

Chapter II

A Background in Ethical Theory

In this book, “ethics” is a general term for concerns about what people should do. The term “ethics” comes from the Greek word *ethike*, which means “character.” Indeed, the ancient Greeks conceived issues about what people should do in terms of impact upon character—whether people were of good or bad character (Aristotle, 350 BCE). Our concern with good reputation reveals this kind of thinking, but bad actions and bad performance can be more important than any amount of good reputation if they are bad enough. Not even the most capable network troubleshooter could survive the discovery of large amounts of downloaded kiddie porn on his workstation.

William Bennett’s *A Book of Virtues* (Bennett, 1993) is a more recent example of a character-based ethics very similar to Greek ethics. The central term of Greek ethics, *ethike arête*, is usually translated as “virtue”—the literal meaning is “excellence of character.” “Good character traits” is probably the nearest translation. Bennett’s list of virtues or good character traits includes: self-discipline, compassion, responsibility, friendship, work, courage, perseverance, honesty, loyalty, and faith. His selection of virtues overlaps with the classic Greek virtues or good character traits. Plato’s list was: courage, temperance, wisdom, and justice. (Plato, 360 BCE). Aristotle added liberality, pride, good temper, friendliness, truthfulness, and ready wit. Although all of these—Plato’s, Aristotle’s, and Bennett’s—are good character traits to have, having them doesn’t answer many important questions about what actions to do, especially when virtues conflict. Is perseverance in constructing a computer

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virus a good thing? Clearly the rightness or wrongness of the action in which we are persevering is very important. Or what about loyalty to an organization ripping off poor people? Here honesty (and compassion) may be more important than loyalty and responsibility. Indeed, Bennett's list omits justice, considered the most important virtue by Plato. Since justice is primarily a virtue of institutions rather than individuals, Bennett's list leaves out issues about how well society is arranged. We have made some progress on these issues since Greek times.¹

The point is that character-based ethics is incomplete. Bennett himself, in replying to critics of his compulsive gambling behavior, seems to believe that as long as an individual has the "virtues," that is, the good character traits, then other actions are irrelevant. Most of the rest of us in these non-classic-Greek times believe otherwise. Nowadays, "ethics" is an inclusive term for concerns also referred to as "morality," "value," and "justice." Besides character, ethics in this inclusive sense is also concerned with the rightness and wrongness of actions, the value or goodness of things and situations, and with the justness of institutions. The basic terms of ethics are: right, good, and just.

Right, Good, Just

Although the Greek emphasis on character as the basis of ethics has not disappeared, our emphasis is much more upon action. We believe that some actions are right or wrong regardless of their impact on character. Child pornography is an extreme example. Less extreme but more important everyday examples include keeping a promise or other agreement and fulfilling a contract. What we now call *professional ethics* concerns itself almost entirely with what actions are right or wrong for a professional to do. Thus, an IT professional is called upon to deliver on contracts on time and to protect the proprietary information of his employer or client. The focus moves from character to action and from good or bad character to right or wrong action. So in addition to an explanation of what constitutes good or bad character, contemporary ethics must also provide an explanation of what makes actions right or wrong.

Along with the rightness and wrongness of actions, concerns about what we should do are greatly influenced by considerations of value. We (and the ancient Greeks) also need a *theory of value*, an explanation of why some things are

good and others are not. Indeed, a very plausible theory of right is that the right thing to do is what produces the greatest good for the greatest number. This theory is called *utilitarianism* (Mill, 1863).²

The other important term included in ethics is revealed by the consideration that people, for example, the employees of a firm or the citizens of a state, can be of good character and do the right thing and yet keep in motion *institutions* of great evil. Thus, the morality of institutions needs to be assessed as well. This insight comes not only through our experience with genocide in the 20th century, but has been available since classic Greek times. Plato, for example, even thought that ethics for the individual was actually derived from the correct order of institutions in a society (Plato, 350 BCE). In recent times, we still see the need to assess whether institutions are just or unjust. So we need an explanation of how to determine the justice or injustice of institutions.

Justice, goodness, and rightness are thus the key areas of ethics.

The Rational Basis of Ethics

When I raised the question of “who is to say what is right and wrong?” in Chapter I, the answer was “The person with the most overall view using the highest level principles.”³ A principle is not higher level because someone says it is, but rather because, in fact, it can settle conflicts irresolvable by lower level principles. Indeed, ethical relativism, the view that all ethical views are equally good, is a view that makes social cooperation either fragile or impossible. Since, as social animals, most of us could not survive without social cooperation, ethical relativism is only possible as very much a minority view. Therefore, it can hardly be a universal high-level principle.

