

Lecture 2.1: Moral reasoning in the medical context

SFSU

Our first reading in SAL is an extremely theoretical way to start the course. You will probably get more formal discussion of ethical theory in this 40 pages than any time in the semester. Lots of our other readings are equally difficult—but probably not as abstract.

They begin the introduction with a reference case, and will refer back to that case in the course of the discussion as they bring out the various morally relevant values and issues that different ethical theories highlight.

Mr. Lasken has a chronic progressive fatal and increasingly painful disease. Rather than accept mechanical ventilation from which he will never be weaned he begs his doctor, Dr.

Brody, to put him to death—now.

SAL ask: what should Dr. Brody do? What is the right answer to this request?

The act is *active euthanasia*—not to provide him with pills so he can commit suicide, but with his consent, to give him a lethal injection to bring about death.

The consequences would include an end of suffering for L, and legal risk for B. What is her role obligation, as Mr. L's physician? What is her human obligation, confronted with the suffering of another?

This case is exemplary of the kind of inquiry that this course will engage upon: inquiry into the rightness or wrongness of various “actions, character traits and social policies,” as SAL put it on p. This is a **normative**, action-guiding inquiry: what ought X do?

SAL point out the important of **context** in addressing such issues: *technology* as a background condition for medical treatment—with all the implications of change and threat of novelty that technology and technological development represent....

--200 years ago Lasken would not have had the possibility of mechanical ventilation to sustain his life in the face of decreased respiratory capacity and equally important, *social* context. The same question in different societies might well receive a different answer—and properly so.

100 years ago, suicide was as illegal as murder

In NY and NJ today, brain death is not the standard of death

Catholic hospitals are not, until recently, expected to perform abortions

In relatively homogeneous societies there is enough agreement on values that all the internal judgments of onion-selves, or all the judgments made on their basis by different onion-individuals with a moral stake in a given case, might be expected to converge. In our increasingly heterogeneous society, more attention has to be paid to diverging values, and SAL point this out in their discussion, in the first few pages of the introduction, of **relativism**—moral nihilism, emotivism, and cultural relativism.

Ethical deliberation, then, as discussed in this text [and course] is an enquiry into what makes an action right or wrong—and what counts as a moral justification, a good reason, for an action?

What might be a good reason for deciding to agree to Lasken's request, or to refuse it? To obey the law? To help relieve suffering? To protect the social order?

On pages 8-30, roughly, SAL discuss in some detail a number of different ethical theories. They want (1) to introduce you briefly to the historically important ethical theories, the sources of the vocabulary of ethical deliberation which will be important for us this semester. But (2) rather than deciding among those theories—a task mainly of interest only to professional philosophers, and beside the point for their [and our] enterprise this semester—they want to suggest a pluralism of theory—a kind of agnosticism about which theory is the best one.

They describe their goal (p. 9) as “a comprehensive though necessarily fragmented moral vision”—to encourage us to adopt a moral point of view, a sensitivity to possible ethical implications—to give us an appreciation of different approaches that will help us understand why the various actors—the moral agents and deliberators in medical situations—might disagree with each other—and to give us some tools with which we might be able to reach or suggest some agreement or resolution in ethically complex situations.

[diagram: the stakeholder bedside]

If we focus on reasons why we consider a given action appropriate in a given situation, we might be able to pull out some common/shared/justifiable reasons/moral claims that everyone in a situation might agree to be valuable and important—but might prioritize differently.

i—different ethical theories or different moral intuitions might be one reason for disagreements about priorities of shared values

ii—different contexts might make some considerations more salient to one stakeholder than to another

iii—in any clinical situation, the different stakeholders have different roles, and those roles carry obligations.

So: in situations in which there are moral dilemmas—two or more courses of action, each of which embodies values to be protected or furthered—the more clearly ALL stakeholders can understand each other, the more likely agreement can be reached on what needs to be done, or what can best be done.

--widening of perspectives (=moral imagination)

--ability to see the POV of other stakeholders (=multi-perspectival approach, empathy)

Seek some course of action that maximizes the good to be obtained, while recognizing that there may be no completely ideal solution.

[diagram their example: who are the stakeholders?]

