

CSC271, Morals, Law and Society in the Digital Age

Background: Morality, Ethics, and Law

A. Ethics and Morality

Although words such as “ethical” and “moral” are often treated as the same, we will make a basic distinction between morality/morals and ethics. **Ethics** is, properly speaking, the study of morality. As such, it is a branch of philosophy. Our interest in this course is usually called “applied ethics.” **Applied ethics**, in contrast, concerns what theoretical ethics can tell us about moral issues that affect contemporary problems or issues. As such, applied ethics is somewhat less formal. It focuses on specific and practical issues, i.e., current affairs.

Provisionally, we can define **morality** as a system of beliefs about conduct and values. However, there is no universally agreed definition for “morality.” At best, we can typify it by common ingredients. A morality usually connotes a code of conduct; a set of rules that express how we should live and interact. A morality typically encompasses a core set of values that are considered either intrinsically or extrinsically valuable. For example, Christian religions usually support a morality that incorporates rules of conduct based on the Ten Commandments. Likewise, it holds values such as faith as core for that morality.

Notice that all this talk about morality characterizes it as “a morality”—that is, one moral code among others. But, even this begs the question. It remains to be considered whether there is a universal morality or multiple forms. Certainly, from a historical and cultural perspective, different societies ascribed to different moral beliefs at different times. But, this fact doesn’t really prove anything since the same could be said about scientific beliefs as well. In other words, the fact that we have held different beliefs about physics or chemistry does not necessarily imply that there are different physics or chemistries.

Consequently, we can distinguish at least two uses of the term ‘morality.’ If we talk about a moral code subscribed to by some society, then we are using the term *descriptively*. On the other hand, if we argue that there are moral principles that all rational beings would accept, then we are talking *prescriptively*. In general, we should not confuse these two contexts.

For example, we are naturally interested in human morality; for us, the most interesting ones are those actually held by humans—that is, a group, a class, a culture or a society. Here we are using “human morality” in a descriptive sense. On the other hand, it is possible that there may be some (prescriptively) acceptable moral code that is no longer or never has been subscribed to by some group of people. This alone does not disqualify it as a legitimate moral code. The point here is that acceptance by some group is not a defining characteristic of a morality. (*This point will be revisited when we consider forms of relativism.*) But, in most instances, we will be talking about morality in the prescriptive sense.

Morality is about values. Something of value is something that we desire and believe to be good. Strictly speaking, **values** are what we hold to be either good or evil—that is, positive or negative values. For convenience, we will speak of them here mostly in the positive sense. Values may be intrinsic or extrinsic. **Intrinsic** values are those that we desire for their own sake, for example, happiness. On the other hand, **extrinsic** values are those that we desire for what they produce or promote, e.g., wealth. It is possible that something may be both intrinsically and extrinsically valuable. Consider health. Health is

desirable both because it confers a sense of well-being and because other things that we desire often depend on it as well.

Morality is also about actions. We say that an action is **morally right**, if it is permissible or justified under some moral code or moral principle. Normally, we think that a person should be commended when they perform what is (morally) right. On the other hand, an action is **morally wrong** (or **immoral**) when it is prohibited or condemned by some moral code or principle. By the same token, we likewise condemn a person committing an immoral action. Sometimes an action is **morally obligatory**. This means that it is not only morally right, but would be morally wrong not to perform it.

As an example, consider the infamous Kitty Genovese murder case in 1964. Less than 100 feet from her apartment building door, Miss Genovese was brutally attacked by Winston Moseley who stabbed her several times. Despite her cries for help and the commotion caused by their struggle, her neighbors did little or nothing to aid her. Apparently, the shouting of one neighbor scared the attacker away. However, Genovese allegedly lay dying in the hallway where Moseley returned, stabbed her several more times and stole \$49. The outrage that many expressed was more than deploring the immoral act of a vicious attack and murder. They also believed that the neighbors were morally obliged to come to her aid. Their disregard was considered not only callous but also morally wrong. The facts of the case are still disputed even today. But it does express an appropriate context to examine the issue of moral obligations.