These considerations are the basis for a rational foundation for ethics. We find that we have conflicting principles of action and that there are higher level principles that can resolve these conflicts only if we treat them as overriding the lower level principles. For example, considerations of self-interest are trumped by principles yielding cooperative benefits only if most everyone follows them. To get the benefits of agreements, everyone must agree to keep agreements, at least most of the time, even when they could do better for themselves otherwise.

It is important to see the nature of the conflict between interests and higher level ethical principles. It can always look as though one can do better by not being ethical, and thus that ethics demands a departure from rationality. The situation

is discussed in Game Theory, the theory of rational choices. The name of the type of choice situation is the Prisoner's Dilemma. The classic story that gives it that name is this: A prosecutor is sure that two prisoners are guilty, but does not have enough evidence to convict them. He offers each of them (separately) a deal: If neither confesses, they will receive medium sentences. If both confess, they will receive light sentences. If one prisoner confesses, he will be treated more leniently than in any other case, but the non-confessing prisoner will receive a maximum sentence (Luce & Raiffa, 1957). The situation can be represented as a *payoff matrix* (see Figure 1).

The pairs of numbers give Prisoner A's and then Prisoner B's ranking of the outcome. Thus, if Prisoner A confesses and Prisoner B does not, Prisoner A gets his first choice outcome (most lenient sentence) and Prisoner B gets his worst choice outcome (maximum sentence).

The payoff matrix applies unchanged to most situations in which there is a higher level ethical principle providing cooperative benefits, and the choice is to observe that principle or not to observe and act on self-interest instead (see Figure 2)⁴.

What the payoff matrix reflects is that one can always do better from a selfish or self-interested point of view if everyone else obeys the (cooperative ethical) principle but you do not. For example, obeying traffic signals. If I obey, I may have to wait extra time. But if I am thinking in a purely self-interested (selfish) manner, I may go through the red light when it looks safe to me. I am attempting to avoid whatever disadvantage or burden there is for obeying and, at the same

Figure 1.

| | Prisoner A confesses | Prisoner A does not confess |
|-----------------------------|----------------------|-----------------------------|
| Prisoner B confesses | (2,2) | (4,1) |
| Prisoner B does not confess | (1,4) | (3,3) |

Figure 2.

| | Person A obeys principle | Person A disobeys (acts selfishly) |
|------------------------------------|--------------------------|------------------------------------|
| Person B obeys principle | (2,2) | (4,1) |
| Person B disobeys (acts selfishly) | (1,4) | (3,3) |

time, get the benefit of the cooperative principle. Of course, the rub is that if everyone acts this way, the cooperative principle with its cooperative benefits is no longer available—we are at alternative (3,3), which means everyone is *collectively* worse off than if everyone obeyed (2,2). Therefore, the only way we can have ethical principles is if we treat principles that are cooperatively rational (produce 2,2 as opposed to 3,3) as a higher priority than considerations of self-interest (Schultz, 1971). A more extreme but perhaps more compelling example is that we agree not to use deadly force against each other and relegate the use of deadly force to a sovereign. The philosopher Hobbes (1651) thought this agreement was the essential social contract that removes us from a state of nature, described by Hobbes as a “war of all against all,” guaranteeing that our lives will be “solitary, poore, nasty, brutish and short” (Hobbes, 1651, Ch. XIII).

People taking advantage of cooperative schemes are called “free riders.” Although enforceable penalties help with free riders and may sometimes be necessary, they reduce cooperative benefits. And, in general, people expect to obey ethical principles even though there may be no obvious or immediate penalties.

The reasoning involved in giving principles yielding cooperative benefit higher priority than self-interest can be applied at higher levels: Whenever principles conflict for a type of action, there is the possibility of higher level principles resolving the conflict in a way that adds value. Thus, there is the possibility of higher level principles for the behavior of nations that add value if they are treated as higher level. Without such principles, we are left with wars, which are rarely in any society’s interest.

The rational basis for ethics is thus the principle of higher level principles. It states that, other things being equal, it is rational to follow a higher level principle when that principle needs to be treated that way in order to resolve conflicts between lower level principles (Schultz, 1971). “Other things being equal” includes the reasonableness of other principles already being followed and the likelihood of the principle being publicly adopted. The task of ethics, so conceived, is to discover, formulate, and promulgate such a system of principles. It is a task we human beings began at least 2500 years ago, and we have made some progress. As we rapidly expand the scope of our powers of action through technology and information technology, one can hope that our progress in our ability to understand how to use these powers in the highest and best ways will keep pace.

