

Ethical Decision Making: Establishing a Common Ground

Ethics – Definition and Goal

Since ethics is the study of moral choices, the goal of ethics is to determine which moral choices will enhance our humanity and which ones will diminish our humanity. Some scholars like to define this as a process of promoting an “authentic humanity”, which includes individuals and all of human society.

So if the goal of ethics can be described as the promotion of authentic humanity, what does this state of authentic humanity look like? Let us consider two ancient perspectives:

The ancient Hebrews used the word shalom or peace (wholeness or health) to describe a state of harmony, willed by the creator, where individuals found their happiness and fulfillment in a state of right relationships with self, others and all of creation. This state of harmony was symbolically described in a creation account – the Paradise story. So if human beings were created to live in this state of shalom – peace, right relationships – the obvious question was: why do we not find ourselves living in this peaceful, Paradise situation? Answer: because we made bad moral choices.

In summary, Hebrews would have defined authentic humanity as humanity in a state of harmony with self, others and all of creation – a state of righteousness.

In another ancient culture, that of the Greeks, the issue of ethics was left up to the philosophers. They viewed the goal of ethics to be the establishment of a state of *eudaimonia* – flourishing or happiness - in which human beings and human society would live in a state of harmony.

And so the ethical goal of the Greeks was much the same as that of the Hebrews, however their source of ethics was not the will of any god, but was the fruit of human reason.

In summary: For our purposes the goal of ethics is defined as the search to identify those human choices, which will promote an authentic humanity. And authentic humanity is defined as humans living in right relationships with self, others and the world. In such a world, humans flourish and find their happiness.

The question remains: How might it be possible to achieve this goal.

Our Ethical Climate

The pathway to achieving the goal of ethics is long and complicated. To begin, let us examine our current ethical climate. Concerning our ethical climate there is good news and bad news. The good news is that we make ethical decisions every day and usually we are pretty good at it. We carry a large arsenal of ethical norms and values, which we have

received from our family, religion, friends and the general legal, political and social culture. While many citizens sense an ethical or moral decay in modern American society, there is still a significant foundation of Judeo-Christian and humanist values embedded in our secular culture - the Constitution, the Bill of Rights, the legal system and our broadly accepted cultural values.

However, there is also some bad news. As we enter the 21st century, we are all aware of a myriad of unsolved ethical issues that confront us. With great rapidity the ethical issues in the areas of bioethics, social ethics, medical ethics, business ethics, global ethics, etc., unfold before our eyes. We are well aware that these ethical issues have serious implications for our individual welfare and the welfare of our human community and yet we have very few effective forums or methods to address these issues.

Unfortunately, the manner in which these ethical issues are presented to the general public in the mass media is not always helpful. In five minute sections of the nightly news and in a variety of group talk shows, we see a parade of “experts” exchanging set ideas (often in loud voices speaking simultaneously) on such complicated and technical subjects as cloning, policies of preemptive armed invasion, abortion, living wage legislation, gay rights, physician assisted suicide, human genetic engineering, stem cell research, the death penalty, environmental issues, immigration, etc. There is generally no hint of an ongoing, cooperative effort to seek the truth.

The Need for Ethical Discussion

Even though we do not now have effective public forums for ethical discussions, we cannot escape our need to study ethics and become involved in the process. This is so because ethics is about life – our lives – and so the urgency to study and participate in ethical discussions emanates from this fact: that our lives and our culture hang in the balance.

When we make ethical decisions something happens or, in other words, human choices have inevitable consequences and for good or ill we will be deeply affected by them.

In general, the consequences of human acts are of two kinds - objective and subjective or external and internal.

1. Objective (external) Moral Consequences

For example, suppose someone chooses to steal fifty dollars from the next door neighbor. First, there is the objective fact that the neighbor is out fifty dollars. Objectively or externally this neighbor has been harmed and in a lesser, but real sense, the human community has also been injured. Because of this act of stealing, the human community is a little less perfect. We all know that human communities work best when citizens can trust that other citizens will respect their property. Stealing breeds fear and mistrust thereby weakening the ties that enable communities to live in peace and security - arguably an ideal condition for the development of authentic humanity.

