

Ethical decision-making: principles and practice



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🌟 Ethical decision-making: principles and practice

Ethics in theory:

1. What is ethics and can we be experts
2. Moral decision making: ethical theories

Ethics in practice:

1. Principles and frameworks
2. Making difficult ethical decisions
3. Clinical ethics and clinical decision making

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🔥 Ethics in Theory:

1. What is ethics and can we be experts?



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🔥 What is ethics? (and how could it help?)

- Ethics or 'moral philosophy' is the study of good (and bad), right (and wrong)
- "Normative" ethics is the study of what the right thing to do is
- The 'downside' of ethics -
 - Ethics are "aporetic" – often the 'good' is in doubt or contradicts other goods
 - Ethics is not a science and cannot tell us how to definitively deal with these contradictions
- The 'upside' of ethics –
 - Ethics can encourage new ways of looking at a problem, making us aware of values we might otherwise take for granted
 - Ethics can offer language that helps describe the intuitions we feel about situations to others
 - Ethical frameworks can be heuristics to help us through crises
 - Ethics can help us to make sense of an apparently senseless world



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🌟 What is *bioethics*?

- Bioethics is the application of moral philosophy to the human sciences (including healthcare)
- Interest in bioethics arose at a particular place and time
 - Retrenchment of welfare states from late 1970s
 - Less restrictive social norms, less support for private interests
- Environment is generally one of interests and rights against (medical) interference, most positive claims are against other individuals
 - Mirrors private law – look for individual responsible and seek compensation for error
 - Legal changes (LAPSO) mean less access to funds to resolve disputes about interests through the law
 - Emphasis on negotiation – mediation, clinical ethics
- Bioethics occupies space left by state guarantee of support for private interests: focus of ethical debate is (often) on what individuals owe one another
 - Who arbitrates? Can we become 'ethics experts'?

🌟 What is ethical expertise

- What does it mean to gain ethics expertise?
 - Singer: ethicists should be able to reach right or soundly based decision by finding, understanding and isolating relevant evidence, being familiar with moral concepts, logic or moral argument; being more aware of bias; having more time to think
 - Archard: ethicists have skills of systemization, clarify, disambiguation and (perhaps) modification of common-sense morality
 - Rasmussen: expertise is ability to give non-binding opinions based on ethos and practice of a context, aiding others to understand supporting and opposing arguments
- However, “to claim that those who know better ought to rule requires a justification that goes beyond ... the individual's expertise: it requires an account of legitimate political authority” (Estlund, 2008)
- Moreover, ethical expertise may just lie in giving good arguments, not in giving the 'right' ethical answer ... questionable whether anyone can be an expert in this way

🌟 The limits of 'ethical expertise'

- Immanuel Kant: Free-will is the basis of moral understanding and behaviour of every self-conscious being
- Kant argues an ordinary mind *already knows* her moral obligations (through feeling of 'duty')
- Ethical expertise is thus innately limited – it is expertise in knowing *our own* duty, not that of others
- Indeed, if Kant is to be believed, following an 'ethics expert' would be a dereliction of your moral duty
- ...more on Kant later...

“when common understanding excludes all [sensuous] incentives from practical laws ... it can even have as good hope of hitting the mark as any ... Philosopher” Groundwork (4: 404)



🌟 Ethics in theory

2. Moral decision making and ethical theories

🌟 What is moral decision making?

- A moral (ethical) decision is making an evaluation that one materially equal choice is better than the others
- We can illustrate this with 'Buridan's ass', who has to choose between two identical piles of hay: what motivates any choice (in the absence of necessity) are *values*
- Conventionally, a moral decision is a decision shorn of facts, one based on a rational discourse about 'values' alone
- In the real world, facts and values are intimately linked (we often justify value choices on the basis of facts, and vice versa), and rely on emotion as well as rationality
 - E.g. arguments about abortion will refer to facts about the risks of driving abortion underground or the foetal ability to feel pain as well as arguments about freedom of choice and the sanctity of life, and emotional response to these.
- Moral theory aspires to be transparent, rational and consistent... but there are certain caveats to keep in mind before considering theory



🌟 What is moral decision making?