Although we talk about a group, culture, or society subscribing to a moral code, the attribution is not a precise one. For example, it is very rare to find a large modern society in which all its members have adopted the same moral code. Instead, we can often distinguish different groups within the society that share common characteristics such as ethnicity, religion, etc. These groups often have their own moral beliefs—some of which are inconsistent with other groups. But even within a single group, such as a religion, it is possible to find individuals who do not share precisely the same moral beliefs and code. But the fact that we find so much disparity does not mean that morality is ultimately individualistic or personal. To the contrary, in spite of this disparity, one of the hallmarks of a morality is that it is *intended* to be held by groups of moral agents. Specifically, a moral code is intended to apply to individuals interacting with one another. It would make no sense to say that a moral rule *X* is a rule that only I should follow. Nor would it be acceptable to say that everyone else should follow rule *X* but not me. Morality is ultimately a public system. And, the fact that different individuals have different beliefs about morality does not belie that fact. Once again, we must be careful to separate descriptive senses of “morality” from its prescriptive and normative uses.

B. Laws and Morality

Morality is not the only normative force in our society. Religion, social conventions, etiquette, and laws also prescribe standards for human conduct. Each of these has specific domains. Social conventions and etiquette, for example, are restricted to our interactions with others in a day-to-day context. On the other hand, the domain of law seems as pervasive as that of morality. **Law** is a rule of conduct that is established and enforced by authority. It may take the form of **legislation** (written or encoded rules) or **custom** (shared beliefs of a community).

Given their normative nature and shared domains, an obvious question would be to ask what relationship do laws have with morality? Some might argue that we can justify a moral code based on an appeal to law. But this seems to be putting the cart before the horse. For example, we sometimes admit that laws can be immoral—such as the laws condoning slavery. Thus, laws don't justify morals. Perhaps, morality justifies laws. There is a long tradition of proponents of this view, which is usually identified as **Natural Law theory**. In other words, while authority may be the origin of laws, their validity or normative justification is by appeals—at least in part—to moral principles and values. The opposite view (called **Legal Positivism**) objects. The Positivist maintains that law is entirely a social phenomenon; its origin and validity can be explained exclusively in a social context. We will not try to resolve this debate here. But, it is sufficient to note that both views support the idea that laws can and often do have moral content. In other words, laws often contain prescriptions that coincide with established morality.

Certainly, in our society, laws represent the attempt to mediate the interests of parties affected by their outcomes. Thus, laws often represent civil attempts to mediate moral problems. This implies that legislation in our country is almost always reactive rather than proactive. In addition, our laws are usually legislated within the context of established law.

Consider how laws come about in the United States. The introduction (or revision) of a law is usually effected by some special instance. An illustration of this point is the Bork Bill, i.e., the Video Protection Act (1988). This was enacted to extend the protection of an individual's privacy to include the video materials they rented and viewed. Supreme Court nominee Robert Bork had been investigated thoroughly by the media. This included his video rental history. The law was quickly enacted in response to the outrage that many felt. Another example is the USA PATRIOT Act, which was quickly passed in response to the 9/11 terrorists' attacks. Laws often deal only with special or limited cases. For example, the Video Protection Act is not a comprehensive rethinking of privacy. Instead, it is a reaction to one of the challenges to privacy. Laws are often added to existing legislation: augmenting or revising it. Again, the USA PATRIOT Act is a good example of this. The result is that laws are like layers of sedimented morality: a succession of attempts to resolve moral problems that arise within society. But these layers are not necessarily comprehensive or consistent. Consequently, in our society, the judicial branch is concerned with making sense out of these many and sometimes conflicting layers of legislative wisdom.

Our laws are one of the best sources for understanding the nature of the problems that interest us. The bottom line is that laws are important to understand what we think and have done about important problems and issues. But, we are not engaged here solely in jurisprudence. It is always appropriate to ask whether some law is justified or stands on its own merit. In short, laws are not the final court of appeals.