Admittedly, it is difficult to get a feel for the fact that the human community could be injured by one act of theft. In the same way it is difficult see how one vote makes any difference in a national election. However, elections are in fact determined one vote at a time. Similarly, every act of kindness makes the world a better place and every act of cruelty or injustice diminishes the entire human community. Sometimes the effects of individual acts are small, but they can also be global.

For example, over one hundred years ago, two young boys lived over a thousand miles apart and each was beaten, nearly to death, by their fathers. Throughout their lives they found it difficult to trust anyone and their own cruelty knew no bounds. The abused boys were Adolf Hitler and Joseph Stalin.

Even small acts have a cumulative effect. Think of Manhattan Kansas sixty years ago. My sense is that very few people locked their homes or their cars at night. However, now most people in Manhattan do lock their cars at night and of those who do not, many have recently found their cars ransacked by thieves. How did this cultural change come about? – through many small acts of thievery.

2. Subjective (internal) Moral Consequences

In the example of someone stealing fifty-dollars, in addition to the objective, external consequences noted earlier, there is also a major subjective consequence: that person becomes a thief. This is a serious, often overlooked subjective consequence.

We are all in the process of becoming - becoming someone. Our actions reflect our moral choices and our moral choices play a significant role in determining what kind of a person we will become. In the first act of theft a person is on their way to becoming a thief. If you have ever stolen something you may remember that this “first time” was somewhat traumatic - what if I get caught, etc. Through repeated acts of theft, however, one can become fairly nonchalant about the matter. For some high school students ripping off the convenience store is more of an art form than a vice. Finally, some people reach the stage where they have no remorse and we can truly say that a person has lost his or her conscience.

The obvious point is that through our ethical choices we either become more or less authentically human. To repeat, it is not simply that someone committed an act of theft - that is important - but it is equally important that by that act of theft *a person has become a thief*. A strong case can certainly be made that we are not at our best (not authentically human) when thievery has become our way of life. Indeed, we become what we do.

Granting all the above, we have a great need to know what is ethical and what is not, what is good and what is evil, because our individual lives and our society depend upon that knowledge. As we will argue later, in a natural law approach to ethics when we choose evil we destroy ourselves, others and the world - we destroy our authentic humanity. Likewise when we choose the good we make progress in becoming authentically human and also make it possible for others to become authentically human.

Given the urgency for making good ethical decisions and the number and importance of the major ethical issues facing us, what is it that restricts us from reaching consensus concerning which ethical decisions will promote and which will diminish our authentic humanity as individuals and as a society? The fact is that from the time of the ancient Greeks, western culture has been searching for an ethical system that will produce *objective universal norms of human conduct* that all can agree on and ones that do indeed promote authentic humanity. So far this search has failed to produce a consensus on an ethical system that will produce such norms or whether such norms are even possible. However, much has been done and much has been helpful, but there are many intellectual and emotional obstacles to be overcome.

The Need for Common Ground

It seems clear that we need to involve ourselves in effective ethical discussions. And in order to make real progress on the ethical issues that confront us, we desperately need an ethical approach or method that will enable us to establish some type of common ground.

Without common ground, the prospect of reaching consensus or a workable compromise on pressing ethical issues is unlikely, if not impossible. Without some form of common ground we are left with the spectacle of advocates of diverse ethical positions exchanging set ideas in an intellectual atmosphere that, to say the least, is non-conducive to learning, much less producing a fruitful ethical system.

Lack of common ground also causes a great deal of wasted time and talent. Good intentioned, talented people on each side of a controversial ethical issue often spend most of their time defending their position and/or attacking the position of others who disagree, rather than joining with others in a common search for truth. Without a common ground - common focus, common method, common goals - true communication (*cum* -with, *unio*-union) is most difficult, because participants are often speaking in a foreign intellectual language.

