory selection, and then describes a method for applying theories to cases. The purpose of this section is to provide guidelines for selecting useful tools and cases, and describe a generic procedure for applying ethical tools to cases.

Guidelines for choosing relevant and useful ethical theories, codes and principles.

The aim of taking a moral perspective on a particular area of practice or inquiry is to use various elements of the ethical toolkit—the theories, codes, principles and approaches presented here—to illuminate the issues, conflicts and questions that confront the thoughtful practitioner. There are a wide variety of ethical theories, principles and codes. To effectively teach a course you need to select a relevant subset of these tools.

Your task is to choose those theories that best highlight the experiences of 'moral puzzlement' that are most likely to confront someone exploring your area of inquiry.

There are two main forms of problem cases, which are generated by different ways of experiencing moral puzzlement:

- **Moral controversy**: the discovery that other people (even within our own social group) have moral beliefs different from, and sometimes quite opposed to, our own.
- **Moral dilemma**: cases where there seem to be equally good justifications for opposing moral conclusions.[1]

Once you have identified those particular moral controversies and dilemmas that are central to your area of inquiry, select those theories, principles and codes that best express the moral views that engender these conflicts. Note that you do not (and should not) limit yourself to theories. Moral principles are often extremely useful elements of an ethical toolkit.

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[1] This distinction is due to John Bishop.

Generally, you want to include a theory only if it clearly addresses one of the morally significant factors that drive moral puzzlement in your discipline. If, for instance, you are teaching a course in political economy, most cases of moral puzzlement are going to be generated by factors related to the legitimacy of institutions, and institutional constraints on the behavior of individuals. Here an agent-centered theory such as Virtue Ethics would have little to say about the primary factors that drive moral puzzlement in this discipline, and would be inappropriate. In contrast, the types of moral puzzlement found in medical practice are often connected to the behavior of individual agents, so an agent-centered theory would be very helpful. If there is a Code of Ethics for your area or profession, then that should clearly be included in your toolkit.

What to avoid: Philosophy 101, A cartoon

It might be helpful to begin by noting that students frequently encounter the following simplistic—and very misleading—picture of ethics (or moral philosophy) and of the various types of ethical theories. First, the ultimate question in ethics is "How should one live?" And, second, there are three broad types of ethical theories, each of which offers a different answer to this question: consequentialist theories, deontological theories, and virtue ethics. *Consequentialist theories* tell us to always do whatever would have the best consequences and are typified by the utilitarian theories of Jeremy Bentham (1748–1832) and John Stuart Mill (1806–1873), which claim that right actions are those that result in the greatest balance of pleasure over pain (summed across all those who are affected by the action). *Deontological theories* tell us to always do our (moral) duty and are typified by the moral theory of Immanuel Kant (1724–1804), which claims that right actions are those that conform to "the moral law," which consists in rather simple, absolute moral rules ("categorical imperatives") that derive from a single, fundamental moral law, the Categorical Imperative, and do not allow any exceptions for extraordinary circumstances or the greater good. *Virtue theories* focus on good character, rather than right action, and are typified by the ethical theory of Aristotle (384–322 B.C.E.), which tells us to cultivate "the virtues," those character traits that dispose us to act virtuously (courageously, temperately, etc.), because acting virtuously enables us— as individuals—to flourish as human beings.

However useful this "Philosophy 101" picture of ethics may be in some contexts, it is a cartoon of the real thing and should not be regarded as accurate. Choosing the paradigm instances of these three approaches simply because others do it, or it seems to offer the most comprehensive selection of moral theories is not a good idea.

Guidelines for choosing relevant and useful cases for analysis and discussion.

When we are applying ethics, cases can play a variety of roles. We can use cases to highlight moral quagmires in the area of inquiry. We can also use cases to highlight the various features of ethical theories, codes and principles we are exploring. Cases can also be used to stimulate the moral intuitions (and in some instances the moral outrage) of that you present the case to. Using cases to elicit moral outrage can be a way of using cases as a call for change or a call to action. All of these are legitimate uses of cases, however different types of cases will be required to fulfill these various roles. Moreover, the various uses of cases tend to be different in both different types of courses, and different stages of a course. The success of your discussions in class (and assignments) is heavily influenced by appropriate choice of cases when teaching applied ethics.

General Requirements for Case Selection

You are the best judge of appropriate cases for analysis in your area, but good cases for exploring applied ethics tend to have several common features.

- *They should be Problem Cases*. That is, they should contain some moral dilemma or controversy. That is, there are good reasons to pursue (at least) two exclusive courses of action to resolve the case. It is always good to include both types of cases where you can. The opposite of Problem Cases are Clear Cases, or paradigmatic cases. Clear Cases are cases in which there is a single clearly preferable course of action that should be taken to resolve the issue presented.
- *They should have identifiable morally significant factors*. That is, you should be able to list those elements of the case that are capable of influencing moral intuitions, judgments, and responses regarding this case.

Requirements for Cases over the Arc of a Course

A course can be usefully divided into three stages: Introduction; establishing tools and methods; and inquiry into the area under discussion.

Introduction: In the first instance, you often want to stimulate the moral intuitions, and probably moral outrage, of your learners in order to show them why they should care about morality in this context.

> Here a surprising or celebrated case relevant to your area of inquiry which has sensational aspects is best.

Establishing Tools and Methods: Next it is often best to introduce the method for applying theories, codes and principles to cases in a way that highlights the various features of the ethical theories, codes and principles you are working with.

> The morally significant factors should connect to the ethical theories, codes and principles that you have selected to use to analyze cases in your area.

Inquiry: Finally, the bulk of a course generally involves highlighting the various moral quagmires and controversies in the area of inquiry.

> The cases should be salient to your specific area. That is, the reason that they are problem cases should be connected to the aspects of the case that are specific to your area.

Note that these stages are neither exclusive nor exhaustive and one case could fit multiple stages, but indicative of the fact that you should keep the purpose of the case in mind when you select it.

General Instructor Notes on Applying Ethics

Applied ethics is "the philosophical examination, from a moral standpoint, of particular issues in private and public life that are matters of moral judgment".[2] Applied ethics is the most practical of three distinct levels of moral inquiry.

> Metaethics: What is the *meaning* and nature of ethical terms, judgments, and arguments?
>
> Normative Ethics: What is the correct theory for determining which acts are morally right or wrong, or which people are morally praiseworthy or morally blameworthy.
>
> Applied Ethics: How should we apply our ethical theories to particular cases, or make moral judgments about particular actions or people.

As you will be focusing on the third and most practical level, you do not want to spend your class trying to determine either the correct metaethical view, or the single right theory of normative ethics. We recommend that you present metaethics as a given, and explicitly reject relativism as a meta-ethical view (Meta-Ethical Cultural Relativism).

Once we focus on the task of applying ethics, we can distinguish between three distinct levels of moral thinking.

Three Levels of Moral Thinking

Understanding the variety approaches to applied ethics requires a basic grasp of the distinction between the following three levels of moral thinking:

> Level 3: Moral Theory — Fundamental moral principles or theory-based methods for reasoning about particular cases.

> Level 2: Shared Principles — Widely-accepted guidelines derived either from theory or from practice.

> Level 1: Particular Judgments — Moral judgments about particular cases.

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[2] Brenda Almond, co-founder of the Society for Applied Philosophy: Brenda Almond, 'Applied Ethics', in Mautner, Thomas, Dictionary of Philosophy, Penguin 1996

These levels of moral thinking are neither mutually exclusive nor independent. For example, shared principles could be, or be derived from, theoretical principles. Shared principles can also be, or be derived from the generalization of experiences in particular cases.

Particularist approach (Level 1)

- This approach begins from the bottom up. We begin with particular cases, which together with analogies to other cases, and generate (through a process of reasoning), a warranted judgment of the moral thing to do in this type of case.
- The process of moral reasoning is that of deriving general principles (moral guidelines) from particular cases through analysis and analogy
- Any specific moral judgments depend on a variety of sources such as cases, history, precedents and particular circumstances
- Any general moral principles generated in this way are taken to be defeasible, that is, they can be overridden by other moral theories or principles.
- Such general moral principles are often dependent on social practices and norms in the sense that these judgments are not derived in a vacuum, they are the product of a particular context.
- Good examples of the particular approach are case-based reasoning (casuistry), and various types of moral particularism.

Theoretical approach (Level 3)

- We begin with a general set of rules or principles, which together with the facts of the case, generate (through a process of deductive reasoning), a correct or justified judgment about the ethical thing to do in this case.
- The process of moral reasoning is that of 'applying' principles to cases
- A simplistic example would be:

    Killing people is always morally wrong (moral principle)
    Fetuses are persons (fact)
    Therefore: Abortion is morally wrong (deductively justified conclusion)

- The **moral principles** central to such theories are taken to be **universally true**.
- The top-down approach is generally found in normative moral theories, such as Utilitarianism and Kantianism

The Common Sense approach (Level 2)

- This is the result of conscious or unconscious reflection on moral theories and particular cases. These are the kind of principles that informed reflective persons agree on as useful moral guidelines in a particular area of moral inquiry.

Within ethics, there are those who argue that either the top-down or the bottom-up approaches are the only legitimate way to reason about morality. This is a

pragmatically unhelpful debate in the context of teaching applied ethics at the lower level, so we are proposing that you take a flexible approach to using various theoretical tools. When you are using the ethical toolkit, note that the different theories occupy different levels of moral thinking, and the process of applying various different theories, codes, and principles will require you to move amongst the various levels, and ultimately come to a judgment through a method of reconciliation, reflective equilibrium.

Method 1: Reflective Equilibrium

Reflective equilibrium is a process of moral reasoning that allows us to generate considered moral judgments about a case from a wide variety of initial beliefs and intuitions. At the early stages of ethical inquiry, the method can be used to explore and elicit various moral intuitions and beliefs. By focusing your attention on the factors in a case that are capable of justifying or changing moral beliefs, it is a useful way of exploring the morally significant factors in a case as well. Ultimately, the purpose of the method of reflective equilibrium is to reconcile, or move beyond, common conflicts amongst moral beliefs.[3] All cases that are helpful for the exploration of ethics in a particular area contain such conflicts. These conflicts can be within our own set of beliefs (moral dilemmas), or between our beliefs, and the apparently reasonable beliefs of others (moral controversies).