What are his reasons? What are her reasons? Who else is involved/affected? Are there any alternatives that haven't been considered?

SAL use the various *ethical theories* they discuss as LENSES through which to examine their case; with each of the alternatives illuminating a different aspect of the case. We won't really have time to discuss all of their examples in detail today, but we will look at the first two in some detail.

An ethical theory:

a. moves beyond our moral intuitions and systematize them

- b. is universal: I act on this M (rule)—as should everyone. That is what it *means* to be [morally] good/ right/a duty/ obligatory...
 - c. must be adequate to all three poles of ethical action (and none is!)
- The question that drives **normative** ethical thinking: “What ought [x] DO in this situation?” The question for meta-ethics: How do I **justify** that answer? *An ethical theory is an attempt to offer a comprehensive answer to the question of what it is that makes an action morally good or bad, obligatory or impermissible.*

I: Teleological theories: “consequentialism” (gr: *telos*=end)

- a. An action is right or wrong depending upon the (non-moral) value it brings into being. That value is the standard by which we judge acts.
- b. In this situation, act X is right because it produces consequence Y for Z. So I should do X; and so should any/everyone in a similar situation.
 - What is Y? eg: happiness; security; pleasure/pain; power; knowledge, self-realization, spiritual perfection...
 - If it is pleasure: hedonic consequentialism
 - Who is Z? If it is the agent: egoistic consequentialism.
 - If it is the general good: universalist consequentialism

c. Utilitarianism: Jeremy Bentham and John Stuart Mill
 Principle of utility: the moral end (goal, *telos*) of all we ought to do is to produce the greatest possible balance of good over evil (pleasure over pain) in the world as a whole.

d. Act v. rule: The principle of utility can be applied either to decide in particular situations/cases (=act utilitarianism) --or to determine which rules we as a collective should adopt/obey for our greatest advantage (=rule utilitarianism).

Difference between act and rule utilitarianism: the consequences of particular acts are taken into consideration in act utilitarianism; but in rule utilitarianism, once a **rule** has been accepted as of great social utility, you obey it, regardless of the consequences in specific situations.

Fundamental rule: justice

Bentham, Mill and Utilitarianism: =Universalistic hedonistic consequentialism.

Utilitarianism takes as central moral value the **effects** of actions. An action is RIGHT if it brings about (=has as its consequence) the greatest amount of (non-moral)good over bad (eg, pleasure over pain, happiness over suffering)—increases the net amount of non-moral good in the universe. [Or: an action is right if it is an instance of a rule which brings about the greatest amount of good over bad.] It is ‘hedonistic’ because the ‘good’ that is supposed to be brought about is pleasure or happiness; it is universalistic because the calculation of the good is based on the good to all the affected members of our moral community (not just the agent), and each person counts as one, and only one.

SAL invoke their Lasken example on p. 12, and use it to distinguish between *act* and *rule* utilitarianism: the act-utilitarian (eg. Bentham) asks only about Lasken’s suffering, which everyone admits is a bad thing; a rule-utilitarian (eg Mill) might ask whether it is good or bad to allow/encourage a social practice of active euthanasia in the face of suffering individuals.

exemplary bioethicists: Jonathan Glover, Peter Singer

Utilitarianism is appealing because it gives us a decision-procedure and some hope of resolving disputes—but that is its weakness, too: pleasures are hard to measure and even harder to compare; advantage is hard to calculate; values are incommensurable. It is an attempt to quantify and objectify qualitative and subjective states.

Another problem is that it contradicts some of our most deeply held moral intuitions. An example suggested by SAL: why is it that we cannot sacrifice one person to provide 5 others with life-saving organs? Because we think it would be wrong! And it is those unprocessed moral intuitions—those voices in our heads/conscience—that ethical theories are supposed to explain. If they get it that wrong, perhaps it is a bad theory.

It is impossible to deny that effects are crucial moral considerations. It is also hard to convince ourselves that consequences are the ONLY ethically important consideration. As SAL remark on page 14, there are some things we shouldn't do, no matter what the effects are. They use this consideration to introduce Kantian deontology.

II: Deontological theories: right action (gr. *deon*=duty, obligation)

a. The rightness/wrongness of an act does not depend upon the circumstances or its consequences. Some actions have the same moral valence regardless.

b. Categorical imperative: act only upon that M which I as a rational agent can consistently will to be a universal law.