Some Failed Attempts to Establish a Common Ground for Ethics

The following are notable post-Medieval attempts to establish a universal ethic:

The sentimentalist option - An appeal to common human moral feelings or sentiments, rather than reason. This approach held that the human sentiments of kindness, friendliness, honesty, gentleness, etc., would be chosen by most over cruelty, dishonesty etc. (David Hume 1711-76)

The rationalist option - An appeal to human reason to establish a “categorical imperative”—what we have a duty to do, no matter what the consequences. This “categorical imperative” included a demand to act only on principles that could be made universal. Also treat people as ends in themselves and never as means to our own ends. (Immanuel Kant 1724-1804)

The utilitarian option - An attempt to base ethics on utility or “the greatest happiness of the greatest number” defined in terms of pleasures and pain common to all human beings. (Jeremy Bentham 1748-1832 and John Stuart Mill 1806-73)

The contractarian option - An appeal made to a social contract that all reasonable persons, despite their differing values, could agree upon. (Thomas Hobbs 1588-1679, John Locke 1632-1704, Jean-Jacques Rousseau 1712-78 and John Rawls 1921-)

An Ancient Option: Natural Law

Finally, we come to the natural law option. Natural law theory is based on the presumption that human nature is in some sense normative for human action. Natural law is understood as knowable to the unassisted human mind, that is, to the human mind which does not reference divine revelation as its source of moral wisdom. Natural law is designed to provide a theory of ethics that is universal, objective and intelligible.

Thus in a religiously pluralistic society natural law offers two secular components which can serve as a basis to establish a common ground for discussion in the search for an objective, universal human ethic. These components are: 1) human nature and 2) human reason.

Those committed to a natural law tradition assume the possibility that reasonable people can discover together what it means to be human and what ethical principles need to be adopted and what civil laws need to be enacted in a society so that human life can flourish. This assumes that we share a common human nature and that through a rational process we can discover what constitutes our nature and what are some of the necessary social circumstances, (ethical consensus and laws), that will enable our natures to grow and flower.

The natural law is not envisioned as some kind of ethical code existing above and beyond human experience and imposed on humans and their societies from the outside. It is not an extrinsic set of laws or ethical principles.

Natural law is not a theoretical knowledge of propositions; ...Our discovery of the natural law occurs by way of reflection upon our natures and then by discovery of the necessary means for achieving or constituting the goods of our natures. (*Narrative of the Natural Law* - Pamela Hall p.37)

That the natural law must be discovered implies that the employment of the natural law in moral discourse is a *rational process*. *Rational* establishes that the ground for discussion is human reason, something human beings share in common. *Process* means that there is an element of discovery in understanding the natural law. *It is not simply a process of*

referencing a set of immutable principles, but a discovery of “what works” for human beings in the particular circumstances of their individual and social lives.

Classic Examples of the Concept of Natural Law

The classic Greek statement is from the play *Antigone* by Sophocles. Antigone defies the order of the king of Thebes, Creon, not to bury her brother killed in a civil war opposing the king. She admits to being aware of Creon’s order not to bury her brother and Creon asks how she could dare to overstep these laws:

For me, it was not Zeus who made (your) order, nor did that justice who lives with the gods below mark out such laws to hold among mankind. Nor did I think your orders were so strong that you, a mortal man, could overrun the gods’ unwritten and unfailing laws. Not now, not yesterday; They always live, and no one knows their origins in time. (Lines 446-457, *The Complete Greek Tragedies*, Green and Lattimore, eds.)

Even for the Greeks, natural law was not viewed as a monolithic philosophical system with a set, immutable code of ethical conduct. They started with the observation that all human beings desire happiness and self-realization. Based on a rational view of reality, it was assumed that through observation and rational investigation certain “natural laws” could be discovered that, when observed, would aid in the attainment of mankind’s final end: eudaimonia – flourishing or happiness.

The Romans also adopted a concept of natural law. Building on the tradition of the Greeks -- from Aristotle and the Stoics -- Cicero (d. 43 BC) defined natural law in his book *On the Republic*, (written in 55-51 B.C.) in this way:

True law is right reason in agreement with nature, universal, consistent, everlasting, whose nature is to advocate duty by prescription and to deter wrongdoing by prohibition...neither the Senate nor the People can absolve us from obeying this law and we do not need to look outside ourselves for an expounder or interpreter of this law.

There will not be one law at Rome and another law at Athens. There is now and will be forever one law, valid for all peoples and all times... whoever does not obey this law is trying to escape himself and to deny his nature as a human being. By this very fact, he will suffer the greatest penalties, even if he should somehow escape conventional punishments.