We can call the inputs into the process of reflective equilibrium common-sense moral judgments (CSJs).[4] CSJs are those claims that can reasonably made about the morality or immorality of various acts and situations. Common-sense moral judgments may be generated by reflecting on any or all of the three levels of moral thinking. They include general principles (we should try to be fair), theoretical

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[3] Reflective equilibrium is grounded in the idea that what matters in ethical thinking is coherence amongst our beliefs about morality. It denies that there are privileged or unrevisable beliefs, which should be treated as fixed in cases of conflicting moral judgments. Using this approach, when you seek an equilibrium amongst a set of beliefs, all of the beliefs that constitute the conflict are open to revision. (Note that it is unlikely that they all will, in fact, be revised. Also, this is not to say that all beliefs are equally likely to be revised. Of those beliefs that generate a conflicting moral judgment, the least well-grounded beliefs ought be revised in the face of beliefs with better justification.) The alternative to a coherence account is a foundationalist approach, which takes some principle, theory, or intuition to be correct, and to be unrevisable in the face of conflict. In an influential group of foundationalist theories the fixed nature of these beliefs is taken to be warranted because the theory itself is taken to be directly justified.

[4] A general method of reflective equilibrium was first articulated in the1950's, but the label, and the prominence of the method is due to John Rawls's articulation and use of it in *A Theory of Justice* (Rawls 1971). Please note that the method presented here is related to, but not the same as, that proposed by Rawls. Crucially Rawls holds that both the inputs into and outputs from the method of reflective equilibrium are considered moral judgments. In contrast, we are proposing that the inputs into the method of reflective equilibrium can be much less considered. Indeed, we hope that you use all of the beliefs in the class to behave as inputs, and then use the method to discard those that are less justified in favor of those that are more justified. The process should then have considered moral judgments as its output. When applied iteratively, as is intended, the more times moral judgments go through the process, the more considered they become.
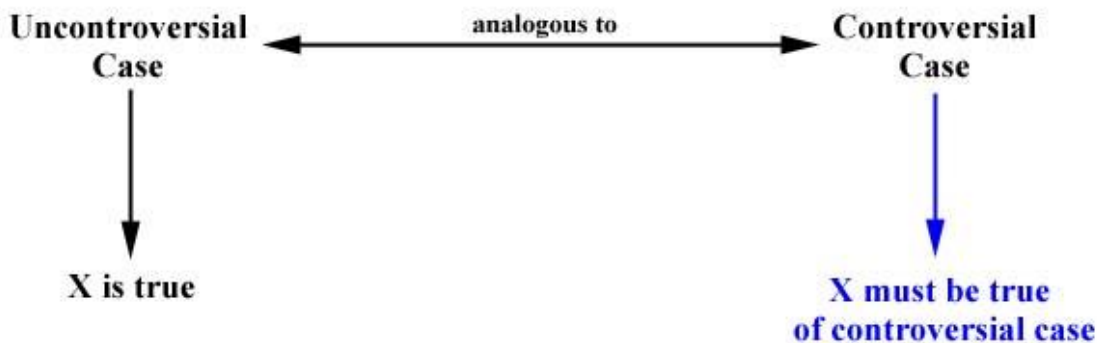
claims (we should aim to maximize the utility for all affected), or basic intuitions (torturing kittens is bad). The process of reaching CSJs can be implicit or explicit.
The Process:

- Considered moral judgments depend on reaching an **equilibrium** amongst all levels of moral inquiry. **Reflective equilibrium** is the process of reflecting on all three levels of moral inquiry to generate a coherent view. In cases where the different levels of moral thinking conflict, we adjust each level in order to achieve an equilibrium
    - A level 3 general principle that conflicts with a wide range of level 1 cases, looks like an implausible general principle
    - Particular case judgments that conflict with both 2 and 3 level principles, looks like a bad case judgment
    - Mutatis mutandis for level 2 principles that conflict with level 3 and 1 claims
- We prune and adjust our views at all particular levels (and our considered judgments) until we reach an equilibrium

The aim of reflective equilibrium is to generate considered moral judgments about the case by beginning with these CSJs. The process of reflective equilibrium ensures that we take all levels of moral thinking into account in the process of reaching a considered moral judgment. Considered moral judgments are, in applied ethics, an appropriate standard for good moral reasoning. Therefore, if we do settle on a CSJ from one level of moral thinking, which conflicts with another CSJ without seeking to reconcile this conflict through reflection, we are guilty of bad moral reasoning.

Method 2: Arguments by Analogy

Another good method for analyzing cases is to use an argument by analogy. An argument by analogy proceeds by finding some case that we can easily form a moral judgment about, which is relevantly similar to the problem case.

To make an argument by analogy you must be able to identify a clear or paradigmatic case that is relevantly similar to the case under discussion. For each course of action that could be used to resolve the problem case under consideration,

identify another case in which that course of action would be clearly justifiable, i.e., identify a clear or paradigm case. You then need to compare the problem case to the paradigm cases. The idea is to weigh the closeness of the analogies between the problem case and the various paradigm cases in order to determine which option best satisfies the competing moral considerations. The strength of an argument by analogy depends on how good the analogy is, so the similarities and differences between the two cases are crucial. Specifically, the analogy will not work if there is a **morally significant** difference between the two cases.

Note there is often no single best answer moral problem cases, but this procedure is useful to both identify better and worse answers, and to highlight the morally significant features of the problem case.

An integrated method for generating (more considered) moral judgments

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┌─────────────────────────────┐
│ List the morally significant factors │
│         of the case         │
└─────────────────────────────┘
              │
              ▼
        ┌──────────┐
       ╱ Are any of these ╲        Yes      ┌─────────────┐
      ╱ factors relevantly similar to a ╲ ──────▶ │ Argument by │
      ╲    clear case?    ╱                │   analogy   │
       ╲──────────╱                        └─────────────┘
              │ No
              ▼
┌─────────────────────────────┐
│   Identify the primary      │ ◀──────
│   conflict(s) in the case   │
└─────────────────────────────┘
              │
              ▼
┌─────────────────────────────┐
│  List the ethical theories, │
│  principles and intuitions  │
│      that generate the      │
│    primary conflict(s)      │
└─────────────────────────────┘
              │
              ▼
┌─────────────────────────────┐
│    Seek a reflective        │
│  equilibrium amongst the    │
│     ethical theories,       │
│  principles and intuitions  │
│      that generate the      │
│    primary conflict(s)      │
└─────────────────────────────┘
              │
              ▼
┌─────────────────────────────┐
│  A considered view of the case │
└─────────────────────────────┘
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Step 1: Identify the morally significant factors of the case. These are those features of the case that are capable of changing a moral judgment about the case.

> For instance, the intention of the person acting is often morally significant, as is the informed consent (or its absence), of those affected. In certain approaches to morality, such as consequentialism, the outcomes of the case are morally significant. There is no hard and fast rule for determining moral significance, the best practice is to begin by making the bar for moral significance low in the beginning, and then throwing out those features of the case that are not sufficiently significant.

Step 2: Test for relevant paradigmatic cases, if there is one, then make an argument by analogy, if not, proceed directly to step 3.

Step 3: List those ethical theories, codes or principles that are (or could) be used to justify one side of the competing moral judgments that are generating the conflict.

> Here you will generally be beginning with the list that you have chosen for your area, which are either specifically related to the area (i.e. the appropriate ethical code), or likely to yield relevant moral judgments in the area. (See the note on choosing your theories)

Step 4: Explore the intuitions of the class. What moral intuitions do people have about the case?

Step 5: Connect the intuitions to the various ethical theories and codes, to the extent possible.

Step 6: Try to reach a reflective equilibrium amongst the competing intuitions, theories, principles and codes.

Lesson 1: Introducing Basic Concepts in Moral Thought and Reasoning

In this lesson, you will introduce a series of basic concepts in moral thought and reasoning by using an imaginary case. The case is a very simple (even simplistic) one that we alter in various ways, and discuss from various perspectives, in order to introduce the concepts.

The case

Consider the following (imaginary) case, which we will call *Bobby*.

> Suppose that a person, Bobby, is drowning in a lake. And suppose that only you can save Bobby, by rowing out to Bobby in a boat that lies nearby.

Concept 1: The moral point of view

One can view this and other cases from various points of view.

From the legal point of view, one can ask whether applicable laws require that you save Bobby. Do the laws of the jurisdiction in which you are present include Good Samaritan laws or other laws that require you to save Bobby?

From the prudential (or self-interested) point of view, one can ask whether saving Bobby would benefit *you*. Would you avoid some legal or social sanction if you do? Might you receive some reward for saving Bobby?

From the moral point of you, one can ask whether you ought (morally) to save Bobby. Is saving Bobby the right thing to do? Or would letting Bobby drown be morally wrong, or impermissible?

Instructor notes: When considering morality, note that the moral point of view can (and should) be distinguished from other points of view. Often people confuse moral and legal concerns, an inclination that is strengthened by the fact that some laws are grounded in moral reasons (e.g., it is plausible to think that murder is illegal because it is immoral). But note that it is not the case that all laws are grounded in morality. Moreover, when there is overlap between the law and morality, it is generally possible to find relevant moral reasons, and it is these reasons that you should focus on.

Further, students should be warned against committing two very common fallacies. The first, which we may call "moral legalism," is the fallacy of inferring the moral status of an action, practice, etc. from its legal status. The second, which we may call "moral conventionalism," is the fallacy of inferring the (actual) moral status of an action, practice, etc. from conventional beliefs about its moral status. A moment's reflection reveals these to be fallacies. For instance, neither the fact that a society's legal system permits slavery nor the fact that members of a society believe that slavery is morally permissible entails that slavery is morally permissible. Likewise, even if it would not be illegal *to let Bobby drown, it does not follow that it would not be* immoral *to let Bobby drown.*

Concept 2: Obligations (or duties)

Do you have a *moral* obligation (or duty) to save Bobby? If you do, then—all else equal—saving Bobby is the right thing to do—that is, it is what you ought to do; whereas letting Bobby drown is morally wrong, or impermissible. If you do not, then saving Bobby may be morally praiseworthy, but it is not morally required. (Obligations are often marked by the term "ought" or "should.". If you ought, morally, to do *x*, then you have a moral obligation to do *x*.)

Instructor note: In moral thought, it is possible to distinguish between the obligatory (those things that you ought (in the sense of being morally required) to do), and the supererogatory (those things that you are not morally required to do, but you would be praiseworthy for doing). Another way of stating the distinction is that you are morally blameworthy when you fail to do something that is morally obligatory, and you do not merit special praise for doing your moral duty. Whereas the supererogatory is the other way around: You are not morally blameworthy for failing to do something supererogatory (such as running into a burning building to save a cat), but you do merit special moral praise if you do something supererogatory. Supererogatory actions are sometimes called ""heroic" or "saintly,"" particularly if they involve considerable risk or cost to the agent.

Concept 3: Rights

In anything like normal circumstances, we ought to respect the rights of others by doing what they have a right that we do. In the case of Bobby we can ask, does Bobby have a right to be saved? More specifically, does Bobby have amoral right against you that you save him or her?