- Experimental psychology suggests that some assumptions made in philosophy about moral decision-making are questionable:
- Moral reasoning appears to be post-hoc
 - "Moral dumbfoundment" (Haidt, 2001); re-interpretation of principles (Batson, 2017)
- Moral judgements influenced by affective systems...
 - Link to bad smells (Schnall et al., 2008) and sweet tastes (Eskine et al., 2011)
- ...although rationality can inhibit affective responses
 - Racial bias becomes worse after drinking alcohol (Bartholow et al., 2006)
- We have little insight into our own motivations
 - Bystander behaviour at emergencies: inaction not attributed to number of bystanders despite reliable correlation (Latane and Nida, 1981); insight is "statistical deduction from observation" (Dehaene, 2014)



This does not mean we should not make moral judgements (we have to), but we should be aware of our limitations when doing so... moral theories may still give us starting points from which to think

🔥 Moral theories and moral principles

- Moral theories look for underlying factor that links all good actions or things
- Major moral theories: Deontology (Kant);
Utilitarianism (Bentham);
Virtue Ethics (Aristotle)

	<i>Major philosopher</i>	<i>Maxim</i>	<i>Method</i>
	Kant (1724-1804)	Obey the moral law	Rules based
	Bentham (1748-1832)	Maximise the good	Consequence based
	Aristotle (384-322 BCE)	Personal excellence	Person based

🔥 Kant: Deontology

- I have already introduced you to Kant and his idea of free-will and moral choice
- Kant's fundamental idea is that we have "transcendental freedom"
 - "Transcendental" means 'a condition of possibility'
 - Nature is subject to deterministic laws of causation
 - Humans are separate from nature: our acts involve free will and so *initiate* a chain of causation
- "Freedom" means freedom to do our duty
 - All humans know what feels like to be compelled to act by duty
 - Kant argues that duty is our perception of the moral law
 - Because the feeling of duty is universal, everyone has access to, and self-legislates, the moral law
- Kant sets out the grounds on which any ordinary mind already knows her duty: "*the categorical imperative*", of which he gives three formulations
 - A moral duty must be a universal rule that applies to all equally and results in a rational world
 - We must respect other people as free agents ("treat people as an end in themselves")
 - Respecting one another's free-will and rationality will bring about a world of universal equality and reason

🌟 Kant: Deontology

- Moral laws are universal rules. They tell us the right thing to do, regardless of what may appear best at a particular time... this may entail acting to very high standards indeed:
- For example: A murderer comes to my house and asks me where a friend, who has taken refuge in my home, is located. Should I lie?
- Kant believes we *should not* lie – it is our moral duty to tell the truth
- To lie would imply contradiction – if everyone lied when they saw an advantage, it would undermine the very basis of truth, there would be no difference between truth and lies
- Instead we must tell the truth: we must rely on the murderer's *own* sense of moral duty to prevent him going through with the murder

Kant tells us that by treating morality as dutiful following of reasoned laws (rather than picking and choosing what we do based on our immediate feelings) we can avoid selfishness and bring about a better world.

🌟 Bentham: Utilitarianism

- Utilitarianism says that the good is always that which produces most utility: 'The greatest good for the greatest number'
- "Utility" can be defined in different ways, but is always the only source of intrinsic value
- In Bentham's terms utility = *happiness*: "*Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do.*"
- All pleasures are equal: "*Quantity of pleasure being equal, pushpin [a game of darts] is as good as poetry.*"
- Utilitarianism is anti-individualist: there should be no individual advantage (even for family or friends): "*everybody to count for one, nobody for more than one*"
- What is good is separate from what we might intuitively think is right or wrong
- Where a law or custom is in conflict with an act that will maximise happiness, not only is the custom wrong, but we are obliged to break it.