Types of Laws

- **public laws** express matters that are relevant for an entire community (e.g., criminal laws, environmental law, etc.).
- **private laws** are those affecting individuals, such as property ownership and employment.
- **statute laws** are those created and sanctioned by a legislative body. These are typically written and codified. On the other hand, laws that are issued by rulings of a

court are considered **common law**. These are judicial decisions that interpret custom, tradition, and precedent.

- **criminal law** prescribes actions or transgressions classified as crimes against individuals and the State. Infractions of these laws are subject to actions by law enforcement. Other public laws deal primarily with civil disputes between parties and usually do not have serious public concerns. These types of disputes are settled in courts as lawsuits rather than matters of arrest and trial.

In our country, there is also a distinction between **state** and **federal** law. The jurisdictions differ; federal law is applied nationwide, whereas state laws are restricted to specific states. State laws may conflict with one another and with federal laws too. A good example of conflicting law today would be those affecting the growth, sale, and use of marijuana.

C. Major Ethical Theories

An ethical theory prescribes a method or procedure for determining moral principles. Thus, ethical theories provide a means for deciding what is moral or immoral. The first two theories that we will examine question the fundamental rationality of morality. They share the assumption that moral judgments are a function of something other rational deliberation.

Moral Relativism

Moral relativism is the theory that moral principles are merely an expression of belief. It takes two forms: subjective and cultural.

Subjective (moral) relativism is the more radical of the relativistic theories. **Subjective relativism** prescribes that each person not only decides what is right or wrong for himself/herself, but that morality is nothing more than personal beliefs about right and wrong. Thus, it is quite possible that you and I could consistently hold very different beliefs about what is moral or immoral.

In its favor, we can say that judgments about values often reflect personal taste or preference. Furthermore, we must admit that many intelligent people throughout history have held widely varying views about morality. Perhaps, the labels “right” and “wrong” are no more than an expression of personal taste.

On the other hand, there are a lot of problems with subjective relativism. First it would lead to disastrous consequences if it were endorsed generally. For instance, a sociopath is someone who is not bound by the conventions of society on behavior and conduct. Serial killers are often sociopathic. According to subjective relativism, the sociopath is correct in his/her beliefs and acts morally when murdering defenseless victims. We may condemn such actions, but this is no more than an expression of our personal views about the matter.

The relativist is making a very facile inference: because there is something subjective or personal about values then morality must also be subjective and personal. The problem, here, is that whereas personal preferences may be relative, this does not necessarily imply that morality is too. I may like certain foods or beverages but that does not make them good for me—that is, healthy. Thus, even for value judgments, there are other factors to consider than mere personal preference.

Subjective relativism is also wrong-headed because morality is never exclusively a private matter. It expresses rules of conduct in society or how we interact with others. If

you were the only living thing in the world, then there would be little sense or need for morality. Who could you offend? Who could harm you? Morality is always a matter of public interests and not merely personal preferences.

Cultural (moral) relativism is another and perhaps stronger version. **Cultural relativism** proposes that societies or cultures—and not individuals—dictate what is morally right or wrong. Thus, traditional beliefs about morality are all that there is to morality. There are no universal standards or principles. The meanings of “right” and “wrong” are conferred on actions by society according to its customs and practices.

Cultural relativism does not fall prey to some of the obvious objections to the subjectivist form. On its behalf, we can point out a couple of factors. History tells us that cultures and societies have held widely varying views about morality. For example, in some societies polygamy is sanctioned; other societies condemn it. Another consideration is that social and cultural conditions affect our evaluation of moral problems. 200–300 years ago the idea of environmental impact was virtually unheard of. There was a seeming unending abundance of natural resources in a relatively unpopulated world. Today conditions have changed; our views have too.

But, ultimately cultural relativism—like all relativistic theories—fails because differences of or even disputed opinions about morality *per se* do not imply that there are no objective standards at all. Moreover, the weight of opinion does not confer validity. For example, millions of people believed that the earth was flat, but that belief alone didn't make it so. Large segments of American society at one time supported slavery but that didn't make it right.

In fact, cultural relativism implies that it would be virtually impossible for social change to take place. Abolitionist opinion, for example, began as a minority view. It gained wider acceptance only after considerable time. Yet, if customary beliefs are the true standards, then the minority view is always wrong and could not justly challenge the (correct) majority belief. Subscribing to beliefs about social change would never make sense.