If Bobby does have a moral right against you that you save him or her, then you have a corresponding obligation (or "correlative duty") to save Bobby and—absent countervailing considerations—you ought to fulfill that obligation.[5]

But now what about owner of boat? As its owner, he or she has property rights in the boat. Those surely include a moral right against you that you not take it for a joy ride. But do they also include a moral right against you that you not take it and use it to save Bobby? And if they do, is that right outweighed or overridden by any or all of the following: Bobby's need, your obligation to save Bobby, or Bobby's right to be saved?

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[5] Although rights (i.e. claim-rights) entail corresponding obligations ("correlative duties"), not all obligations entail corresponding rights (see the discussion of correlative duties in ____). Thus, even if Bobby does not have a right against you that you save him or her, you might still have an obligation to save Bobby. (The view that there is a moral duty to rescue but not a moral right to be rescued is fairly common, but certainly not uncontroversial. The same is true of the view that there is a moral duty of beneficence but not a moral right to beneficence.) For this and other reasons, a theory of rights will not be a complete moral theory. And knowing what the rights of the relevant parties are is not sufficient to know what one ought or ought not do.

Instructor notes: A plausible and widely-held view (and one that is generally reflected in the law) is that the need or obligation to save a life (e.g., Bobby's) outweighs or overrides property rights (e.g., the owner's exclusive right to the use of his or her boat).

Make sure that you are clear about the difference between claims *or* claim-rights *and other things that are called rights:* liberties*,* powers*, and* immunities*.*

Make sure also that you are clear about the distinction between positive and negative rights. A positive right is a claim to a performance, or to the provision of some good or service (e.g., active assistance). A negative right is a claim to a forbearance, or to non-interference (e.g., with one's property). Some (but not all) theorists regard this as an important distinction.

Concept 4: Special obligations and rights

Now we will alter the case by introducing a further, potentially relevant factor.

Suppose that Bobby is not a stranger, but rather your friend, spouse, or child.

Does that change things, morally speaking? And, if it does, how does it change them? Do you now have an obligation to save Bobby where before you did not? Does Bobby now have a right to your life-saving services when before he or she did not? Are the rights of the boat's owner now outweighed or overridden where before they were not?

Instructor notes: Certain kinds of relationships (e.g., friendship or familial relations) may give rise to special obligations, obligations that we owe to specific individuals, as opposed to others generally. (General obligations, or natural obligations, are those obligations we owe to others generally. The obligation to not harm others is a prime example.) These may include obligations of care.

Promissory obligations are a prime example of special obligations: a promissory obligation is owed by the person who made the promise, the promisor, to the person to whom she made the promise, the promisee. Moreover, special obligations often (and perhaps always) entail corresponding rights. For example, a promisee has a right against the promisor (but not others) that the promise be kept. Thus, had you promised to save Bobby if she got into trouble while swimming, you would have a promissory obligation to save Bobby, and Bobby would have a corresponding right against you that you save him or her.

Concept 5: Permissions (Options)

Now we will alter our original case (*Bobby*) in a different way.

Suppose that saving Bobby will cost you something. Suppose, for example, that you cannot save Bobby without ruining that very expensive suit or outfit that you just bought. Or suppose that you cannot save Bobby without missing out on a once-in-a-lifetime opportunity to compete in an Olympic sailing regatta that is being held on the other side of the lake.

Does that change things, morally speaking? And, if it does, how does it change them? Is there some threshold at which the cost to you is sufficiently high that you do not

have an obligation to save Bobby where before you did? Or is there some threshold at which the cost to you is sufficiently high that, although you do have an obligation to save Bobby, it is permissible for you not to do so?

Instructor notes: Permissions (or options) are limits on what we must do to promote good ends or optimal outcomes—including, most prominently, permissions to pursue our own interests or projects even when doing so would have suboptimal consequences. In this variation of our case, doing anything other than saving Bobby will have suboptimal consequences. (It is essential that this feature of the case be preserved here.) And the question is whether there is some threshold at which the cost to the agent justifies—that is, makes it permissible for—the agent to forego saving Bobby.

Note that permissions must be distinguished from excuses. Permissions justify—that is, make permissible—acts that would otherwise be wrong. Excuses mitigate the blameworthiness of agents who act wrongly. And what the agent in this case needs to know (or decide) is what she may do, or what she is justified in doing, not what she would be blameworthy for not doing. Thus, the question here is not whether there is some threshold at which the cost to the agent would make it inappropriate to blame her if she foregoes saving Bobby. Rather, it is whether there is some threshold at which the cost to the agent would make it permissible for her to forego saving Bobby.

Concept 6: Consequences

Now we will make a different alteration to our original case (*Bobby*).

> First, suppose that saving Bobby will *benefit* third parties. Suppose, for example, that Bobby is a famous violinist whose live performances bring joy to millions or a trauma surgeon who saves hundreds of lives every year.

Does that change things, morally speaking? And, if it does, how does it change them? Do you now have an obligation to save Bobby where before you did not? Are the rights of the boat's owner now outweighed or overridden where before they were not?

> Now, suppose that saving Bobby will *harm* third parties, albeit indirectly. Suppose, for example, that you have traveled back through time to 1938 and that "Bobby" is, in fact, Adolf Hitler. You could save Hitler, thereby enabling not only the Holocaust, but also the most destructive war in all of human history. Or you could let him drown.

Does that change things, morally speaking? And, if it does, how does it change them? Do you have no obligation to save Hitler? If you do, is it outweighed or overridden by the harm that others will suffer if you do? Do you have an obligation *not* to save Hitler, to let him drown? Do his would-be victims have rights against you that you *not* save him?

Instructor note: These variations get at the point that the consequences of actions and, in particular, the goodness or badness of those consequences may be morally relevant—especially if they are unusually good or bad. Indeed, act consequentialist theories claim that whether an act is right or wrong depends only *on the non-moral*

value of its consequences (the consequences of the act itself). And important categories of consequences are the benefits and harms that result from a given action.

Concept 7: Moral Agents vs. Moral Patients

Now we will shift our focus by altering our original case (*Bobby*) in a different sort of way.

> Suppose that Bobby's drowning in the lake is no accident. Smith, knowing that Bobby cannot swim, took Bobby out to the middle of the lake and pushed Bobby overboard.

Can we hold Smith morally responsible for trying to drown Bobby? *Moral agent*s are those entities we can (appropriately) hold morally responsible for their actions. Such an agent is one capable of knowingly acting with reference to some standard of right and wrong. We generally think that adults of sound mind are moral agents, while young children, and those with significant psychological impairments (e.g., psychosis), are not. Being a moral agent entails having *moral standing* (or *moral status*).)

Central to moral agency is the ability to perform actions, rather than mere behaviors. An action is a behavior that is done intentionally. To act intentionally, the actor does something in order to bring about a particular, consciously identified, end. The difference between actions and mere behaviors explains why we think that you are clearly morally responsible for things that you choose to do and for the foreseeable results of your actions, but are generally not morally responsible for involuntary movements of your body (e.g., epileptic seizures) and the unforeseeable results of your actions.

Moral patients are those entities who are not moral agents, but who nevertheless possess moral standing. We do not hold very young children morally responsible for their actions, as we do not think that they really understand the consequences of their actions or the difference between right and wrong. However we do think that the way we treat young children can be moral or immoral: they have moral standing. In contrast, an inanimate object (or the way we treat such an object) has moral significance only if and to the extent that it is related in morally significant ways to an entity that has moral standing. For example, your mother's dining table (or the way we treat it) has moral significance only insofar as it is related in morally significant ways to (e.g.) you or your mother.

Instructor note: Questions about moral status and the grounds thereof are central questions in numerous branches of applied ethics, including bioethics and environmental ethics. A fairly common mistake (one not infrequently made by students) is to argue that animals cannot have moral status (or moral rights) simply because they are not moral agents. This argument not only implies that young children lack moral status (that they are not even moral patients), but also begs the question of what the grounds of moral status are.

Concept 8: Morally Relevant Significant Factors

The foregoing exercise illustrates a crucial point: "Whether a given action is required, permitted, or forbidden is typically a function of several different morally relevant factors."[6] Each alteration of our original case (*Bobby*) introduces an additional factor that may (or may not) be of moral relevance and asks the student to consider whether, and if so how, it is morally relevant. For instance, whether Bobby is related to you may well be morally relevant, as may be any substantial risk that rescuing Bobby poses to you.

Precisely which factors are of genuine moral relevance is an open question in ethical theory, as is the further question of how those factors combine and interact to make right acts right and wrong acts wrong.[7] But the immediate and equally crucial point is that developing a considered view about the moral status of a particular action, practice, etc. requires developing a considered view not only about *which* features of it or the circumstances of the case are morally relevant, but also about *how* those features are morally relevant. This is not a simple task, but it is one that no one engaged in ethical inquiry can avoid.

Lesson 2: Connecting ethics to the area of inquiry.

By the time you reach the second lesson in this series, you will already be tailoring its content to your area of inquiry, so it is impossible to give a universal lesson plan here. What we can offer is a generic outline for a lesson that engages the students in the moral issues and theories that are central to your area of inquiry.

Outline

These steps have been roughly broken down for a 50 minute class, but you really can take quite a lot of time over these steps, and we think that 80 minutes is even better.

1. Present an "anchor" case. An anchor case is one that is clearly controversial and lends itself to analysis using the primary ethical theories, codes and principles that you intend to cover in your class. [10 minutes]

2. Break students into small groups to discuss the case, asking them to list any issues that arise in the discussion. [10 minutes]

3. In large group, solicit the issues that arose in the small group discussion and list on the board, consolidating ideas as much as possible. [5 minutes]

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[6] Kagan 1998, 17.

[7] As Kagan observes, "[m]uch of the work of normative ethics is a matter of articulating these various [factors], and [of] discovering how they interact so as to determine the moral status of an act" (1998, 17).

4. Go through the list, and distinguish the moral issues from the empirical issues, making sure that you emphasize this distinction clearly. You do not want to get bogged down a discussion about the facts of the matter. [10 minutes]

5. Elicit the underlying moral principles, codes and theories that are driving the moral issues, and list these on the other side of the board. You may have to expand things a bit to get all of the elements of the toolbox you want in this list – this is where choosing your case well becomes evident. [15 minutes]

By the end of the class, you will have taken your students through the process of discovering for themselves why the elements of the toolkit that you have chosen to cover in your course are relevant to your area of inquiry, and why they should care about them. This list sets the groundwork for the moral theories, codes and principles that you will be introducing in more detail over the next few class sessions.