You can't consistently will to universalize 'murder'—because that is (by definition) unjustified killing. Or "lying"—because to lie is to affirm something you know to be false as if you thought it true

c. Second formulation: always act so as to treat humanity—either yourself or others—always as an end, never as a means. To treat someone as an end is to presuppose, accept, that h/s like me, a moral agent in h/h own right, with goals, aims and projects—not a mere instrument to my own purposes.

[cf. 'do unto others as you would have them do unto you...']

d. autonomy: what it is to be a moral agent. Moral maturity is to figure out for yourself what it is your duty to do, and to direct yourself according to what you figure out. (gr. *Auto* = self; *nomos* = law: to be a lawgiver for yourself)

Kant and deontology

On pages 14-15 SAL give a really inspiring vision of the interrelation of reason and morality in the life of humans—indeed, in the life of any rational conscious choosing agents. The results you bring about are not the only morally relevant considerations. It matters how you do things—not just what the result is. The ends (=effects) do not justify the means; the nature of the action you carry out has moral value. Kant emphasizes the importance of acknowledging that others, like myself, are able to act on the basis of reason and to conform their actions to moral law; that they are moral agents and rational choosers with their own purposes and goals, and are not to be treated as a means to the ends of others. They have dignity, are worthy of respect; and the term he uses, *autonomy*, has been incorporated into the language of ethics to signify this value, respect for persons. (It means 'self-legislating'--for me to be autonomous means that I act on the basis of my own decisions and can be held responsible for those decisions/actions. To be

‘heteronomous’ would be to unquestioningly act on the basis of direction from others—like a child or computer.) If an action is rational, if it is the right action, if it is just, respectful of human dignity, if it is my duty—it is a *categorical*, not a hypothetical, *imperative*, and Kant has several formulations of the categorical imperative, and SAL give one of them on the bottom of page 15.

On p. 16 SAL consider the aspects of their initial case which are illuminated by the Kantian deontological moral perspective of respect for persons and consideration of the nature of the act: is it murder? Suicide? Or an expression of my right to leave life at a time and in a way of my own choosing?

There are other deontological (=act-centric) approaches: On pp. 17-20 SAL consider social contract theories, from Hobbes to Rawls. The discussion of Rawls is particularly interesting, and there is a prominent bioethicist, Norman Daniels, who has applied Rawls’ approach to justice to health care in a number of contexts. Contractarians, natural (=divine) law theorists, and libertarians also emphasize the priority of ‘right’ to ‘good,’ and define the moral good in terms of the rights which they consider primary.

III: I’d like to talk as well about a third kind of ethical theory: *aretaic* ethical theory, which concentrates on the agent-pole of ethical action.

Virtue-ethics: focuses not on right actions, but on what makes an agent morally good. Advocates of this approach think that morality should be conceived as being primarily concerned NOT with rules or principles, but with the cultivation of morally valuable dispositions, or traits of character: an ethics of BEING, not of DOING.

Motives and intentions are more central to our moral judgments than consequences (and indeed, are more under the control of agents than consequences).

SAL discusses virtue-ethics on pp. 31-36.

habitual action in accordance with the mean (=virtue) in all areas of life

- a. tradition that begins with Aristotle (and has been raided by all other theories)
- b. actions derive their value from their relationship to virtues: the assumption is that a morally and intellectually virtuous man will be able to SEE in a given situation what the appropriate response should be. (=moral intuitionism?)

Professional ethics is to some extent an agent centered ethic. The ethical codes associated with being a socialized member of a health-profession will be important to us this term.

SAL introduce through discussions of communitarian and feminist ethics other values that are underemphasized by the individualistic focus of liberal individualism, whether utilitarian or Kantian. Both argue (in different ways) that somewhere between the individual and the value-neutral ‘greatest number’ there are *special relations* that have moral import: our community, our family, people with whom we stand in a special relationship of some sort. This ‘relational’ thinking stands in some contrast to the principles of equity or impartiality that we mentioned in connection with utilitarianism, and in our context may apply to the particular patients with whom a given physician has established a fiduciary relationship.