Theories of Right: Intuitionist vs. End-Based vs. Duty-Based

So what makes an action right? There are three kinds of theories of right action: intuitionist, end-based, and duty-based. The first theory of right, intuitionism, is actually a non-theory. It says that there is no good explanation of right and wrong. Nevertheless, we have strong intuitive feelings about what is right and wrong that need no justification. The Ten Commandments, taken on their own, are an intuitionist theory. Two major difficulties with intuitionism are, first, that it is very unsatisfying just to be told that certain actions are right or wrong with no further justification. Second, when different kinds of right action conflict, we have no way of deciding priorities. If we are told: Honor thy father and mother, and also told: Do not steal, then what do we do if our father orders us to steal? For example, in an episode of the TV show *The Simpsons* dealing with the Ten Commandments, Homer (the father) has stolen cable TV access. His daughter Lisa's spiritual advisor reminds her that to turn her father in would violate the commandment to honor thy father and mother (Pepoon, 1991). The answer may be obvious to us that the command "Do not steal" has precedence, but if so, we are using something in addition to an intuitive list of wrong actions to decide.

End-based theories of right action simplify things by reducing considerations of right action to considerations of pursuing some end, usually goodness. A very common formula, *utilitarianism*, has much plausibility: Act so as to produce the greatest amount of good for the greatest number (Utilitarian Principle). For how could it possibly be wrong to do the action that produces the greatest good? How could it possibly be right to do an action that produces less good when you could have done better?

Although a plausible idea, utilitarianism suffers from two major difficulties. One is that if we consider actions in isolation from one another, it is easy for a utilitarian to break promises or fail to fulfill contracts when more good would be produced in that case. Breaking copy protection to give software to a needy organization doing good for homeless people seems acceptable on utilitarian grounds. The trouble is that then institutions that allow us to cooperate, to live and work together, would disintegrate. If, in individual cases, breaking copy protection may produce more good, we cannot realize the overall good of not allowing copying and thus providing an environment for software development. Thus, important goods are not available unless we consider ourselves bound to

follow certain rules. Considerations like these are important in the discussion of copyright and piracy in Chapter IX.

But utilitarianism can achieve these goods if it is considered as a theory of just institutions rather than individual acts. Then, one is still bound by social rules governing the institutions of keeping agreements and fulfilling contracts even though more good might be done in the individual case by breaking the social rule. One does actions not because the individual actions produce the greatest amount of good, but because the right action is to follow social rules that produce the greatest amount of good. This theory is called *rule utilitarianism*.

But how do we tell which rules these are? The second major difficulty is that summing goodness over individuals in any reasonable way has proved to be impossible. Therefore, the notion of the greatest good for the greatest number can only serve as a metaphor. It simply can't be made useably precise (Arrow, 1951).⁵

The major alternative to end-based theories of right action is a duty-based theory. Duty-based theories insist that rightness is independent of goodness. Perhaps the most developed duty-based theory is due to the philosopher Immanuel Kant, founded on his *Categorical Imperative* (Kant, 1785). Following the Categorical Imperative, one acts on principles that could be willed to be universal law. For example, making an agreement you have no intention of keeping could not be willed to be universal law because then no one would make agreements. The biblical Golden Rule, do unto others as you would have them do unto you, is a similar but less formal version of Kant's principle.

There are a number of superficial criticisms of Kant's principle, mainly about technicalities in its wording and application. It is important in Kant's theory that what is judged for rightness or wrongness is your action together with its motive. The test of rightness is whether your action *as done from that motive* could be made a universal principle of action (Nell, 1975). Therefore, Kant's principle, correctly understood, does not allow "tailoring" the action to the circumstances. For example, "I will fail to keep agreements only to people without the resources to sue," when your agreement is with people without the resources to sue, is not a legitimate application of Kant's principle. (Insurance companies would, therefore, sometimes be in violation of Kant's principle.)

Kant's principle would handle the previous case of breaking copy protection to give software to a needy organization doing good for homeless people by a careful (self-) examination of motives. Is my principle to do good in a particular

case regardless of the social rules? Everyone's acting on that principle will result in there being no rules and thus no software and thus no opportunity to break copy protection. This cannot be a right action with that motive. However, if my principle is to break the social rule only in cases where great harm would otherwise occur, this could be a right action. For example, breaking an encryption to obtain medical information needed immediately to save someone's life would clearly be the right thing to do. The tricky thing is to estimate the relative consequences. It is important to consider actual social rules, and there is clearly a presumption that they are not to be broken lightly.

Frequently, the consideration of *publicity* can provide guidance in using Kant's principle. *Publicity* requires that everyone concerned be aware of the principle you are using. This immediately rules out exceptions to principles that can't be publicized because those not granted the exception would know they had been unjustly treated. For example, a student does not satisfy a requirement for graduation but is granted a diploma on the condition that he is not to tell anyone that the exemption was made. Kant's principle is clearly not satisfied.