🌟 Bentham: Utilitarianism

- In utilitarianism, only the consequence of our decision is important ...
- For example: Suppose I am suspicious that a prisoner knows the location of a hundred people who are suffering torture. Should I therefore torture the prisoner to get this information, and stop the suffering of a hundred people?
- Bentham says we should torture the prisoner: *“could any pretence be made so much as to the praise of blind and vulgar humanity, by the man who to save one criminal, should determine to abandon a 100 innocent persons to the same fate?”*
- We should set aside our qualms and realise we are morally obliged to torture the prisoner
Utilitarianism tells us that we should always do what produces the most good, without prejudice or favour. By acting on our rational instincts according to a governing principle, we can increase the total good in society.

🌟 Aristotle: Virtue ethics

- ‘Virtue ethics’ is based on three underlying concepts from Aristotle’s “Nichomachean Ethics”
Virtue (Arete); **Practical Wisdom** (Phronesis); **Flourishing** (Eudaimonia)
- **Virtue**: All people and things have a fundamental purpose, encompassed in ‘virtues’
 - E.g. a good knife should have the virtue of “sharpness”
- In people, virtues relate to the regulation of the human desires
- Moral virtues are expressed as enduring ‘character’ traits
- We recognise moral virtues because they are the mean between two vices
 - E.g. Courage is a virtue between the opposing vices of cowardice and rashness
- **Practical wisdom**: We must understand our purpose in life and gain experience to better recognise virtue, virtuous response to any situation is one that follows this purpose in life
- **Flourishing**: Having virtuous characteristics allows people to ‘flourish’ - to reach our purpose in life i.e. to exercise of the most “divine element” of humanity

🌟 Aristotle: Virtue ethics

- In virtue ethics there are no rules or principles that govern behaviour- actions are virtuous because we make the right decision at the right time
- Actions that may be vices in one situation may be virtuous in another
- For example: A Jewish doctor is caring for several sick patients in the Warsaw ghetto during the second world war. The population of the ghetto is being sent to concentration camps. The patients will die in abject circumstances during the journey. Should the doctor euthanise his patients without their consent?
- While only this doctor can decide, virtue ethicists would look to the circumstances and the character of the doctor: euthanasia may be the action of a virtuous doctor in such a terrible situation

Virtue ethics says that character, rather than actions, are the source of morality. It recognises that the world is complex and sometimes involves terrible choices that can only be solved by asking "Who should I be?", not "What should I do?"

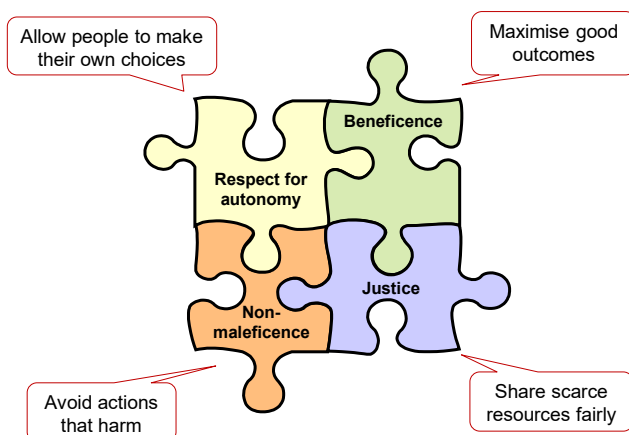
🌟 Ethics in Practice

1. Principles and Frameworks

🌟 Moral theories and moral principles

- Each ethical theory is complex (the discussions here are purposely simplified)
- Ethical theories contain numerous strengths and defects: indeed, most seem best at pointing out the defects of the other
 - E.g. untenable outcomes of non-discretionary rules in deontology, cold, calculating 'utility monsters', lack of clarity over the right action in virtue ethics
- Some have sought to both simplify ethical theory and aid ethical decision-making by deriving 'principles' from different theories that can be better used to aid thinking
- These principles have been used to develop different frameworks for decision-making
- These can be either:
 - *Moral frameworks* e.g. Beauchamp and Childress' "The four principles approach"
 - Or
 - *Procedural frameworks* e.g. Jonsen's "Four quadrants"

🌟 Moral Frameworks: Four Principles



- **Respect for Autonomy:** Respect people's decisions about their lives, based on their values. Avoid paternalism. Give full information.
- **Beneficence:** Promote the patient's welfare, even if it is inconveniences or burdens us.
- **Non-maleficence:** Do not intentionally cause harm and avoid it where possible.
- **Justice:** Treat people fairly and without discrimination e.g. treat like as like