For Cicero all men receive the gift of reason from God and thus natural law accords with the common sense possessed by all reasonable people.

Based in part on the Greek and Roman concepts of natural law, Thomas Aquinas in the 13th century taught that the natural law participates in the divine law and that all human law is derived from the natural law. Indeed, it is one of the foundational convictions of

Western civilization that there is an objective and universal justice which transcends any particular expression of justice found in civil law. This is known as the *natural law tradition* which, based on a rational investigation of human nature, establishes the standard of justice for those making civil law.

That some human laws have been judged to be unjust when measured by this “higher” order of universal justice is historically clear. The history of nations is replete with instances when citizens rose up against unjust laws. What was the basis of their protest? How were these laws judged to be unjust? They were often “instinctively” or “intuitively” understood to be contrary to the nature of human beings and thus militated against their ability to grow and flourish.

In the twentieth century, examples of the employment of natural law include the Nuremberg Trials where German judges argued that they were only obeying the civil laws of Germany, but the trial judges declared Hitler’s laws as unjust because they were “crimes against humanity”. They proclaimed the doctrine of natural law, without using those words.

And in his “Letter from a Birmingham Jail”, Martin Luther King justified civil disobedience by citing the natural law as higher than unjust civil laws. Such reasoned judgments, that some civil laws are unjust, are based on the reality of a common human nature and its fundamental need to flourish, this is the basis for natural law.

Based upon such judgments, unjust laws were often repealed and just laws were instituted, e.g., slavery and civil rights. These new laws were considered just because they were deemed to aid in the process of human growth and maturity, for individuals and society. This is basically what we mean by an appeal to the natural law. It is a *rational*, nonsectarian *process* based on a historical reflection on human nature and a determination of what moral choices and what civil laws either militate for or against the good of individuals and society.

And so to go against the natural law is to act against the universal human good or to diminish authentic human existence. Good is defined as that which contributes to human flourishing. It is important to note again that this type of morality is thus viewed as intrinsic, not extrinsic. It pertains to internal laws of our nature and not to laws imposed from the outside by either divine or human authority. So it is considered possible that through a rational examination of human nature, we can come to understand what is good for us, what works for us, so that we can in turn determine what ethical principles and social structures will help us attain our individual and collective common good.

Finally, people, regardless of their religious affiliation or lack thereof, seek to live in a society and a state where they can fulfill their human desire for order, peace, justice, kindness, love and any other values that most of us can agree are desirable apart from any specific religious base or context. This is what natural law theory strives to accomplish and thus provide the necessary common ground.

Civil Law and the Natural Law

When people react to civil laws that seem to them unjust (eg Martin Luther King), they “sense” that the law is wrong because it is an offense against the common good, it attacks certain basic, shared human values and certain basic human rights. While these laws in question may have been created and enacted by lawful authority (as in the case of Hitler), people object that they are unjust by referring to something beyond or more basic than simple authority -- i.e., human nature. Just laws must correspond *intrinsically* to the good of individuals and communities. When they do not, people rightly object.

A powerful example of people from various religions and no religion objecting to existing civil law and coming to agreement on a moral issue was experienced in the civil rights struggle, which we noted briefly above. This was viewed as a moral issue, based on common human dignity. Of course there were legal issues, but the vast majority of marchers who took to the streets were not lawyers or jurists. They were ordinary people - theists, agnostics and atheists - who “knew in their hearts” that discrimination was a mortal offense against human nature and human community. As accepted under law it was a threat to their individual freedom and it was a destructive force within society.

A political consensus was reached that segregation was an attack on our common human dignity. A universal experience of what it means to be human provided the common ground (*natural law*) for social action, resulting in the enactment of anti-discrimination laws to allow greater possibilities for human beings to grow and flourish within society. A parallel case is that of slavery.