Sample Anchor Case

The following is an anchor case is from a course in bioethics:

Myriad Genetics and the Patenting of Genes

Myriad Genetics, Inc., a molecular diagnostic company that specializes in the genetic bases for disease. Its business is the development of molecular diagnostic products for predictive and personalized medicine. Predictive medicine is the assessment of an individual's risk for developing particular diseases. Personalized medicine includes the identification of a patient's likelihood of responding to a particular drug, the optimization of drug doses, and assessment of a patient's risk of disease progression and disease recurrence. Myriad's flagship product is BRACanalysis, a predictive medicine test for a genetic predisposition to breast cancer. The test is based on the identification of two genes, BRAC1 discovered in 1991, and BRAC2 discovered in 1995. Myriad genetics charges $4000 for the test, which is equivalent to the cost of sequencing a whole genome. This is the test that was cited by actress Angelina Jolie in her decision to have a preventative double mastectomy. Mutations in these genes increase the predicted risk for breast cancer from 12% to 50%-80%, and ovarian cancer to 20%-50%. Patents were granted on the two genes in 1997 and 1998 respectively. These patents were the subject of an extended legal battle culminating in the landmark Supreme Court decision Association for Molecular Pathology v. Myriad Genetics (No. 12-398)*. On June 13, 2013 the US Supreme Court unanimously ruled that, "A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated," invalidating Myriad's patents on the BRCA1 and BRCA2 genes. The Court allowed that if a gene was manipulated to create something 'not found in nature' it could still be eligible for patent protection. In the weeks immediately following the Supreme Court decision Myriad Genetics and its*

partners filed suit for patent infringement against Ambry Genetics and Gene by Gene Ltd. for offering tests for BRAC1 and BRAC2.

Prior to class, you want to have, for your own use, a list of the morally significant factors, and the theories, principles and codes you have chosen from the toolkit. Your aim will be to draw the student's discussion to these points, guiding where necessary. Although generally they get to most of them on their own. In this case, the Morally Significant Factors are: *ownership of genes; prevention of harm; rights of companies; incentives for private development; the general good; patient's rights to access their own genetic information; the purpose and limits of intellectual property rights.*

A Brief Overview of Ethical Theory (Material for Instructors)

Applied ethics, or practical ethics, is the branch of ethics, or moral philosophy, that addresses concrete practical problems and controversial moral issues. As the name suggests, much work in applied ethics involves applying concepts, principles, and theories derived from *ethical theory* to concrete practical problems and controversial moral issues. This section provides a brief overview of ethical theory and brief summaries of the kinds of ethical theories that most often figure in discussions of topics in applied ethics. A list of recommended introductory texts and secondary sources is appended.

Terminology

The term "ethical theory" is here used narrowly, to refer to *normative ethical theory* and theories. Normative ethical theory addresses *general* moral questions, such as what kinds of actions are morally right and what kind of person one should be. Thus, normative ethical theories make moral claims. Used more broadly, the term "ethical theory" refers not only to normative ethical theory, but also to *metaethics*, which addresses questions *about* morality and moral judgment (including questions about how morality relates to other things, such as rationality and human psychology, and whether there is a set of moral obligations, etc. that everyone should accept). Although the focus here is on normative ethical theory and theories, it should be noted both that normative ethics is widely thought to be continuous with metaethics, and that many ethical theories and theorists address both normative ethical questions and metaethical questions and, thus, make both moral claims and claims about morality and moral judgment.

What is an ethical theory?

What is an ethical theory? It is easiest to characterize ethical theories as a class in terms of their theoretical and practical aims or aspirations, keeping in mind that individual theories attempt to achieve these aims in diverse ways.

Ethical theories generally have two aims, one theoretical and the other practical.

First, like other theories, ethical theories have explanatory aims. And what they aim to explain is why right acts are right, why good things are good, why virtuous character traits are virtues, etc.

Second, ethical theories have practical aims. They aim to guide action. Few, if any, aim to offer an algorithm for making decisions. And virtually all stress that judgment, deliberation, and sensitivity to the complexities and salient features of particular situations play ineliminable roles in ethical decision-making. But ethical theories can help us to make progress on practical problems in other ways, as by clarifying relevant concepts; identifying overlooked complexities and difficulties; proposing methods for testing moral beliefs, rules, and principles; or defending claims about what is and what is not of ultimate value or of fundamental moral importance.

It should be noted that ethical theories are both general and abstract in character. Addressing concrete practical problems and controversial moral issues—including

the application of ethical theories thereto—is the domain of ethical theory's practical counterpart, applied ethics.

It should also be noted that ethical theories are not theories about how people should make decisions, either moral decisions or decisions in general.

Kinds of Ethical Theories

This section briefly summaries the kinds of ethical theories that most often figure in discussions of topics in applied ethics. It should be noted both that these are *kinds* of theories and that no theory or kind of theory should be regarded as widely accepted.

Act-Focused Theories

Act-focused theories focus on acts (including omissions) and are primarily concerned with matters of right and wrong, obligation or duty, individual rights, etc. They try to answer one of the two fundamental practical questions of ethics, "What ought I to do?" (the other being "How ought I to be?"). Such theories can be thought of as offering alternative answers to the question, which features of acts (including omissions) determine whether they are right or wrong, or which features of acts make right acts right and wrong acts wrong.

Consequentialist Theories

- To a first approximation, consequentialist theories claim that whether an act is right or wrong depends only on the non-moral value of relevant consequences, either the consequences of the act itself (direct consequentialism) or the consequences of something related to that act (indirect consequentialism), such as the social acceptance of moral rules that require or prohibit that act. The most prominent consequentialist theories are versions of act utilitarianism and rule utilitarianism.
- Some things have non-moral value and disvalue. That is, there are some things (e.g., pleasure) that would be good, and other things (e.g., pain) that would be bad, even if there were no right or wrong, and no virtue or vice. Thus, some states of affairs have greater non-moral value than others (because they contain or realize more non-moral value than others).
- Consequentialist theories claim that rightness and wrongness (and also virtue and vice) are determined, either directly or indirectly, by the non-moral value of consequences, or outcomes—that is, consequent states of affairs. For instance, act consequentialist theories claim that the rightness or wrongness of an act is determined (directly) by the non-moral value of its consequences. And rule consequentialist theories claim that the rightness or wrongness of an act is determined (indirectly) by the non-moral value of the consequences of our accepting a moral code that requires or prohibits that act.
- *Utilitarian* theories claim that the overall value of a given outcome (consequent state of affairs) depends only on how much happiness or well-being it contains (or that is realized therein). *Egalitarian* and *prioritarian* theories claim that the overall value of a given outcome also depends on how happiness or well-being is distributed among the individuals therein.

Egalitarian theories claim that more equal distributions are preferable, *ceteris paribus*. Prioritarian theories claim that distributions favoring those who are worse off over those who are better off are to be preferred, *ceteris paribus*. (In practice, utilitarians and prioritarians often favor promoting the well-being of those who are less well-off *as a means* of promoting greater aggregate well-being or more equal distributions thereof.)

- Consequentialist theories typically claim that the happiness or well-being of all sentient beings is of fundamental moral significance and, moreover, that a benefit (or harm) to any one individual (sentient being) is of equivalent value (or disvalue) to any other benefit (or harm) of equivalent size to any other individual. (This is consistent with the further claim that humans can be benefitted or harmed in ways that non-human animals cannot be.)

Act Consequentialist Theories

- To a first approximation, act consequentialist theories claim that whether an act is right or wrong depends only on the non-moral value of its consequences (the consequences of the act itself).
- Act consequentialist theories claim that morally appropriate (or ethical) actions, policies, practices, institutions, etc. are those that have good consequences, or outcomes.
- Most claim that morally appropriate actions, policies, practices, institutions, etc. are those that have maximally good consequences—i.e., optimal outcomes—and, thus, that an act is right if and only if its consequences are at least as good as those of available alternatives. Act utilitarians typically accept the following principle, "the principle of utility": an act is right if and only if it maximally promotes sentient happiness or well-being ("maximizes utility").[8]
- Contemporary act consequentialists deny that agents should decide what to do on particular occasions by calculating which act of those available to them would have the best consequences. (Recall that ethical theories are not theories about how people should make decisions.) For there are compelling reasons to believe that this method of decision-making is generally counterproductive. Instead, contemporary act consequentialists generally advocate following rules that are framed in advance, on the basis of consequentialist reasoning: rules that require conduct that is generally (but not invariably) productive of optimal outcomes (e.g., keeping promises and helping those in need), and rules that prohibit conduct that is generally (but not invariably) productive of suboptimal outcomes (e.g., wanton killing and lying). Moreover, many contemporary act consequentialists claim that agents should be blamed or feel guilty, not when they act wrongly, but rather when they decide what to do by using an unreliable method. The goal, they say, is

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[8] Some early formulations of utilitarianism and of the principle of utility referred to "the greatest happiness of the greatest number" (often paraphrased as "the greatest good for the greatest number"). But this ambiguous phrase is inapposite and should never be used.

to do what will have the best consequences. And that goal is best promoted by judging ourselves and others based, not on whether we achieve that goal on any particular occasion, but rather on whether the methods we use for pursuing it are reliable ones.

- Act consequentialist theories are often criticized for being overly reductive and, in particular, for implausibly reducing our various moral obligations to a single, general obligation to promote optimal outcomes and for failing to adequately account for the nature and content of moral rights.

Rule Consequentialist Theories

- To a first approximation, rule consequentialist theories claim that whether an act is right or wrong depends only on the non-moral value of the consequences of certain rules being generally accepted: moral rules that require or prohibit that act.
- Rule consequentialist theories claim that the rightness or wrongness of an act is determined (indirectly) by the non-moral value of the consequences of our accepting a moral code that requires or prohibits that act.
- Most claim that morally appropriate (or ethical) actions, policies, practices, institutions, etc. are those that are permitted or required by the moral code whose general acceptance would have the best consequences and, thus, that an act is right if and only if it conforms to the code of rules whose general acceptance would have the best consequences. Note that the relevant code is not the one that is, in fact, generally accepted, but rather the one whose general acceptance would have the best consequences (whether or not it is, in fact, generally accepted).
- Rule consequentialist theories are often criticized for elevating a means of promoting optimal consequences—namely, compliance with moral rules—to the status of an end in itself, because they claim that we ought to comply with the moral code whose general acceptance would have the best consequences even when we know that doing so will have *sub*optimal consequences.