Cultural relativism would also imply that the only solutions to cross-cultural disputes would be non-rational ones—such as war. If moral beliefs are relative, then nothing could persuade another group to either accept or tolerate views that run contrary to their own. And, if we cannot persuade them, then there is nothing left but forcing them to accept our way of thinking. No doubt much of human history has followed this prescription. But today warfare is so advanced and efficient that it is becoming too horrific to even contemplate. Rather than solving a dispute, a full-scale war would simply annihilate the disputants.

Certainly, cultures do infuse us with moral beliefs. Socialization of individuals is one of their chief products. But, cultural beliefs can be inconsistent, incoherent, and subject to change. As a result, there must be some other standard that determines morality other than popular acceptance.

Divine Command Theory

It is difficult to imagine that anyone would condone the torture and murder of children or innocents. Yet, in *Genesis* 22:1–19, we are presented with the strange account of God commanding Abraham to kill and sacrifice his beloved son Isaac. Of course, God prevents Abraham from completing the act, even though Abraham appears to be ready to do so without question. We are told that God is only testing the extent of Abraham's faith, but the

story is relevant for an age-old debate about the general nature of morality. Called the “**Divine Command Theory**,” it states that moral right and wrong are based exclusively on the commands of God.

To put it more precisely,

- (1) An action is morally right because God approves it; and an action is morally wrong because God disapproves it.

Plato offers one of the earliest challenges to this view in the dialog *Euthyphro*. Socrates asks the young Euthyphro whether piety is good because the gods have said so or piety is good and the gods have agreed. We can easily substitute “morality” for “piety” to make his deliberations more relevant for our concerns. Socrates argues basically that if morality is merely what the gods (or God) command, then it is arbitrary. But, if morality is arbitrary then it is rendered meaningless—for the same reasons that moral relativism is unsatisfactory. To the contrary, Socrates argues morality must be justified on objective reasons and not mere pronouncement. In the end, Plato would likely substitute (1) with a new version.

- (2) An action is morally right and God approves it; and an action is morally wrong and God disapproves it.

In short, God’s decrees are based on the fact that a perfect Divine Being would only command that which has compelling (rational) justifications.

For some, this seems sacrilegious because it implies that God somehow has constraints. On the other hand, the picture of an arbitrary and perhaps capricious Divine Being is not satisfying either.

A more modern version of the Divine Command Theory argues that if God did not exist, then objective moral values do not exist. (Craig, 2004) For example, the Holocaust is considered morally wrong even if the Nazi regime considered it otherwise. But, this kind of objectivity would have no justification if God did not exist. Otherwise, morality would amount to no more than the beliefs of the current culture or society. But, because we can agree that there are some objective moral values, it must be due to the will of an all-knowing Supreme Being.

The argument is interesting but may commit a subtle version of the *genetic* fallacy: counterarguing a thesis based on its origin. If we assume that a moral belief originates in some culture or society, this fact does not imply that it has no objective validity. The source of an idea, after all, is not relevant for whether it is true or false.

There are other problems with the Divine Command Theory as a comprehensive ethical theory. If it is a valid theory, it should also provide sufficient means for determining precisely what is morally right and wrong. For most, the source would be the writings of divine revelation.

But whose divine revelation are we to accept? There are sometimes disagreements among religions about matters of morality. How do we decide? Our society is pluralistic when it comes to religion. Which of these religions should we subscribe to for moral issues? If you simply say “mine” (because that is the one that I believe), then we are sliding back into a relativistic stance. In pluralistic societies, how do we handle inconsistent religious beliefs about morality?

Another practical problem is that revelation does not address some moral issues. For example, there is nothing in the Bible about the Internet. If revelation is silent, then how do we decide on these issues?