This form of the natural law tradition is, in large part, what makes our country great. The following observation by Harold McKinnon sums it up quite well:

This, gentlemen, is our birthright...And in this matter we are in the most unyielding dilemma. For if there is no higher law, there is no basis for saying that any man-made law is unjust...; and in such case, the ultimate reason for things, as Justice Holmes himself conceded, is force. If there is no natural law, there are no natural rights, and if there are no natural rights, the Bill of Rights is a delusion, and everything which a man possesses -- his life, his liberty and his property -- are held by sufferance of government, and in that case it is inevitable that government will some day find it expedient to take away what is held by a title such as that. And if there are no eternal truths, if everything changes, everything, then we may not complain when the standard of citizenship changes from freedom to servility and when democracy relapses into tyranny. (McKinnon, The Higher Law, 1946)

Throughout history, citizens have rejected the absolute claims of institutionalized human authority. This is what revolutions are all about. To the old Roman adage “What has pleased the sovereign has the force of law” the response has been, “not always”. Our own Declaration of Independence specifically mentions the natural right of a people to rebel

when there is no other way to redress violations of the natural, inalienable rights of citizens by the government.

When an appeal is made to confront the misuse of human authority, whether it is an appeal to “humanity”, the “dignity of man” or the “natural law”, the *function* of the appeal is the same, i.e., *to curb human authority*. Intuitively we sense that without the ability to appeal to something higher or beyond raw human authority and power civilization is in great danger. And if such appeals are to have any validity, that to which we appeal must be real and grounded in the essence of what it means to be human. I would call this the basis of natural law.

Natural Law and the Formation of Individual Conscience

Our intention has been to investigate ways to provide common ground for ethical discussion in a pluralistic society. However, any investigation of ethics has an individual dimension also. In the final analysis, the vast majority of ethical decisions are made by individuals. As individuals engage with others in the quest for universal ethical norms they are by that process also engaged in the formation of individual conscience.

Conscience is not some small voice telling us what to do or simply our Super Ego as Freud contented. Individual conscience is our *best judgment* about what human acts are ethical in these particular circumstances. Thus, the exercise of individual conscience is not understood as a right, but as a duty. One must always follow one’s conscience. Will we always make the right ethical decisions? Probably not. Does it make a difference? You bet.

Ethical decisions make a difference because no matter how we form our conscience, how we view the goodness or badness of an act or whether we have good or bad intentions, when we make an ethical decisions there are certain consequences over which we have little or no control. As we all know, even with the best of intentions we can do harmful things. These are objective consequences, consequences that happen outside us, as noted above.

For example, say a soldier is on the battlefield and a comrade is wounded in the stomach and cries out for a drink of water. The soldier decides to share his meager supply of water even at the risk of his own life. From a subjective point of view this is a loving and perhaps heroic act, but objectively it will no doubt only cause his comrade great pain. Because, when a person has a stomach wound a drink of water usually results in great pain. Out of ignorance our good soldier caused great pain. In a way of speaking, it was an objectively evil act. Hence, we have here an act that is subjectively good, but objectively evil. Even when acting out of heroic love, when combined with ignorance the soldier failed (objectively) to do the right thing. This is why it is crucial to know right from wrong and to act on that knowledge.

The natural law tradition is based in the premise that human acts are good or evil insofar as they are constructive or destructive of authentic human existence. Acts are not

objectively good or evil because of our intentions, our legal constructions or our cultural or religious biases. The objective goodness and badness of human acts are fundamentally independent of any subjective constructs.

Therefore, the process of individual formation of conscience is a crucial process. Our individual and societal lives depend on knowing what, in fact, is ethically good or bad. The lack of a correct conscience displayed by serial murderers is a poignant reminder of how important a correct conscience is to our human survival.

Objections To The Concept of Natural Law

There has been a determined attempt in this forum to make a strong argument for recourse to the natural law in the public forum when debating ethical issues. However, recourse to natural law is not without its problems. It would take us too far afield to discuss the long history of objections to and the failure of the natural law tradition, but there is one question we need to address: Given that we all possess a common human nature and all can employ the use of human reason, why is there often such a lack of agreement about the ethical choices necessary to flourish as individuals and a human society? Consider these points:

- 1) We are not perfect. Human reason is fallible. We do not know all the facts.
- 2) While we are defined as rational beings, we are not entirely rational. We also have an irrational side to our nature, which can at times interfere with our ability to see reality objectively. It is easily observable that we are at times more under the rule of our passions than our reason. Reason thus impaired can err in the discernment of the natural law.
- 3) Certain moral principles may be universal and valid, but their application may be conditioned by circumstances (contra Kant). St. Thomas called this the exercise of prudence. For example, while it is a universal, valid general rule that you must return borrowed property, it would not be prudent to return a sword to one who has gone mad or has vowed to kill you. (ST 2-2ae, q.57, art.2)
- 4) The subject matter of moral judgments is changing. The issues of cloning, total warfare, stem cell research, genetic engineering and a host of other moral issues were not part of the moral landscape a hundred years ago. New insights into the natural law and its application to new circumstances are required to address the changing world of ethical challenges. This takes time.

What is the upshot to these objections to the natural law? We have offered some answers, but we must admit that the use of the natural law as a tool in defining ethics requires hard work with no guarantees of success. It is a difficult process of reasoning about what it means to be fully human and then sifting through human history and personal experience to determine, in this concrete historical setting, what individuals or the State can do to foster the flowering of authentic human life. As was noted, to use the

natural law is not simply a process of applying a storehouse of immutable principles to every conceivable human situation.

We should also note that using reason, because it provides a common ground, is not as simple as it sounds. When we “reason” we do so from a particular point of view or paradigm (*a la* Kuhn). We all have our own frame of reference and who is it that enters a dialogue expecting to have their opinions changed? Not me! What each of us considers “reasonable” depends a great deal on our past experiences and our general approach to life. Ask any waitress the difference in what people consider a “reasonable tip”.

This observation has important implications for any who advocate the natural law approach to morality. To say that we reason from a particular point of view, means that we each operate with a certain ideology. An ideology is a certain way of understanding ourselves and our world. It reflects our aspirations for self and for society. It is what we want for ourselves and society, because we believe it to be “the right thing”. Whether or not these aspirations are grounded in reality is where the debate rages in a society with conflicting ideologies e.g. liberal vs conservative.

This is not to say the task is not worth undertaking, but to free ourselves of any delusion that it will be easy or that our conclusions will be the product of free, unprejudiced reason. It is also a signal to be patient with each other, because our ideologies are not just academic opinions of how we think the world ought to be, but they also define who we are and how we have come to understand our world and ourselves as human beings. Such understandings change slowly, if ever. When someone challenges our ideology, we naturally become defensive. Therefore, consensus is elusive. Perhaps a defense of our dependence on human reason is like Churchill’s view of democracy – it may not always work very well, but it is the best system we have.

A Final Thought

What have we accomplished? We do not have a bag of ready made answers for our pressing ethical issues, but if we adopt a natural law approach - the common ground of human nature and the method of human reason - we have accomplished something important.

Namely, given this common ground, we are free to view each other as friends, friends with legitimate differences, but with a common concern for truth and the welfare of all human beings. We must be patient with each other, because one of the most difficult things for any of us to do is to “change our minds”.

And so, we may still disagree, but in establishing a common ground our task has shifted from seeing each other as “the enemy” to be overcome, to seeing each other as fellow human beings with the same goal - the good of humanity - and using the same method in the quest for truth.

In such an atmosphere it is possible to learn from each other and in the end if we still disagree we know that we have searched together in good faith. We are companions facing the mystery of human life and our role in its flourishing.

In any event, we cannot escape our need to study ethics and become involved in the process. This is so because ethics is about life – our lives – and so the urgency to study and participate in ethical discussions emanates from this fact: that our lives and our culture hang in the balance.

A closing thought:

Some of us (and perhaps all of us sometimes) believe that we already know what constitutes the best resolution of a moral conflict without deliberating with our fellow citizens. Assuming that we know the right resolution before we hear from others who will also be affected by our decisions is not only arrogant but also unjustified in light of the complexity of issues and interests at stake. If we refuse to give deliberation a chance, we forsake not only the possibility of arriving at a genuine moral compromise but we also give up the most defensible ground for maintaining an uncompromising position: that we have tested our views against those of others. (Bruce Jennings, “Possibilities of Consensus: Toward Democratic Moral Discourse”, *Journal of Medicine and Philosophy* 16, no. 4:447-63, p. 458)