Non-Consequentialist (incl. Deontological) Theories

- To a first approximation, non-consequentialist theories claim that whether an act is right or wrong depends on factors other than or in addition to the non-moral value of relevant consequences.
- Non-consequentialist theories accept *constraints*, *options*, or both. Non-consequentialist theories that accept constraints are often referred to as *deontological* theories.
- Constraints are limits or restrictions on what we may do to promote good ends or optimal outcomes—limits on what it is permissible to do, even to achieve noble ends or the greater good. Thus, theories that accept constraints deny that it is always permissible to do whatever would have the best consequences. Both general obligations, such as duties not to harm or lie to others, and universal human rights would be constraints. So would special obligations, including duties of care and other role obligations. Moreover, constraints would include not only duties of and rights to non-interference

(negative duties and rights), but also duties to provide and rights to goods or services (positive duties and rights), such as assistance, an education, or health care.

- Options are limits on what we must do to promote good ends or optimal outcomes—including, most prominently, permissions to pursue our own interests or projects even when doing so would have suboptimal consequences. Thus, theories that accept options deny that it is always obligatory to do whatever would have the best consequences.
- Moreover, non-consequentialist theories accept constraints or options on non-consequentialist grounds. In contrast, act-consequentialist theories reject both constraints and options. They may accept rules that specify constraints or options, but only as guidelines or heuristics, and only on the basis of consequentialist reasoning (see above). And while rule-consequentialist theories may accept constraints or options, they may do so only on consequentialist grounds. Thus, most rule-consequentialist theories may (and do) accept them only insofar as the code of rules whose general acceptance would have the best consequences provides for them (see above).
- Neither non-consequentialism nor deontology should be confused with moral absolutism, the view that some or all moral prohibitions or rules hold without exception. Absolutism in this sense most often takes the form of the view that certain actions are morally impermissible simply in virtue of being members of certain identifiable kinds of action, such as lies, acts of adultery, and deliberate killings of the innocent. It may also take the form of the view that there are absolute moral rights, that is, moral rights that may never be permissibly infringed. Although some non-consequentialist ethical theories are absolutist in this sense, many non-consequentialists —including many deontologists—reject such absolutism.

Contractarian Theories
- To a first approximation, contractarian theories claim that whether an act is right or wrong depends on whether or not it conforms to norms of mutually beneficial cooperation that are, or would be, agreed to by self-interested agents.
- Contractarian theories generally view people as primarily motivated by self-interest and morality as a conventional response to a collective action problem, a situation in which each can benefit only by securing the cooperation of others.
- Contractarian theories claim that morally appropriate (or ethical) actions, policies, practices, institutions, etc. are those that conform to norms of mutually beneficial cooperation that are, or would be, agreed to by self-interested agents under certain conditions.
- Contemporary contractarians do not claim that morality is a contract or agreement. Rather, they regard the fact that self-interested agents would agree to a given norm as indicative of the (self-interested) reasons they have and, in particular, of what conventional norms they have (self-interested) reasons to accept provided that others reciprocate. For example, the fact that

such agents would agree to a norm prohibiting wanton violence shows or evinces that self-interested agents have (self-interested) reasons to accept conventional norms that prohibit such violence provided that others also accept them.

- Libertarian theories claim that the primary motive for agreement is a fear of depredations by others. Self-interested agents concerned to protect themselves from such depredations would, they claim, agree to norms that prohibit them from using force or threats of force to achieve their own ends provided that others reciprocate. Liberal theories claim that the primary motive for agreement is a desire for the positive benefits that mutual cooperation makes possible. Self-interested agents concerned to benefit from mutual cooperation would, they claim, agree to norms requiring that they aid others in need and contribute to mutually advantageous social insurance schemes provided that others reciprocate.
- Contractarian theories are often criticized for being unable to account for our obligations to and the rights of those who cannot reciprocate, including children, the disabled, and non-human animals.

Contractualist Theories
- To a first approximation, contractualist theories claim that whether an act is right or wrong depends on whether or not it conforms to principles or rules that could or would be accepted by all rational beings or that could not be reasonably rejected by any rational being.
- Contractualist theories generally view people as motivated, not only or even primarily by self-interest, but also to act in ways that they can justify to others as free and equal beings. For instance, T.M. Scanlon's theory claims that reasonable persons want to live together on terms that no one could reasonably reject. Thus, speaking very roughly, whereas contractarian theories see moral principles as rules that (self-interested) individuals would agree to from their own, diverse perspectives, contractualist theories see moral principles as rules that individuals could or would agree to (or could not reject) from a common perspective, the perspective of one free and equal person among others.
- Contemporary contractualists do not claim that morality is a contract or agreement. Rather, they regard the fact that reasonable persons could or would agree to (or could not reject) a given principle as indicative of the reasons they have. For example, the fact that such persons would agree to a rule prohibiting wanton violence shows or evinces that reasonable persons have reasons to accept principles that prohibit such violence.
- Neither of the two most prominent contractualist theories—those of John Rawls and T.M. Scanlon—is a complete moral theory. Thus, neither claims to offer a complete account of which features of acts determine whether they are right or wrong, and neither claims to offer a complete specification of which actions are morally appropriate (or ethical).
- Rawls's theory is a theory of justice and, in particular, a theory of just political and social institutions (political constitutions, legal systems,

economies, etc.). It claims that just political and social institutions are those that conform to principles that it would be rational to accept in an "original position" behind a "veil of ignorance"—that is, the principles that it would be rational for one free and equal person among others to choose were such a person ignorant of any and all features that individuate different persons or their societies, including the resources available to them; their abilities, talents, gender, race, and socioeconomic position; and their own interests or values. ("The original position is, in effect, the perspective of a, that is, an arbitrary, free and equal individual."[9])

- Scanlon's theory is a theory of what he calls "narrow morality," which consists of what rational persons owe each other. It claims that, within the scope of narrow morality, morally appropriate (or ethical) actions are those that conform to principles that no one could reasonably reject. More precisely, it claims that "an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement."[10]
- Contractualist theories are often criticized for being unable to account for our obligations to and the rights of merely sentient beings, including non-human animals.

Kantian Theories

- To a first approximation, Kantian theories claim that whether an act is right or wrong depends on whether or not it respects rational nature "as an end in itself."
- Kantian ethical theories are a broad class of ethical theories that include both the ethical theory of Immanuel Kant (1724–1804) and contemporary ethical theories that are inspired by Kant's theory but diverge from or add to it in various ways, including the contractualist theories of John Rawls and T.M. Scanlon (see above). The most common point of departure, not only for contemporary Kantian theories but also for contemporary interpretations of Kant's own theory, is Kant's second formulation of what he calls the Categorical Imperative: *So act that you use humanity, whether in your own person or in the person of another, always at the same time as an end, never merely as a means.* This principle enjoins us to always treat rational nature (which is what Kant means by "humanity") as an end in itself, and never as a means only.
- Many Kantian theories claim that our fundamental moral obligation is to respect rational beings and, in particular, their rational natures (their capacities for rational thought and action) as "ends in themselves." Thus, they claim that morally appropriate actions, policies, practices, institutions, etc. are those that respect rational nature as "as an end in itself." (In Kant's

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[9] Darwall 2003, 6.
[10] Scanlon 1998, 153.

own theory, this obligation is taken to be a requirement of practical reason: a standard of rational choice and action.)

- What respecting rational nature as "as an end in itself" entails is a matter of considerable controversy among Kantians. For example, some regard it as a matter of treating rational nature as having a special kind of value ("dignity") that is to be "honored" (e.g., preserved, developed, and exercised) rather than promoted (e.g., produced or maximized), while others regard it as a matter of acting on or in accordance with rules or principles that could or would be accepted by all rational beings or that could not be reasonably rejected by any rational being (see Contractualist Theories, above).
- Kantian theories generally claim that our obligation to respect rational nature limits what we may do to promote our own well-being or the greater good. Thus, they accept constraints. But both Kant and many contemporary Kantians also claim that respecting rational nature also requires promoting both our own perfection (developing our own rational capacities) and the happiness or well-being of others. That said, Kantians generally accept options, too, and, in particular, permissions to pursue our own interests or projects even when doing so would have suboptimal consequences.
- In keeping with the view that our fundamental moral obligation is to respect rational nature, Kantian theories typically deny that the interests of merely sentient beings, including non-human animals, are of non-derivative moral significance. And for that reason, they are often criticized for being unable to account for our obligations to and the rights of merely sentient beings, including non-human animals.

Natural Law Theories

- To a first approximation, natural law theories claim that whether an act is right or wrong depends on whether or not it is a non-defective response to a basic human good. Such theories should not be confused with the view that morality is natural as opposed to conventional (or otherwise artificial), which is compatible with most ethical theories, not just natural law theories.
- Natural law theories are a broad class of ethical theories that claim morally appropriate (or ethical) actions, policies, practices, institutions, etc. are those that respond appropriately to basic human goods, and that which goods are basic human goods is determined by human nature. In this way, natural law theories claim that human nature determines the content of morality, which they often refer to as "the natural law" or "the law of nature."
- Most natural law theories claim that there are a variety of defective responses to basic human goods. Notably, many claim that the intentional destruction of a basic human good is a defective response thereto, even when it is necessary to promote or preserve another such good. (Thus, natural law theories tend to accept constraints.)
- Natural law theories should not to be confused with the moral theory accepted by the Roman Catholic Church, which is only one of many natural law theories and reflects the influence of religious dogma and papal authority. Notably, Roman Catholic proponents of natural law ethics

(including Thomas Aquinas) generally claim that life is a basic human good, and that the intentional termination of human life is a defective response thereto. They also tend to be absolutists more generally, holding that lying, adultery, etc. are never morally permissible. But these additional positions rest on further claims that are contested within natural law ethics—further claims about human nature, about what the basic human goods are, and about which responses to those goods are defective.

- Nor should natural law theories be confused with the view that certain acts are wrong because they are "unnatural" in that they violate basic principles of biological functioning (e.g., that non-procreative sex is wrong because the biological function of sex is procreation). For while some proponents of natural law ethics do endorse this view, many others rightly regard it as absurd.
- Natural law theories are often criticized for being unable to offer a tenable account of human nature, for being unable to account for our obligations to and the rights of non-human animals, and (in some versions) for being implausibly absolutist (e.g., for claiming that lying is always wrong).