A final obstacle for the effectiveness of the Divine Command Theory is that revelation is ultimately the words of men revealed by God. The reality of human fallibility is not controversial. Consequently, we must always wonder whether that fallibility might not affect their reports of revelation. After all, eyewitnesses of the same incident can often have different reports of it. What kind of filtering has affected these divine reports? But, if the latter point is true, it does not matter. We can accept revelation as one among other sources that inform us about morality. And, if there are problems or difficulties in interpreting that revelation, we have other means to aid us. There is an element of faith here. But, that article of faith is that God made a rational world.

In conclusion, we can see that relativism and the divine command theory are basically debate-stoppers. Rather than encouraging dialogue and the exchange of ideas, they serve to end the discussion. In that respect, they are anti-rationalistic: judgments of right and wrong are not based on reason. The remaining ethical theories are philosophical theories precisely because they do appeal to reasons, evidence, and principles.

Ethical Theories Based on Reason

A *philosophical* ethical theory holds that moral principles may be justified by appeals to reason alone. Major philosophical ethical theories fall into two basic categories: consequence-based theories and deontological theories. Utilitarianism is the most influential of the consequence-based theories. Among deontological theories, we shall highlight duty-based theories and rights-based theories.

Consequence-based theories examine actions primarily by their results or consequences. In other words, the morality of a given action must be considered in the context of its effects. Normally, we are taught that telling the truth is the right thing to do. But, a consequence-based theory might justify some instances of lying if the results of these actions produce a greater good.

Utilitarianism, for example, considers the rightness or wrongness of an act in terms of how much good or bad it produces in a social context—in other words, it considers others' interests rather than self-interest alone.

Ethical theories that do not appeal to consequences exclusively are called "deontological theories." **Deontological theories** reject moral principles that are based solely on estimates of what their actions produce. In other words, deontological theories judge the morality of actions by criteria different from the outcomes of these actions. There are several varieties. We shall examine duty-based and rights-based theories.

Duty-based theories hold that some actions are right or wrong in themselves, regardless of the consequences of these actions. As a result, it is morally wrong to ignore these rules or principles. Thus, it makes it our duty to follow these rules or principles. A duty-based theory, for example, might proclaim that being truthful is always right and exceptions are not justified. Immanuel Kant's concept of the categorical imperative is a prime example of duty-based ethics.

Rights-based theories are those that derive moral principles from the fact that each person has an unqualified claim to certain privileges in a free and egalitarian society. Moral

rules are instituted to safeguard and promote these rights. Most of these theories support the concept of universal human rights that transcend any specific society or culture. These rights are therefore considered apart from the legal rights instituted within a society.

Utilitarianism

Utilitarianism is by far the most well-known example of a consequence-based ethical theory. The basic idea is this: the morality of an action is measured by the extent to which it promotes the “greatest good for the greatest number.” This is often cited as the **principle of utility**. (Mill, 1863)

Utilitarianism has many different versions. The standard classification begins with differentiating act- vs. rule-utilitarianism. **Act-utilitarianism** measures each instance or case using the principle of utility. **Rule-utilitarianism** measures rules of conduct (i.e., implying generality) rather than individual cases.

The difference is a subtle but important one. Act-utilitarianism applies the principle of utility directly to actions themselves, whereas rule-utilitarianism considers the morality of the action as an instance of the applying the principle of utility to *a rule that generalizes that action for all agents*. For example, suppose that my bank incorrectly credits me with \$20 in a monthly statement. Should I keep the money? An act-utilitarian might argue that the good produced (for me in this instance) would outweigh any evil consequences suffered by others. It is only an infinitesimal portion of the bank’s assets and the fact that it is an oversight means that no one will suffer from missing the money. So, in this analysis, it might be considered morally permissible for me to keep the money. On the other hand, a rule-utilitarian might take a different view. If everyone acted this way and banks were aware that their customers were not honest, the overall consequences might be different. The relationship between the bank and customer would not be based on trust and might be more antagonistic. Banks might raise fees to compensate for potential losses due to this general behavior. Overall, the good of keeping the money would likely pale in comparison to the undesirable consequences produced. Thus, the rule-utilitarian might argue that keeping the money is therefore morally wrong.