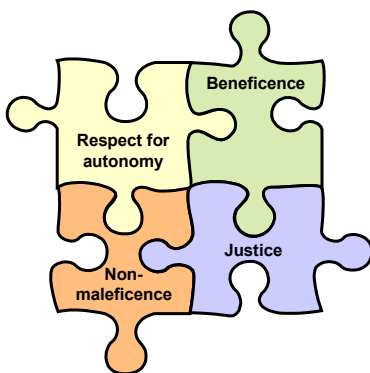
[Beauchamp and Childress \(1985+\)](#)

🔥 Procedural Frameworks: Four Quadrants

<p style="text-align: center;">Medical Indications</p> <ul style="list-style-type: none"> • P's condition, prognosis • Treatment options (risks/harms v benefits) • Probable outcomes of treatment 	<p style="text-align: center;">Contextual Features</p> <ul style="list-style-type: none"> • Impact of/on family and relatives • Impact on hospital staff • Financial/resource issues • Insurance issues • Legal issues
<p style="text-align: center;">Patient Preferences</p> <ul style="list-style-type: none"> • What are P's goals? • Does P have sufficient information? • Does P comprehend? • Is P consenting voluntarily? • Has P been coerced? • If P lacks capacity, who has authority to decide? 	<p style="text-align: center;">Quality of Life (QoL)</p> <ul style="list-style-type: none"> • What does QoL mean (generally and here, incl. with/out treatment)? • Can P determine his/her own QoL? • If not, who should decide? • How do others perceive P's QoL? • What is the relevance of QoL to ethical judgement?

Jonsen et al (2006)

🔥 Moral theories and moral principles



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Frameworks can be useful tools to discuss moral cases

All contain the potential for conflicts between their principles or stages ...

✦ Conflict between moral principles

- When we find that moral principles conflict, it reminds us that ethics is *aporetic*
 - *Aporetic* means irresolvable, or always open to doubt – ethics is an endless merry-go-round
- There is a danger that ethical frameworks can make us misunderstand moral philosophy.
 - Ethics is not a science, we cannot produce answers that are true in every case
 - Solutions that are ethically ‘neat’ are likely to be so because we are failing to consider every factor

“A story that takes our moral sentiments seriously is bound to reflect their eclectic nature”
(Appiah, 2008)

- Difficult ethical decisions demand a more dynamic process that can accommodate the aporetic nature of ethics

✦ Ethics in Practice

2. Making difficult ethical decisions

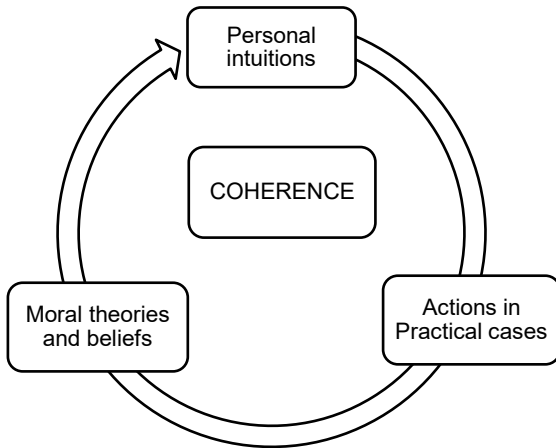
🌟 Dealing with conflicting ethical principles

- Different views on the purpose of ethics have been characterised as *Socratic* or *Pythagorean*
 - Socratic view: the purpose of ethics is to find underlying truths
 - Pythagorean view: ethical truths have been discovered - the task of ethics is to keep people on right path
- If we take the Socratic view, a conflict between principles should invite us to question the principles we have chosen: are they the right ones? have we understood them properly? are our standards achievable in practice?
- If we take the Pythagorean view we should question whether people understand what is demanded of them? how we can help people to better achieve the standards that we set?
- Both views are useful because they suggest:
 - i. we must encourage people to adhere to the standards that are set in ethical codes and in the law, but;
 - ii. we must also realise that these standards need translation at the bedside, and this requires us to be ready to revise our positions in line with the challenges of practice, and potentially, to agitate for change

