

Tuesday we went (much too rapidly) on a tour of pages 1-34 of SAL and the world of ethical theory.

Today I would like to talk about the last 6 pages of their introduction, in which they bring us, if not down to earth, at least a little closer to the level of the cases which will form the content of most of our discussion for the rest of the semester.

*Are moral considerations—utility, duty—the only determinants of our actions?*

On page 35, SAL introduces in a very important section what they call the ‘non-moral’ dimension: the **political, personal, prudential, economic** or **legal** implications of our actions. “However broadly ethics is conceived,” they note, “there will always be the possibility of conflict between moral and non-moral considerations” when we deliberate about what we should do.

We saw this instantly in considering the dilemma faced by Dr. Brody considering Mr. Laskin’s request for a shot to end his life.

Her conflict between confronting human suffering and engaging upon an action which is under one description an act of murder, and in any case probably illegal where she practices, representing a conflict between ethical and legal considerations. SAL might well consider this a conflict between moral and non-moral imperatives—and it is in those terms that they discuss it in this section. They describe her as weighing the risks and the benefits of the requested action, drawing on all of her wisdom and practical judgment to determine how to proceed.

*What role do (or should) ethical theories play in our action-guiding, behavior-determining moral life? More immediately, what role do (or can) they play in our consideration of the decisions open to others, the decision-makers in the cases we consider this semester?*

We have a range of options with respect to theories--the usual continuum of options between (usually) equally-undesirable extremes.

One extreme: moral skepticism, that SAL discuss (on page 6 under the heading of ‘moral nihilism’): 2000 years of moral theorizing has no practical application to our lives.

The other extreme: adopt one theory, and then fiddle with it to accommodate various situations, considerations; deduce from the adopted theory what should be done in particular situations to meet the requirements of the principle of action endorsed by the chosen theory.

Now mind you—I think that we probably, each of us— from family environment and early education, or just from temperament—may be inclined toward one of the three poles of ethical action—taking into consideration, prioritizing what kind of person we think we are, or choosing to do right whether the heavens may fall.

Isaiah Berlin, one of the great humanists of the last century wrote a really neat little essay called “the hedgehog and the fox’—dividing people

into hedgehogs—syncretists, people who sought to integrate everything, related everything to one big idea, and foxes—the analytical approach, people who wanted to understand all the pieces, fit them all together. We might be equally simplistic, I suppose, and consider people either utilitarians or kantians. But the truth of the matter is that most of us cannot even be rationally consistent, much less morally consistent enough to satisfy the demands of any moral theory abstractly conceived.

On page 36 SAL gives us three reasons why adopting the ‘deduce the action from the theory’ approach isn’t a good one: (1) it’s hard to determine which would be the best one to adopt; (2) theories are usually couched in such vague terms that it’s hard to figure out what their implications for action are; and (3) that level of abstraction ‘obscures all the richness and diversity of the moral life,’ as he puts it—makes it all look too easy, in other words.

The other extreme, moral nihilism, is pretty unappealing. There are people with no moral sense at all, sociopaths, but they are few and far between. One of the consequences of being rational animals with the power to direct our actions is a kind of irresistible impulse to do it right. It’s not always easy to figure out what the right thing to do is, but even if we aren’t sure we’ll ever get it right, we all try. A moral sense seems to be a virtually invariable association of rationality and agency. Frankena closes his little book on Ethics with a nice section in which he addresses the question “why should I be moral?”

[rorty bedside-to-spotlight diagram c vertical axis]

Several means between the extremes: modes of bioethical reasoning

One of the first and still the most popular textbooks of bioethics is Beauchamp and Childress’ *Principles of Biomedical Ethics*. It was first published 40 years ago, and its appearance was coincidental with the first bioethics commissions in the US and its vocabulary and method were the first philosophical competitors to the traditional physician’s professional method. Arras devoted pp 36-39 to it, under the description of ‘principlism.’

The premise of the book is that whatever the disagreements on the level of theoretical formulation and foundations, there are several mid-level principles that are common assumptions for ANY ethical theory. As long as we stay on this ‘common morality’ level, we don’t need to choose between meta-theories.

It is an important part of this approach that none of the principles have ultimate authority: they represent what philosophers call *prima facie* obligations or duties: “all things being equal, do this.”

Different authors choose different principles. B&C have four: autonomy, beneficence, maleficence, and justice. Bernie Gert, another contemporary bioethicist, has 10 or 12. The 10 Commandments are a set of principles on the same level of generality as those B&C recommend.

Principles have some of the disadvantages of theories; they too are relatively abstract (although not as abstract as the ‘theory’ level) and need to be ‘specified,’ adjusted, tailored to fit the situation and made relevant to it. So you go back and forth between the case and the principle, accommodating the description to fit the situation...

Other bioethicists choose other intermediate steps between theory and lived situations. SAL on pp. 39-42 discuss **casuistry** (another term-of-art derived from an ancient language, this one latin, meaning 'case'). The case before you, the case about which you are deliberating, has some features in common with other cases which have either been experienced by you as a caregiver, or has served as a paradigm in your education, or has been an important, precedent setting law case. So instead of moving up to the level of abstraction represented by the 'principles,' or maxims of action, you may simply look at, draw analogies with, what SAL call 'a typology or grouping of cases around paradigmatic instances of a moral rule or principle.'

Casuistry has a long tradition, elegantly sketched by a neighbor of yours, Al Jonsen, bioethicis in residence at California Pacific Medical ICenter and author of a very nice history of casuistry from the middle ages to the contemporary day (published in 1988; see fn 69 on p. 39).

The syllabus announced that we would spend today on "how to read a case," and to that end I have posted on the website last week two popular examples of case analysis crib sheets. Both are designed for the education of people who serve on hospital ethics committees, and are thus more clinically than philosophically oriented; but I hope they will be of use to you as you begin writing papers for me. One of the worksheets is authored by my mentors, Fletcher and Spencer, a cleric and a physician from the University of Virginia; the other is co-authored by our casuist neighbor Al Jonsen, along with a doctor from Chicago and a lawyer from Texas. They are structured slightly differently (and the Jonsen sheet actually invokes the 'principles' of the older bioethics) but they urge attention to many of the same factors that determine the ethical valence of specific cases.