Utilitarianism is a very popular moral theory and as a result has attracted a great deal of critical attention as well. Before we address the adequacy of the theory, it is useful to consider some of the technical criticisms that it has garnered. We can summarize these in a short list.

- problems with the principle of utility
- problems with consequentialism
- problems with applicability

While these are serious objections, we will see that the moral theory itself can be revised in response to them.

The classical interpretation of the principle of utility holds that “good” is defined by that which produces the greater amount of pleasure or minimizes the total amount of pain. Thus, this interpretation equates utilitarianism with hedonism (the pursuit of pleasure and the avoidance of pain). Hedonism has never been considered a very noble philosophy, but there are other considerations here.

Pleasure and pain are usually classified as sensations. As a result, the sensation itself is what we seek (or try to avoid). Consequently, there would be little sense in distinguishing one “good” from another if they produce comparable sensations. Thus, for some people, gambling may produce a thrill equal to or even better than the pleasures of contemplating great art. Does this make fine art less valuable? Isn’t art something entirely different?

It makes more sense to talk about “good” and “bad” as based on qualitative considerations rather than mere quantitative measures. Pleasures from personal activities are not insignificant, but the value of our cultural legacies such as art and literature are somehow different and more important. This is a case of apples and oranges; it seems ridiculous to try to equate them.

Perhaps, all of this is too high-brow. We often hold that freedom, knowledge, and personal integrity are good, but they are seldom associated with pleasures. In fact, they can sometimes produce feelings of anxiety and discomfort. Does this fact disqualify them as values?

The problem is that the sensate versions of pleasure and pain are too weak to be the ultimate standards for good and bad. For example, we would hardly condone the sadist’s torture of a person because it produced pleasure for the torturer—even if the victim were masochistic and derived pleasure from the abuse! Furthermore, charitable acts can often mean sacrifices for the person who performs them. They may feel some personal satisfaction for doing these deeds, but this is not the same thing as (sensate) pleasure. So, pleasure and pain are not always a good measure of utility.

Other critics of utilitarianism object to its interpretation of consequentialism. Specifically, how should the morality of an act be measured by its consequences? One difficulty is separating intended from actual consequences. Intended consequences refer to the agent’s expectations or estimates of what the action might produce. This doesn’t seem strong enough. After all, it would be possible that someone (in good faith) could always be wrong about his or her predictions of consequences. Furthermore, imagine that these actions generally produced very undesirable actual consequences. Such an individual would hardly be acting morally if these actions thwarted the good and caused general harm instead. Consequently, actual consequences are more important in justifying actions than intended consequences.

By the same token, the agent’s motives are not relevant here either. One could have the best of intentions in performing some act, but this would not be sufficient to justify that act. Thus, the standard would have to be based not only on actual consequences, but also direct consequences, i.e., those that depend on the consequences of the act itself (as opposed to motives and intentions).

Some objections to utilitarianism depend on criticizing the principle of utility as a *deliberative* principle. In other words, critics argue that it is difficult and perhaps impossible to apply in practice without error and misjudgments. In specific instances, it is difficult to determine what will be the precise consequences of several options and, therefore, equally difficult to choose one over the other. These kinds of quandaries would be even worse because they would lead more likely to inaction. Even though this may be true, it is important to recognize that utilitarianism holds that the principle of utility is a *justifying* principle and not necessarily a deliberative one. The principle of utility justifies what is right and wrong. This does not imply that it is a useful method for determining

individual concrete cases. It is plausible that a utilitarian endorses the teaching of a moral code or rules to follow rather than invoking the principle of utility in every individual instance. In short, questioning the applicability of the theory is germane, but it does not completely defeat the theory.

Although classical utilitarianism is suspect in light of these criticisms, there is enough wiggle room for some qualified form of the theory to survive. We must admit that good is not a function of mere sensations (pleasure and pain); that good is qualitative rather than quantitative; that there is no strict calculus for estimating utility; that direct consequences are more important than either indirect consequences or motives; and, finally, that we must have good reason to expect our actions will produce these consequences.