Rossian Moral Pluralism

- To a first approximation, Rossian moral pluralism claims that there is no single feature, however general, on which the rightness or wrongness of an act depends. Rather, whether an act is right or wrong depends (it claims) on the interplay of an irreducible plurality of factors, describable only by a plurality of fundamental moral principles. Rossian moral pluralism is often treated as a point of departure for developing or defending alternative ethical theories, both consequentialist and non-consequentialist.[11] And it is often (implicitly) taken for granted in various discussions, both in theoretical ethics and in applied ethics.
- Rossian (or Ross-style) moral pluralism names a class of ethical theories that share certain features with the ethical theory developed by W.D. Ross (1877–1971). An ethical theory may depart from or add to Ross's own theory in various ways yet still be classified as (broadly) Rossian.
- Rossian pluralism claims that there is an irreducible plurality of fundamental moral principles, identifying an irreducible plurality of fundamental moral obligations (or duties). Rossians do not deny that some obligations are reducible to others. For example, they typically claim that the obligation to not kill and the obligation to pay one's debts are special cases of, and therefore reducible to, the obligation to not harm and the obligation to keep one's promises, respectively. Rather, what they deny is that all of our various moral obligations are reducible to a single, fundamental obligation, such as an obligation to promote optimal outcomes or an obligation to respect rational nature "as an end in itself." Moreover, Ross himself argued that our various moral obligations are reducible to five fundamental obligations: to

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[11] See, e.g., Rawls 1971, Kagan 1989, Hooker 2000.

produce as much good as possible; to avoid harming or injuring others; to show appreciation for and to reciprocate the benefits that we have received; to acknowledge and make amends for the wrongs we have done and the harms and injuries we have inflicted; and to keep our promises, including our implicit promises.

- Rossian pluralism claims that our various moral obligations can, and frequently do, conflict. In such cases, at least one action will be morally right, even though it breaches a moral obligation (or infringes a moral right). For example, one's obligation to save a life might outweigh or override one's obligation to keep a promise, making it right to breach the latter obligation. (Rossians generally deny that there can be conflicts between obligations that leave the agent with no morally permissible options.) Rossians use terms such as "pro tanto obligation" and "prima facie duty" to refer to obligations of the sort that can conflict with one another in this way. Some also prefer to speak in terms of moral reasons or right- and wrong-making features of actions, rather than obligations or duties.

- Some moral theories claim that the rightness or wrongness of an act depends on a single feature thereof, such as whether or not its consequences are at least as good as those of available alternatives or whether or not it respects rational nature "as an end in itself." Rossian pluralism denies this. It does allow that right acts are supported by the "balance" of moral reasons. But beyond that, it denies that there is a single feature—however general—that makes all right acts right (or all wrong acts wrong).

- Rossian pluralism also denies that there is a general formula that specifies which actions are morally appropriate (or ethical), such as that morally appropriate (or ethical) actions are those that conform to principles that no one could reasonably reject. Moreover, Ross himself claimed that "no act is ever, in virtue of falling under some general description, necessarily actually right" (1930: 33).

- Rossian theories generally recognize an obligation to promote optimal outcomes both directly and indirectly (e.g., by promoting policies, practices, and institutions that promote optimal outcomes). But they also accept constraints. For instance, Ross's own theory accepts constraints both in the form of a general obligation to not harm others and in the form of special obligations to promisees, to benefactors, and to those whom we have harmed or wronged. And, recently, some have begun to explore how options might be accounted for within a Rossian theory.[12]

- Many Rossians claim that the happiness or well-being of all sentient beings is of fundamental moral significance and, moreover, that a benefit (or harm) to any one individual (sentient being) is of equivalent value (or disvalue) to any other benefit (or harm) of equivalent size to any other individual. (This is consistent with the further claim that humans can be benefitted or harmed in ways that non-human animals cannot be. It is also consistent with the further

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[12] See Hurka and Shubert 2012.

claim that we have obligations to humans that we do not have to non-human animals.)

- Rossian theories are often criticized both for not providing a single, unifying principle from which all of our various moral obligations can be derived and for not providing guidelines that we can use to decide what we ought to do when out obligations (or the rights of others) conflict. (Rossians generally reply that this is a feature of their view, not an objection to it, and that there is no reason to suppose that any such principle or guidelines are to be found.)

Agent-Focused Theories

Agent-focused theories focus on agents or the relations between them, rather than on acts. They include theories that focus primarily on the kind of person one should be or the kind of character one should have and, thus, on the nature of virtue and virtuous personhood. These try to answer the other fundamental practical question of ethics, "How ought I to be?" (The various theories classified as Virtue Ethics are prime examples of such theories.) Agent-focused theories also include theories that focus on relations between agents (the prime example being caring relations) and on the evaluation of the various aspects and expressions of these relations, and of the social practices and values that sustain them.

Although there are some who view agent-focused theories as alternatives to act-focused ones, many such theories may be seen as necessary amendments or supplements to an adequate act-focused theory or as parts of a more general ethical theory that includes both act- and agent-focused elements. In this regard, it is worth noting both that some virtue theorists (including Aristotle) connect agent to action by claiming that virtue involves doing the right thing for the right reason, and that some act-focused theories connect actions to agents by claiming that relations between agents and other persons (including caring relations) give rise to special obligations to act in particular ways (including obligations of care).

Virtue Theories

- To a first approximation, theories of virtue ethics propose that what makes a particular act moral, or individual agent morally praiseworthy, is some aspect of the agent's character.
- Many ethical theories rest on intuitions about various types of virtuous behavior, such as the virtue of beneficence (Utilitarianism), caring for others (Ethics of Care), or justice (various elements of contractarianism). However virtue theories are distinct in proposing that morality consists not only in the existence of particular virtues, but also in the possession of multiple virtues by identifiable agents.
- Virtue Ethics is an agent-centered approach to morality, which addresses the question "How ought I be in order to live the good life?" which can be contrasted with other approaches to ethics which center on the question "What ought I do".
- The genesis of virtue theories can be found in the philosophy of the ancient Greeks, particularly Aristotle's presentation of the view in his "Nicomachean Ethics". Virtue theory fell out of favor until its revival in the latter part of the

20th century, which has yielded many influential modern restatements of the view including those of Philippa Foot Rosalind Hursthouse and Virginia Held.

- Virtues are character traits, which are identified as good. Particular theories differ in those character traits which are counted as virtues, and range from the very broad characterization given by Aristotle, who included bodily and intellectual virtues on his list such as beauty and intelligence, to more narrowly prescribed accounts that focus on more traditionally moral traits such as beneficence and courage.
- Virtue theories generally include some meta-virtues, virtues that facilitate the use of the other virtues. Aristotle's take on the meta-virtue is the virtue of practical wisdom, the specific intellectual virtue of knowing how to appropriately deploy the other virtues. The importance of meta-virtues such as practical wisdom highlights the contextual dependence of morally appropriate behavior that is central to virtue ethics.
- A virtuous agent is one who acts virtuously, that is, one who possess and exercises the virtues.
- Virtue theories are often criticized in applied contexts for being an agent-focused theory, so although it can answer the question "How ought I live?" its answer to the question "What should I do?" is generally less clear. A notable attempt to generate a more act-focused version of Virtue Ethics is Rosalind Hursthouse's proposal of v-rules. V-rule are essentially rules of thumb for the practical implementation of the virtues.

Care Theories

- To a first approximation, care ethics focuses on the socially embedded nature of lives as central to the creation and fulfillment of moral obligations.
- Care ethics partially defines itself as an alternative to the prevailing view of morality as impartial behavior (i.e. Kantianism, Utilitarianism). Care ethics holds that the impartial standpoint ignores important contextual features of our lives, particularly that we are born into a web of relationships and are interdependent, socially embedded beings. Through the focus on impartiality the prevailing view of ethics misses important aspects of morality, specifically, the crucial aspect of "care", and at worst it promotes a completely unrealistic view of the person, and so fails to capture what morality really is at all.
- The central focus of the Ethics of Care is on the "…compelling moral salience of attending to and meeting the needs of the particular others for whom we take responsibility."[13]
- Epistemologically, care ethics values emotion as a way of understanding what it morally best, rather than rejecting it, and treating emotionally based judgments as suspect.

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[13] Held, in The Oxford Handbook of Ethical Theory"

- Methodologically, care ethics rejects claim that the ideal of moral reasoning is abstract, and impartial. Rather it proposes that moral reasoning is about particular interconnected individuals in particular equal or unequal relationships.
- The Ethics of care challenges and reconceptualizes the traditional division between the private and the public sphere by making the 'private' domain of relations of family and friends central to morality.
- Care ethics conceives of persons as "relational and interdependent persons" who begin and end their lives as dependents of others, in relations with others that we do not choose – our families. Persons, on this view, are fundamentally dependent on, and connected to, others throughout their lives.
- In care ethics, moral obligations are derived from our relationships to others, they do not exist prior to or separable from these relationships. Moral obligations resulting from care can only be understood by taking circumstances, people, and future interpersonal impact of our judgments into account. Likewise, our moral judgments are particular, that is, they take the context of actions and relations to be important to the moral judgments that we make.
- There is general agreement that care is an activity of taking care of a particular person that requires the carer to expend energy on the cared for. To care for another is not merely to have an attitude of caring *about* some one or thing divorced from any inclination or motivation to act on that attitude.
- Care ethics is often presented as a form of Feminist Ethics, although this is not necessary. The most noted version of this view comes from the earliest proponent of Care Ethics, Carol Gilligan.
- Care theories have been criticized for several reasons: Care Ethics initially emphasized care and maintenance of relationships at all cost. But: Who does the caring? At what cost? (Note that it is generally women – this is a particularly lively issue in the traditional "caring" professions). By emphasizing care as a female virtue are we gender essentializing? It is arguably easier to understand Care Ethics not as a stand-alone ethical theory, but rather in conjunction with another view, possibly as an amendment or supplement to other moral theories, which identifies an important gap in the prevalent understanding of morality.

Moral Rights: Theoretical Background

It is difficult to discuss moral rights in abstraction from a particular moral theory and the particular claims it makes about such rights. (Theories of moral rights are generally not independent moral theories, but rather elements of more general moral theories.) But because talk of rights figures so prominently in political and moral discourse, and because so much of that talk is muddled and/or question-begging, we think it necessary to say something about moral rights in general: to identify some important distinctions, concepts, complexities, and theoretical

positions that should be kept in mind when discussing moral rights. Not everything we say here is uncontroversial, but we do attempt not to assume any point on which we would bear the burden of argument.

Moral rights vs. legal rights

We must, of course, distinguish between moral rights and legal rights. Slaveholders in the antebellum South had *legal* property rights in their slaves: legally, their slaves were their property. But it does not follow that they had any *moral* property rights in their slaves: morally, their slaves were not property, but rather free and equal beings.

Perhaps less obviously, we must also distinguish between rights that are recognized or enforced and those that are not. Slaves in the antebellum South had moral rights to liberty and equality that were neither recognized nor enforced, either by the law or by the conventional morality of the antebellum South.

Human rights, natural rights, and civil rights

Human Rights

Human rights are those moral rights of humans as such, rights that humans have in virtue of being human. "Human" here is used in the moral sense and does not mean a biological human, a member of the species *Homo sapiens*. What features are definitive of humans in the moral sense is itself an open question in philosophical ethics, as is the question of whether all humans in the biological sense are also humans in the moral sense. For instance, if *reason* or *the capacity for choice* is necessary for humanity in the moral sense, then some *Homo sapiens*—including infants—are not humans in the relevant sense. On the other hand, if *sentience*, *the capacity to suffer*, or *having interests* is sufficient for humanity in the moral sense, then not only are most infant *Homo sapiens* humans in the relevant sense, but so too are many pets, livestock, and wild animals.