🌟 Dealing with conflicting ethical principles

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 - we must encourage people to adhere to the standards that are set in ethical codes and in the law, but;
 - we must also realise that these standards need translation at the bedside, and this requires us to be ready to revise our positions in line with the challenges of practice, and potentially, to agitate for change
- In other words, ethics, properly done, should invite constant re-examination of our theoretical positions, as well as our own beliefs and understandings
- Such a process has been described by John Rawls (1999) as “Reflective Equilibrium”

🌟 Reflective equilibrium



- Constant process of revision to bring theories, intuitions and practical cases into coherence
- Radical epistemic equality: no element is beyond revision
- Discard beliefs or activities that cannot be revised to cohere with the whole
- Consider this in relation to the “murderer at the door” or “torture” examples

🌟 Making difficult ethical decisions

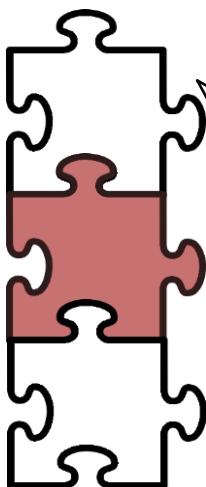
- Revision is a constant process – we make moral decisions when we have to, but we must always be ready to revise our view in the light of new understandings
- How do we avoid our judgements becoming hopelessly unpredictable and contradictory?
- One way to do this is to involve others in moral decision-making...
- **A popular way to do this in practice is by developing ‘clinical ethics support services’**

🔥 Ethics in Practice

3. Clinical ethics and clinical decision-making

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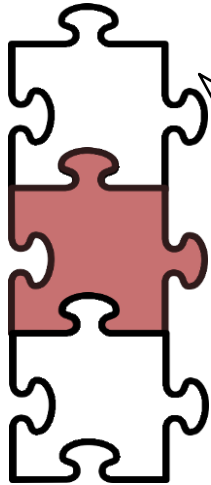
🔥 Clinical ethics support



- Nuffield Council on Bioethics (national committee) established in 1991 to report on ethical issues
- Clinical ethics support is based on a non-statutory, 'enthusiast' model
- Ethics support usually follows committee model (plus a few lone ethicists)
- UK Clinical Ethics Network (<http://www.ukcen.net/>) exists to support establishment of ethics committees
- 56 CECs are registered with UKCEN
- 84% (43/51) CECs received 1-10 consultations annually (Slowther et al., 2012)

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🔥 Clinical ethics support



- Committees usually have 10-20 members, usually includes clinical disciplines, chaplaincy, legal advisors, academic ethicists, lay members
- Queries about patient involvement: often resisted, recent legal critique: *X (A Child)* [2020]
- Benefits of diverse opinions:
 - Pervasiveness of bias, becomes more extreme among like minded individuals
 - Registering dissent in a homogenous group is at the cost of emotional distress
 - A diverse group gives access to dissenting opinions, and this reduces or eliminates these negative effects

🔥 Clinical ethics and clinical decision-making

- A key factor in reducing staff attrition, poor mental health and burnout is through the organisational structure and working environment (despite current emphasis on resilience)
- A wide variety of support structures are needed: e.g.:
 - Access to legal support
 - Access to mediation
 - Access to counselling
 - Mentoring, supervision and peer support
 - Schwartz rounds
 - Ethics committees and/or ethics consultants
- Ethics support is stronger when it is part of a supportive institutional culture
- Awareness of ethics is part of the solution, but only if we are aware of its limitations, as well as its strengths