But even this qualified version of utilitarianism is vulnerable to more serious objections. Specifically, if we can admit counterexamples to the theory, then its adequacy is questionable. One type of counterexample would be an instance that we would agree is morally wrong but that the theory classifies morally right. Another type of counterexample would be an action that we would agree is neither moral nor immoral but that utilitarianism would classify one way or the other. These and other counterexamples would serve to undermine whether the theory is correct and complete. You can decide for yourself whether they legitimately challenge the moral theory.

Duty-based Theories

As mentioned earlier, duty-based ethics are deontological theories of morality—and, perhaps, in its purest form. Duty-based ethics teaches that some actions are right or wrong because of the sorts of things they are, and people have a duty to act accordingly, regardless of the outcomes that they might produce. For example, honesty and treating people fairly seem to be morally commendable, while committing murder seems to be morally reprehensible. Shouldn't it be our duties to be honest and fair with one another? By the same token, it should be our duty not to willfully take the lives of others.

The basic idea is that our actions should be derived from our duties or obligations to ourselves and others rather than something like a pleasure calculus. Because morality is derived from duty, the motives for our actions become relevant too. For instance, doing the right thing because it improves your reputation is a sham because it is not motivated by duty.

Immanuel Kant is the most famous proponent of duty-based ethics. Kant believed that it was possible to develop a consistent and effective moral system using reason alone. Moreover, he stated that any rational being would recognize that all morality can be derived from a principle that he dubbed the categorical imperative. The categorical imperative has several formulations, but its simplest form states, "Always act on the principle that would be universally binding for all human beings." In other words, all moral rules must be capable of being applied universally—no exceptions.

Unlike consequentialist theories, duty-based ethics is more easily applied practically. The fact that there are rules that define our duties makes moral education a lot easier. By contrast, consequentialist theories like utilitarianism always retain some degree of uncertainty, because predicting the outcomes of actions is complicated. Duty-based ethics also focuses on intentions rather than outcomes. This means that a person can be exonerated if doing their duty produces unfortunate consequences. It is possible in these instances to justify some actions as accidental rather than condemning them *per se*. Kant's

version of duty-based ethics is also commendable because it recognizes basic human rights belong to all—and even those who are in the minority in a pluralistic society.

On the other hand, duty-based theories of morality have met with strong objections. First, duty-based ethics set absolute rules of action. It seems difficult to accept that some rules do not have exceptions. In fact, we could imagine instances in which following duty would produce less good in the world rather than more. Suppose that you had an opportunity to stop a madman like Adolph Hitler from spreading death and genocide. What if it meant that you must murder him? Is it rational to observe a duty if it means destroying numerous lives?

Duties may conflict as well. In these cases, how do we choose what to do? If we suppose some hierarchy of duties to resolve the conflicts, what would be the basis for that ordering? Considering the consequences of their actions would obviate the deontological approach, of course.

Rights-based Theories

Rights-based theories hold that each person has unqualified claim to certain privileges and that moral rules are intended to safeguard and mediate these rights. Rights are usually separated into two groups: positive and negative.

Negative rights are the most common; these are rights that you may choose to exercise and expect not to be interfered with in so doing. For example, the right to vote in free elections is a negative right. You do not have to vote if you choose not to; but no one should prevent you from voting if you choose to do.

Positive rights are those that must be provided. These are rarer and often more difficult to agree upon. For instance, most of us would accept the right to education is important for democratic society founded on liberty and equality of opportunity. On the other hand, what about the right to healthcare? Is it fair that some citizens have access to healthcare while others lack this access due to the high costs it incurs? Obviously, this is a debate that has engaged our society for some time. Note, however, that a positive right entail personal responsibilities. A citizen is required to attend school for a minimum number of years or meet recognized standards of education. Likewise, truancy is not tolerated as well.

Rights are often distinguished as **absolute** or **limited**. For example, some hold that the right to life and liberty are inviolable—and, thus, absolute. This means that they can be no exceptions. In these circumstances, suicide and capital punishment would be unjust. On the other hand, our society treats the right to an education as limited. We provide for the education of our citizens up to a certain level or age (e.g., 12th grade or 16 years old) and only to an extent that can be supported by taxpayers (state and local taxes for public education). Of course, most rights are considered limited. For example, in our society, even the right to life is limited and can be forfeited if one commits a capital crime.