Natural Rights

Natural rights are moral rights that humans (in the moral sense) have because of their nature, or in virtue of being human. Thus, the (historical) term natural rights and the (contemporary) term human rights are synonymous. Natural rights are sometimes said to be rights that humans have, or would have, in a pre-political "state of nature." But this is simply a consequence of the fact that they are moral rights that humans have because of their nature, as opposed not only to legal and other conventional rights, but also to civil rights.

Civil Rights

Civil rights are moral rights of citizens as such. In moral and political philosophy, they are often further defined as the rights that constitute free and equal citizenship in a liberal democracy.

The claim that all natural rights are negative rights—claim-rights against others that they forbear from doing certain things, which include rights to non-interference or negative freedom—has its origins in an eighteenth-century understanding of such

rights that is far narrower than most contemporary understandings thereof. Thus, the claim that there cannot be natural rights to such things as an education, healthcare, or a certain standard of living because all natural rights are negative rights is question-begging: it assumes a particular, controversial conception of such rights, one that is not shared by anyone who thinks that there are natural rights to such things. In this regard, it may be worth noting that a right can be a natural or human right even if its realization requires the existence of a political community, such as a state, with the resources necessary to secure its realization.

Claim rights, liberties, powers, and immunities

Talk of rights, or of what someone has a right to, is systematically ambiguous between talk of *claims* or *claim-rights, liberties* (aka *privileges*, *licenses* or *permissions)*, *powers*, and *immunities*. (These terms derive from Hohfeld's discussion of legal rights.[14]) Consider the following statement, "Smith has a right to give her car to Jones." This statement could express four entirely different propositions. That is, it could say or mean four entirely different things.

(1) Smith has a valid claim that others not interfere with her giving her car to Jones. In other words, Smith has a *claim* or *claim-right* against others that they not interfere with her giving her car to Jones.

(2) Smith has no obligation or duty not to give her car to Jones. In other words, Smith has a *liberty* to give her car to Jones.

(3) Smith has the authority to give her car to Jones. In other words, Smith has the *power* to alter the existing scheme of rights and duties by giving her car to Jones—that is, by transferring her property rights in the car to Jones.

(4) Some other (e.g., the state or Smith's parent) lacks the authority to prohibit Smith from giving her car to Jones. In other words, Smith enjoys a certain *immunity* with respect to some other's power to alter the existing scheme of rights and duties.

A claim-right is a valid claim to a performance or forbearance, a valid claim that someone do or forbear from doing something. (N.B. Claim-rights include not only rights to negative freedoms, but also rights to active assistance.) A liberty is an absence of an obligation or duty to do or forbear from doing something. (The terms "privilege" and "license*"* often connote an exceptional absence of a duty or obligation, as does the term "special permission.") A power is a certain authority to alter the existing scheme of rights and duties, while an immunity is a certain immunity from such an authority. Claim-rights are often said to be rights in the strictest sense, and some go so far as to deny that liberties, powers, and immunities are rights properly so called. Moreover, in some contexts, the term "right" connotes a claim-right as opposed to a liberty, power, or immunity.

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[14] See Hohfeld 1919.

Strictly speaking, one cannot have a claim-right to do something. This is not to deny that statements such as "Smith has a right to give her car to Jones" and "Jones has a right to speak" can ascribe claim-rights. Rather, it is to say that (when they do) the claim-rights they ascribe are claim-rights against others that they not interfere with Smith's giving her car to Jones or with Jones's speaking, respectively.

Moreover, assertions of claim-rights do not entail assertions of liberties, nor do they entail assertions of permissibility. For example, it could be that Smith has a claim right against others that they not interfere with her giving her car to Jones *even though* she has an obligation or duty to give it to a third person, Black, and *even though* it would be wrong (impermissible) for her to give it to Jones rather than to Black. Thus, I may have a right to say something defamatory or to obtain an abortion in the sense that I have a claim-right against others that they not interfere with my doing this or punish me after the fact for having done it, but that would not suffice to justify my doing it. Likewise, I may have a right not to give the money I spend on luxuries to the needy in the sense that I have a claim-right against others that they not force me to do this, but that does not justify my not doing it.

The forgoing facts may be obscured by the following fact: when we speak of rights, we are often speaking of complex aggregates of rights that include claim-rights, liberties, powers, or immunities. (Judith Thomson suggests that such aggregates are themselves rights, rights that contain other rights, or "cluster rights."[15].) For example, when we speak of Smith's property rights in her car, we mean an aggregate of rights that includes both Smith's claim rights against others that they not interfere with her continued possession and use of that car and Smith's powers to transfer (or alienate) her rights therein. And when we speak of a right of self-defense, we often mean an aggregate of rights that includes both a qualified liberty to do certain things that are normally prohibited (e.g., use violence) to defend oneself and a claim-right against others that they not interfere with one's exercise of that liberty. Similarly, when we say that someone is "at liberty" to do something or has "the liberty" to do something we often mean not only that she as a liberty to do it (i.e., that she has no obligation not to do it), but also that others have an obligation not to interfere with her doing of it.

For these and other reasons, a theory of rights will not be a complete moral theory. And knowing what the rights of the relevant parties are is not sufficient to know what one ought or ought not do.

Correlative duties

Claim-rights entail "correlative duties," or corresponding obligations. For example, if Smith has a right against me that I not interfere with her giving her car to Jones, I have a correlative duty not to interfere with Smith's giving her car to Jones. Moreover, I owe this duty to Smith. For correlative duties are owed to the holders of the correlative rights.

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[15] Thomson 1990, 54–7 & n. 11.

Note that not all duties or obligations entail correlative rights. Thus, while the absence of an obligation or duty entails the absence of a claim-right, the absence of a claim-right does not entail the absence of an obligation or duty.

For these and other reasons, a theory of rights will not be a complete moral theory. And knowing what the rights of the relevant parties are is not sufficient to know what one ought or ought not do.

Consent, waiver, and forfeiture

One does not violate a person's rights if one acts with that person's consent. For example, I do not violate Smith's property rights in her car if I use it with her permission. Consent can be thought of as the granting of a liberty, which liberty may be qualified or revocable. So understood, it implies a power, the power to grant a liberty.

To waive a right is to give it up voluntarily. Waivers may be limited or revocable. To forfeit a right is to lose it by fault or wrongdoing. Forfeitures may be limited. Both waiver and forfeiture imply powers, the powers to waive and forfeit the rights in question.

Inalienable rights

Strictly speaking, an inalienable (or unalienable) right is one that cannot be transferred. (In property law, "alienability" refers to the transferability of property rights.) Thus, someone who possesses an inalienable right lacks another right, namely, the power to transfer that inalienable right. But in law, the term is often used differently, to refer to a right that cannot be transferred or surrendered *without the right-holder's consent*. And in moral philosophy, the term is often used more broadly to refer to a right that cannot be lost or given up either by transfer, forfeiture, or waiver. Historically, it was used to refer to a natural right that cannot be—and thus is not—transferred or surrendered to the sovereign or the state upon becoming a subject or a citizen. And some (perhaps many) would distinguish rights that are inalienable in that sense from rights that cannot be forfeited by, for example, committing a capital offense or waived by, for example, enlisting in the military.

Constraints, instruments, or goals

Constraint theories

Constraint theories of rights claim that rights are *constraints*, limits or restrictions on what we may do to promote good ends or optimal outcomes—limits on what it is permissible to do, even to achieve noble ends or the greater good (including the ends of promoting respect for rights and of minimizing the violation thereof). Expressions of the idea that moral rights are constraints include John Rawls's thesis that the demands of justice have "lexical priority" over other moral considerations, Robert Nozick's thesis that moral rights are "side-constraints" on the pursuit of our

goals, and Ronald Dworkin's thesis that political rights are "trumps" over collective goals that are held by individuals.[16]

Constraint theories assign rights a non-instrumental status but may take them to be derivative of other sorts of constraints, including obligations or duties. For example, many Kantian ethical theories claim that the basic moral unit is an *obligation* to treat rational nature "as an end in itself" or to treat rational beings as "ends in themselves," rather than a *right* of rational beings to be so treated. On such theories, rights are derivative of an obligation that is more fundamental, even if they are constraints rather than instruments for acknowledging the moral status of persons (see below).

Rights are constraints so long as the following is true:

> that the consequences of infringing a right would, on the whole, be better than the consequences of respecting that right does not suffice to make infringing that right permissible.

To claim that moral rights are constraints is thus not to claim that moral rights are absolute constraints, or that it is never permissible to infringe a moral right. Using terminology introduced by Thomson (1986), we may distinguish between "infringing" a right and "violating" a right. To infringe a negative right is to do something that someone has a claim-right against you that you not do, while to infringe a positive right is to not do something that someone has a claim-right against you that you do. And to violate a right is to infringe a (positive or negative) right impermissibly. In this terminology, the claim that moral rights are absolute constraints is the claim that moral claim-rights may never be permissibly infringed, or that every infringement of such a right is a violation thereof. And that claim is one that most constraint theorists (including Thomson and Dworkin) reject.

Instrumental theories

Instrumental theories of rights claim that moral rights are instruments, or means, either for promoting valuable ends or outcomes (e.g., well-being or equality) or for acknowledging the moral status of persons. Such theories assign rights and respect for rights a derivative status, as means to ends or as ways of acknowledging moral personhood or aspects thereof. Nevertheless, they may assign *practical priority* to rights and respect therefor. That is, they may claim that, for practical purposes (deliberation, justification, etc.), rights function as if they were constraints.

End-state Theories

Amartya Sen has defended a third option, a *goal-rights (or end-state) theory*—that is, one claiming that the fulfillment and non-violation of rights are themselves valuable ends and, so, contribute to the overall value of states of affairs. This theory assigns rights and respect for rights a non-derivative status, as intrinsic goods and ends to be promoted. Furthermore, it denies that rights are constraints.

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[16] See Rawls 1971, 42–44; Nozick 1974, 28–33; Dworkin 1978.

Regardless of which of these theories we accept, it is always presumptively wrong (immoral or unethical) to infringe a claim right. However, this presumption is rebuttable so long as the right in question is not absolute, and any claim that a right is absolute will be controversial.

Principles, Codes and Doctrines (Material for Instructors)

The following principles and doctrines often figure in discussions of topics in applied ethics. Each of them is controversial, and none of them should be regarded as widely-accepted.