🔥 Conclusion

- Medical ethics offers no fixed answers but helps us make decisions and live with them
- We can become 'expert' in the ideas expressed in ethical theory, but everyone reflective and open-minded has an ethical sense - we should be wary of claims of ethical expertise
- We can approach ethical decision-making with a number of theoretical lenses, or with set of principles drawn from these theories. We should be aware that the psychology of moral decision making suggests that decision making is a complex tension between emotion and reason
- Moral decisions usually involve conflict between apparently equally compelling considerations. We should be aware no theory is perfectly suited to practice, nor perfectly applied. These conflicts should be addressed through a constant and reflective process of revision and adaption
- We may gain more consistency in our ethical decisions, by making them together, actively seeking and listening to other opinions and considering all the potential impacts and consequences
- This sort of approach should be applied in practice as part of a supportive environment

🔥 Bibliography

- Archard, D. (2011) Why Moral Philosophers Are Not and Should Not Be Moral Experts. *Bioethics*. 25(3):119–127
- Aristotle (1999) *Nicomachean Ethics* (Translated by Irwin, T., Second Edition). Hackett.
- Barela, S. J. (2020) "Reclaiming Bentham on Torture, in Interrogation and Torture" In *Integrating Efficacy with Law and Morality*, Steven J. Barela, Mark Fallon, Gloria Gaggioli, and Jens David Ohlin (eds) Oxford University Press
- Bartholow, B. D., C. L. Dickter and M. A. Sestir (2006) "Stereotype Activation and Control of Race Bias: Cognitive Control of Inhibition and Its Impairment by Alcohol." *Journal of Personality and Social Psychology*, 90: 272–287.
- Batson, C.D. "Getting Cynical about Character: A Social-Psychological Perspective" in: Sinnott-Armstrong, W. Miller, C. B. "Moral Psychology. Volume 5: Virtue and Character" MIT Press (2017)
- Beauchamp, T. L. and J. F. Childress (2009). *Principles of Biomedical Ethics*, 7th Edition. Oxford University Press.
- Bentham J. (2012) *An Introduction to the Principles of Morals and Legislation*. Dover Publications.
- Bentham, J. (1843-1859) "Rationale of Reward" In: *The Works of Jeremy Bentham*. Simpkin, Marshall.
- Dehaene S. *Consciousness and The Brain* (2014 Penguin Books)
- Eskine K, Kacinic N, Prinz J. 2011. "A Bad Taste in the Mouth: Gustatory Influences on Moral Judgment." *Psychological Science* 22:295–99.
- Estlund, D. (2008) *Democratic Authority: A Philosophical Framework*. Princeton University Press
- Haidt, J. (2001). "The emotional dog and its rational tail." *Psychological Review*, 108: 814–834.
- Jonsen, A., M. Siegler & W Winslade (2006) *Clinical ethics* 6th edition. McGraw-Hill

Bibliography

- Kant, I (1997) *Groundwork of the Metaphysics of Morals*. Cambridge University Press.
- Latane, B. and S. Nida (1981) "Ten Years of Research on Group Size and Helping." *Psychological Bulletin* 89: 308–324.
- Mill, J. S. (2003) *Utilitarianism and On Liberty* 2nd Edition, Mary Warnock (ed) Blackwell
- Rawls J. A. (1999) *Theory of Justice* (Revised Edition) Harvard University Press
- Rasmussen, L. (2011). An Ethics Expertise for Clinical Ethics Consultation. *Journal of Law, Medicine and Ethics*. 39(4):649–661
- Singer, P. 1972. Moral Experts. *Analysis*. 32(4):115–117 Schnall et al., 2008
- Slowther, A. M., L. McClimans and C. Price (2012). "Development of clinical ethics services in the UK: a national survey." *J Med Ethics* 38(4): 210-214.
- Schnall, S., J. Haidt, G. L. Clore, and A.H. Jordan (2008). Disgust as embodied moral judgment. *Personality and Social Psychology Bulletin*, 34: 1096–1109
- Schneewind, J. B. (1998), *The Invention of Autonomy: A History of Modern Moral Philosophy*. Cambridge University Press.
- UK Clinical Ethics Network (<http://www.ukcen.net/>)
- Varden, H. (2010) "Kant and Lying to the Murderer at the Door... One More Time: Kant's Legal Philosophy and Lies to Murderers and Nazis" *Journal of Social Philosophy* 41(4): 403–421.
- X (A Child) [2020] EWHC 1958