In general, rights-based theory justifies moral rules on the grounds that they protect the rights of citizens in a society organized by a political authority. The American philosopher John Rawls (1916–2001) proposed an interesting version of a rights-based moral theory. Rights, in his view, are not justified exclusively on an individual's value beliefs. It is a fundamental fact that most modern societies are pluralistic: individuals often have very different beliefs about religion, right and wrong, family, and personal relationships. Thus,

the legitimacy of political rights must be derived from their ability to protect the interests of all segments of society while providing sufficient stability so that individuals can conduct their own lives meaningfully.

His political theory is based on the idea that a democracy offers the best means for maintaining the basic rights of liberty and equality for individuals in that society. For example, individuals should have rights of free expression, liberty of conscience, and the free choice of an occupation.

But, there is a fundamental tension between liberty and equality. A libertarian society, for instance, stresses individual liberties over equality. In this type of society, individuals are not required to support social goals such as public health, education, etc., which could lead to the detriment of society as a whole. On the other hand, a socialist society gives greater precedence to equality above personal freedoms. This could impact liberties such as choice of occupation, residency, etc. For Rawls, a democracy based on justice or fairness has the best hope for maintaining a delicate balance between these competing interests: freedom and equality. Fairness implies that public interest must be separated from private interest. Public interest seeks to maintain an equilibrium of personal liberties in an egalitarian society. Thus, rights are justified because they are derived from public interest and not from private interests. Yet, this framework should also permit individuals to pursue personal interests in their private lives.

In his view, justice is fairness and moral rules must pass the justice test to be sanctioned as morally good. Rawls proposed two principles or criteria for achieving justice.

(1) a just society is one in which all citizens have a common claim to exercise liberties and rights so long as they do not interfere with the rightful claim of others to exercise their own liberties and rights.

(2) any social inequalities must be justified on the grounds that everyone has an equal opportunity to achieve that (inequitable) position and that the principle of difference be applied where possible to mediate these inequities. Specifically, that redressing the inequities must be based on yielding the “greatest benefit of the least-advantaged members of society.” [Rawls, 2001]

For example, the first principle would justify rights such as freedom of speech and expression, right to privacy, the right to work, and others. Violations of these rights would be laws and practices that catered to racial or gender preference or discrimination. Under the second principle, one could make a case for a graduated income tax system. But, a flat income tax, sales taxes, or other regressive taxes would not be justified because they would incur the least benefit to the least-advantaged members of society.

Rights-based theories like Rawls’ are natural for or compatible with Western democracies. This makes them appealing for societies that consider individual values to be core. At the same time, they offer a means to support the interests of minorities within a pluralistic society.

But, critics have posed some problems too. Rights-based theories are not always helpful for deriving moral rules or resolving conflicts. For example, is abortion a private or public issue? Some situations can be characterized in a variety of ways, which makes it difficult to determine what rights and whose rights are concerned. Rights-based theories are also

vulnerable to moral dilemmas where there are clear conflicts of interest between parties on different ground.

Notes

- (Adams, 1979) Robert M. Adams, "A New Divine Command Theory," *Journal of Religious Ethics*, 7 (1979), 66-79.
- (Craig, 2004) William Lane Craig and Walter Sinnott-Armstrong, "God and Objective Morality: A Debate," from *God? A Debate Between a Christian and an Atheist*. Oxford: Oxford University Press, 2004.
- (Kant, 1785) Immanuel Kant. *Groundwork for the Metaphysic of Morals*. Excerpted and edited by Jonathan Bennett. <http://www.earlymoderntexts.com>. (2008).
- (Mill, 1863) John Stuart Mill. *Utilitarianism*. Excerpted and edited by Jonathan Bennett. <http://www.earlymoderntexts.com>. (2008).
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- (Rawls, 2001) John Rawls, *Justice as Fairness*, edited by E. Kelly. Cambridge, Harvard University Press, (2001), 42-43.