

Some Controversial Issues in Ethics.

Legal Versus Moral Order. One of the most controversial aspects of the study of ethics is the relationship between laws, rules, and regulations and ethical behavior. Laws, rules, and regulations are norms of behavior that have been codified by legal authority to set standards of conduct. They are in the form of proscriptions, i.e., “thou shalt nots”, rather than entreaties to do good. Presumably, these codified behaviors are considered important enough to be reduced to written form. It would seem that this would be prima facie evidence that people governed by them would have an ethical duty to comply as a matter of honor. It is not uncommon, however, for people to view many such norms, e.g., traffic laws, to be outside ethical duty; rather, it is a matter between the individual and authority. If one is caught, one pays the penalty, but the violation is not a breach of ethics and is not cause for moral guilt. Other rules, e.g., murder, are seen as both a violation of ethical behavior as well as a contest between the individual and authority. Clearly, this is an area of ethics that lends itself to judgment, and controversy. This has a significant bearing on how we use honor and legal authority to gain compliance with codes of behavior. Ethical behavior goes far beyond legal constraints. There are many behaviors that are unethical, but not covered by legal constraints. Laws represent attempts of a society to govern behavior that the people agree needs to be regulated. In a sense then, laws are codified ethical rules

Written Ethical Codes. Ethical codes, which may be written or unwritten, set forth standards of conduct relating to what a group considers right and wrong. In society at large, these standards are usually in the form of customs, mores, norms that are generally shared by most of the population. Rarely are they in writing, but unwritten rules can lead to ambiguity of what is expected. Professional and religious organizations usually have written codes, although these organizations have many unwritten norms of behavior. Written codes may carry more authority to ensure compliance, or they may merely serve the purpose of clarifying rules of behavior. In the case of some professional codes, e.g., the “Standards of Conduct for Federal Employees”, they approach the status of legalistic documents, enumerating what is legally prohibited. There is a continuing debate among ethicists regarding the value of written codes.

Absolute, or Flexible, Rules of Behavior? One of the most controversial issues in ethics is whether standards of conduct should be viewed as absolute, black and white rules or as “shades of gray”. Lying is condemned in most codes, but there are lies and then there are lies. Should all be treated in the same way? The most extreme case of an absolutist point of view would argue that lying is always wrong—there is a categorical imperative not to lie under any circumstances. If a gracious hostess serves you a meal that you do not like, should you tell her the truth, or should you tell a “little white lie”? Should medical personnel tell someone in a terminal state of illness the truth? One can vary the scenario to illustrate the complexity of this principle. Lying always erodes trust and confidence to some extent, even when the overall good may be served. So, how does one resolve the conflict? Clearly, there are circumstances where it is wrong to lie, but there are other circumstances where lying might be the right thing to do. During WW II, Dutch fishermen would hide Jews in the hold of their ships and smuggle them to England. German U-boats would stop the boats and ask if there were any illegal cargo on board. Few would argue that the fisherman should tell the truth. Moreover, not all lies have the same consequences. Sometimes it is a matter of judgment and people of good will can disagree.

One faces the same dilemma when applying most ethical principles. Absolute principles of conduct have the advantage of simplicity and, on their face, suggest higher standards of

behavior. When exceptions are allowed, what will prevent loose interpretations that rationalize behavior to fit one's own interests? This is often referred to as "the slippery slope" phenomenon. On the other hand, rigid application of principles without regard to real world consequences can cause harm. Another school of thought argues that people should make ethical decisions based on the results of the decision, taking into account both short- and long-term, tangible and intangible consequences. Principles are guidelines to be used to assess a situation; reason is the final determinant of choice.

Does adoption of flexible "shades of gray" standards amount to "situational ethics" or "ethical relativism"? Some argue that anything other than absolutism will necessarily lead to the practice of rationalizing situations to serve one's own personal interests. Arguments can be made to support that perspective. Even religions divide internally on this issue. Fundamentalists, whether they are Islamic, Christian, Jewish, etc., tend to be absolutists, with little or no discretion for individual interpretations of "revealed truth". Other elements of the same religions afford more leeway for the use of reason to assess each situation to determine the right thing to do. Basically, absolutists distrust individual judgment.

Motive as a basis for moral judgment. In addition to the use of a priori principles (divine or natural law) and consequences as the basis for passing judgment on a person's behavior, another school of thought says that one's motives are the key to moral judgment. Does a person intend to do harm, or are the bad consequences unintended? Moreover, one takes into consideration whether the motive was to gain personal benefits rather than to help others. For example, the "white lie" to save hurt feelings would not be judged harshly, if at all. As we know, the legal system considers motives in weighing judgments and penalties. Likewise, most people do the same when making moral judgments and determining appropriate sanctions.

Ethical Temptations versus Ethical Dilemmas. As one might surmise from the above discussion, some ethical decisions involve tough choices between doing what is right and the personal costs associated with those decisions. One is often asked to pay a high price for standing up for what is right. These situations are what Rush Kidder calls "moral temptations". One knows what is right, but is tempted to choose unethical behavior because of personal benefits. Cheating on income tax returns is an example. Other situations involve a genuine ethical dilemma; there may be no clear-cut choice. Consequences may not be clear, all the facts may not be available, and the situation itself may involve conflicting principles, e.g., removing life support from a terminally ill person. Kidder calls these moral dilemmas. Our focus in class will be on this latter category—moral dilemmas.

Individualism versus community orientation. As stated above, ethical codes are standards of behavior that "operationalize" our values. Therefore, we need to look at our national values to better understand the basis of our professional obligations. We are a highly individualistic society with a strong emphasis on individual rights and responsibility, as opposed to community welfare and obligations. The founding fathers reflected this bias and, coupled with their fear of centralized control in the hands of an elite, wrote a constitution that tilted in favor of individual rights. The dominant political philosophy stresses that pursuit of individual self-interest is the best way to attain the good of the nation. Our economic philosophy of laissez faire private enterprise is likewise based on pursuit of self-interest. This pursuit of self-interest, if left alone, will produce the greater good for all. These are, in general, values emphasized by conservatives. Some argue that such pursuit of self-interest also dominates our social and psychological values in the form of Social Darwinism and psychological egoism.

The Supreme Court has led the way in changing the focus from laissez-faire economics to a system that emphasizes "the general welfare" clause in Article I, section 8 of the Constitution. Starting in the late thirties during the New Deal Era, the courts have approved government intervention in the economy to provide social security, workers rights, health care for certain

segments of the society (e.g., Medicare and Medicaid) and other forms of “distributive justice.” Recent conservative administrations, starting with Reagan, have sought to reverse this trend. Liberals have generally favored this government intervention and Obama is apparently aiming to revive the movement.

While the courts have moved aggressively to curb property rights when those rights seem unfair, recent courts, beginning with the Warren Court, have emphasized Individual rights and privacy in non-economic matters. Governments (at any level) can abridge rights, freedom, and privacy only when the government can show a compelling interest to protect the community welfare to do so. In general, liberals stress these values. This divide is not on a simple continuum; we have economic conservatives and social conservatives in both political parties. We also have economic liberals and social liberals in both parties. This will play out in the coming elections; the public seems to be bitterly divided on the issue. We will discuss this controversy in more depth in sessions 4 and 5 when we address Domestic Policies from a moral standpoint.