The Doctrine of Double Effect

The doctrine (or principle) of double effect (the DDE) claims that it is *sometimes* permissible to bring about as a merely foreseen side effect a harmful event that it would be impermissible to bring about intentionally (i.e., as an end or as a means to an end).

For purposes of this doctrine, an agent brings about an event intentionally *only* if she acts or refrains from acting with the intention, or aim, of bringing that event about (either as an end or as a means to an end). Thus, one may *knowingly* cause or fail to prevent an event without bringing it about intentionally.[17] On some versions, what is essential is not whether the event is harmful, but whether it is evil. For example, Roman Catholic versions regard death as an evil (something that is intrinsically bad) even when it is not a harm. And on some versions, what is essential is whether the harmful *event* is intended, not whether the *harm* itself is intended.

Illustration:

> Strategic Bomber. Strategic Bomber (SB) bombs an enemy munitions plant knowing, but not intending, that civilians living nearby will be killed in the raid.

> Terror Bomber. Terror Bomber (TB) bombs enemy civilians in order to terrorize the enemy.

Intuitively, there is a moral difference between what SB and TB do. And it seems like we can explain this by appealing to the DDE. SB acts only with the intention of destroying a legitimate target, an enemy munitions plant. But TB acts with the intention of killing or harming "innocents," as a means to her ends.

N.B. No advocate of the DDE claims that it is *always* permissible to bring about as a merely foreseen side effect a harmful event that it would be impermissible to bring

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[17] There is a broader sense of "intend" in which the object of numerous kinds of intentional mental states (beliefs, desires, etc.) may be said to be intended. The sense of "intend" that figures in the doctrine of double effect is a narrower (semi-technical) sense, in which a person intends only her aims (her purposes or objectives), including not only her chosen ends, but also any means she chooses to realize those ends. Consider the following exchange:

> Smith: "How can you say that you did not intend for that to happen? You had to know that it would happen if you did that. And you did it anyway."

> Jones: "Of course I knew it would happen. But I did not intend for it to happen. It was not part of my plan. It was nothing to my purposes."

Smith is using "intend" in the broad sense, while Jones is using "intend" in the narrow sense.

about intentionally, or that it is always permissible to cause harm provided that we do not intend that harm.

In addition to requiring that the harmful (or evil) event be unintended, the DDE also requires both that the act in question be otherwise permissible (i.e., that it would be permissible if it did not bring about that event) and that the harm (or evil) that the act causes not be out of proportion to the benefit (or good) that it does. Thus, SB's act is permissible only if two further conditions are met: (1) It would be permissible for SB to bomb the enemy munitions plant if doing so would not kill the civilians that it will, in fact, kill; (2) The deaths of those civilians (*qua* harm or evil) is not out of proportion to the benefit (or good) that would be done by destroying the plant.

Advocates of the DDE may disagree among themselves about whether a particular act is otherwise permissible. And they do disagree about how to understand the latter, proportionality requirement. Traditional formulations require only that the benefits outweigh the costs. Some formulations require that the costs be no greater than is necessary to secure the intended benefits. Michael Walzer proposes that the agent must minimize the bad consequences of her action, even if doing so puts her at additional risk or requires forgoing some potential benefits.[18]

The Doctrine of Doing and Allowing

The doctrine of doing and allowing (the DDA) claims that the difference between doing harm and allowing harm to occur *sometimes* makes a moral difference, a difference between what is right and what is wrong.

Illustration:

> Rescue I. We are hurrying in our jeep to save [five] people...who are imminently threatened by the ocean tide. We have not a moment spare, so when we hear of a single person who also needs rescuing from some other disaster we say regretfully that we cannot rescue him, but must leave him to die.[19]

> Rescue II. We are again hurrying to the place where the tide is coming in in order to rescue the [five] people, but this time...the road is narrow and rocky...[and] the lone individual is trapped (do not ask how) on the path. If we are to rescue the five we would have to drive over him....If we stop he will be all right eventually: he is in no danger unless from us. But of course all five of the others will be drowned.[20]

Intuitively, it is permissible to save the five in Rescue I but not in Rescue II. And it seems like we can explain this by appealing to the DDA. In Rescue I we can save the five without doing harm to the one. But in Rescue II, we cannot.

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[18] Walzer 1977, 151–9.
[19] Philippa Foot 1984, 176.
[20] Ibid.

N.B. No advocate of the DDA claims that the difference between doing harm and allowing harm to occur *always* makes a moral difference. Nor does any claim either that it is never permissible to do harm or that it is always permissible to allow harm to occur.

N.B. The doing/allowing distinction and the intend/foresee distinction are different distinctions. Rescue II shows this (as does <u>Strategic Bomber</u>, above).

Advocates of the DDA disagree about how to draw the distinction between "doing" and "allowing." In other words, they disagree about what the relevant distinction is. One proposal is that the relevant distinction is the distinction between *act* and *omission*, or between *action* and *inaction*. Another proposal is that it is the distinction between *originating or sustaining a causal sequence* (initiating one or keeping one going when it would otherwise stop) and *diverting a causal sequence* (altering its outcome) *or allowing one to runs its course* (doing nothing to stop one or removing an obstacle or impediment that would otherwise stop one).

Rights as Constraints

Constraint theories of rights claim that rights are *constraints*, limits or restrictions on what we may do to promote good ends or optimal outcomes—limits on what it is permissible to do, even to achieve noble ends or the greater good (including the ends of promoting respect for rights and of minimizing the violation thereof).[21]

Rights are constraints so long as the following is true:

> that the consequences of infringing a right would, on the whole, be better than the consequences of respecting that right does not suffice to make infringing that right permissible.

To claim that moral rights are constraints is thus not to claim that moral rights are absolute constraints, or that it is never permissible to infringe a moral right. Using terminology introduced by Thomson (1986), we may distinguish between "infringing" a right and "violating" a right. To infringe a negative right is to do something that someone has a right against you that you not do, while to infringe a positive right is to not do something that someone has a right against you that you do. And to violate a right is to infringe a (positive or negative) right impermissibly. In this terminology, the claim that moral rights are absolute constraints is the claim that moral rights may never be permissibly infringed, or that every infringement of such a right is a violation thereof. And that claim is one that most constraint theorists (including Thomson and Dworkin) reject.

Constraint theories are in many respects the most intuitive theories of rights. But *instrumental theories* of rights are a prominent alternative to constraint theories.

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[21] Expressions of the idea that moral rights are constraints include John Rawls's thesis that the demands of justice have "lexical priority" over other moral considerations, Robert Nozick's thesis that moral rights are "side-constraints" on the pursuit of our goals, and Ronald Dworkin's thesis that political rights are "trumps" over collective goals that are held by individuals. See Rawls 1971, 42–44; Nozick 1974, 28–33; Dworkin 1978.

Instrumental theories claim that moral rights are instruments, or means, either for promoting valuable ends or outcomes (e.g., well-being or equality) or for acknowledging the moral status of persons. Such theories assign rights and respect for rights a derivative status, as means to ends or as ways of acknowledging moral personhood or aspects thereof. Nevertheless, they may assign *practical priority* to rights and respect therefor. That is, they may claim that, for practical purposes (deliberation, justification, etc.), rights function as if they were constraints.

Moral rights remain a complicated and under-theorized subject. And rights-based moral arguments frequently beg disputed questions. But regardless of which theory of rights we accept, it is always presumptively wrong (immoral or unethical) to infringe a moral right. However, this presumption is rebuttable so long as the right in question is not absolute, and any claim that a right is absolute will be controversial.

For more information about moral rights, see the discussion of moral rights in the previous section.

The Harm Principle

The Harm Principle is generally proposed as a constraint on the liberty of individuals. That is, it identifies certain circumstances in which it is morally legitimate to restrict, or interfere with, the actions or person of another. The Harm Principle exists against a background of existing rights and/or liberties. (*For more information about rights and liberties see here.*) If you do not believe that individuals have various rights or liberties to do things or be places, then there is nothing wrong with preventing individuals from engaging in these activities. However, if someone does have a right to do x, then any attempt to interfere with them doing x looks to be morally wrong, unless there is some justifying factor. The Harm Principle is proposed as just such a justifying factor.

The Harm Principle, was initially formalized by John Stuart Mill in *On Liberty*. Mill proposed the Harm Principle as an account of the morally legitimate limits on liberty:

> "...the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."[22]

Crucially, Mill distinguishes between harm and 'mere offense'. Harms are those actions that are injurious, or cause a setback in those interests of identifiable individuals in which they have rights. So the mere perception of harm or injury is not sufficient to justify a claim of violence as self-defense, the harm in question must meet certain standards.

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[22] Mill, "On Liberty", (I 12; III 1; IV 3, 10, 12; V 5).

The scope of the Harm Principle is restricted to other-regarding actions. Other-regarding actions are those actions that affect others. If you stick your arm out in such a way that it intentionally pokes someone else, then the act of sticking your arm out is other-regarding. Other-regarding actions can be contrasted with self-regarding actions. Self-regarding actions are those that affect only the agent. Sticking your arm out in the privacy of your room in order to stretch your shoulders is a self-regarding action.

The Harm Principle can be used to regulate the interactions amongst individuals, constituting an influential justification of the limited use of inter-personal force. It only justifies the use of force against a person if the person is both an agent, and is intentionally performing an other-regarding action. Note that a true agent of an action is one who, with respect to that action: is free (not coerced); acts voluntarily (competent to choose) and is informed (has sufficient information to choose knowledgeably).

The Harm Principle is also applied to interactions between governments or societies and individuals. Specifically, it can be used as way of justifying or rejecting the various intrusions of government regulation on individual lives. If the Harm Principle is the primary justification of government regulation, and its scope is restricted to other-regarding actions, then the government is not justified in regulating the self-regarding actions of citizens. Such self-regarding actions include such things as the sensible use of recreational drugs.

Professional Codes of Ethics

To the extent that professional codes of ethics have any standing it is as general agreements about relevant ethical principles in a particular profession. This makes them more like implicit contractual agreements than moral theories. Good professional codes of ethics are ones the people in those professions are justified in agreeing to. Bad professional codes of ethics have no moral standing or significance. A promise or agreement to do something immoral has no moral force in the same way that a contract to do something illegal has no legal force. You can make something morally permissible obligatory through an agreement, but you cannot make something morally wrong (impermissible) permissible or obligatory simply by agreeing to it. This means that professional codes of ethics are only as good as the principles or theories that they contain. When you are considering applying such a code you should be careful to consider the moral legitimacy of the underlying principles or theories. And note that you do not have to accept or use all of the principles expressed, you can pick and choose the ones that are legitimate or useful in the circumstances. That said such codes of ethics are useful sources for identifying principles and theories that are particularly relevant to a profession of area of inquiry.

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