Kant has little guidance for what to do when right actions conflict, except to say that the stronger ground of obligation has precedence (Kant, 1797b). However, he doesn't give directions on how to determine this. Therefore, in this respect, Kant's theory of right action is incomplete and needs the addition of a theory of just social rules, especially how they fit together into a system without conflicts. Kant has such a theory in his *Metaphysical Elements of Justice* (Kant, 1797a), but rather than discuss Kant's theory of justice, I will use a modern update by the 20th century philosopher, John Rawls (Rawls, 1999a).

Both rule utilitarianism and Kant's principle offer similar and often identical answers to the questions of right and wrong, but there are cases in which they differ. If there are grounds for deciding between them, it lies in the nature of the contribution each makes to a theory of justice, of what systems of social rules deserve our obedience. We will return to the question of justice shortly.

Some think that the attempt to reduce ethics to rational calculation is misguided. The 18th century philosopher, David Hume, for example, thought that ethics would not be possible without feelings of sympathy of one human being for another (Hume, 1739, 1751). Without these feelings, it would not be possible for us to include others within the sphere of our own interests.⁶ The claim is that formal ethical theories, especially Kant's, ignore the importance of moral feeling. We are inclined to help other people not because we see that the principles of our action could be willed to be universal law, but because we feel

for other people's predicaments and are moved to help them (Baier, 1992, pp.56-58).

Kant (1797b, pp.451-453) does derive the duty of mutual aid from his principle. A principle of not helping others when they are in need could not be universal law because one would want such aid oneself when one was in need. Although this seems cold and unfeeling, Kant also discusses the role of feeling. Although moral feelings such as sympathy are important and need to be cultivated, they can't be the ground for the rightness of the action. Otherwise, one could avoid helping other people on the grounds that one simply didn't feel like it. One is probably a better person (good character again) if one has a robust set of moral feelings that help one make the correct ethical decisions and help one carry through one's ethical decisions. But such feelings are not the basis of rightness or goodness or justice. The feelings follow from rightness, goodness, and justice as determined by rational principles.

Rights, Duties, Obligations

Several other common ethical terms can be defined starting from right and wrong action. *Duties* and *obligations* are actions it would be *wrong* not to do. *Duties* come about just from the nature of the situation one is in, for example, being a parent. Whereas *obligations* come about because of something one has done to obligate oneself, for example, sign a contract or accept a benefit. A person has a *right* to do something or have something when it would be *wrong* to prevent him from doing the action or having the object.

Duties and obligations have different characteristics. Normally, obligations require one to do a specific action or set of actions. For example, if I have an obligation to correct the faults in my installation of your network, then that is the action I am ethically required to do. But if I have a duty as an IT professional to help underfunded educational facilities, it is, to a large extent, my choice which educational facilities I help. I obvious am not ethically required to help *all* educational facilities. I cannot be required to help them all because my cost would be too great.⁷ This is very often the limiting proviso on duties—the actions mentioned in a duty are required only if the cost to oneself is not too great⁸ (Kant 1797b, p.392).

Because each of these ethical items can easily conflict, they should always be regarded as derived from an acceptable theory of right and wrong action. It is

not uncommon for people to think that, because they have a right to do something, that is the end of the story, ethically speaking. Whereas a right—which is based on reasons for not preventing a person from doing an action—may have to be weighed against reasons for not preventing other people from doing conflicting actions. I may have a right to buy a competing software company, but that right may be outweighed by society's right to prevent monopolies. It is clearer to work in terms of right and wrong than rights. If society does have a right to prevent monopolies, one needs to recognize that the operative ethical principle is that it is wrong to create monopolies and that individual rights to acquire property can be superseded.⁹

Theory of Value

In a way, it is too bad that it is so difficult to make utilitarianism a practical guide to right action, because then two of the key ethical concepts—rightness and justice—would be reduced in a relatively simple way to goodness. And goodness or value is easier to explain.

To understand goodness, we must look to interests considered from a point of view. A good or valuable object is one that, to a greater degree than average, answers to the interests one has in the object from a certain point of view.¹⁰ Thus, a good disk drive is one that answers to the interests of a computer user in safely storing information. Very often, the objects that we deal with are actually defined in terms of functions, and then the value of that object simply consists in its performing that function to a greater degree than average; that is, good antivirus software must prevent and destroy viruses, a good keyboard cleaner must clean keyboards well, and so on.

Very often, we simply assume that the point of view from which value is to be evaluated is our own or that of our group. Most disagreements about value are, in fact, disagreements about the appropriate point of view to use for evaluation. But within a point of view, there is nothing especially subjective about value. Whether something is valuable from a point of view is a matter of fact.

One especially important set of values are *enabling* values, for example, health, education, and wealth. We must have these things to a certain level if we are going to be able to pursue any interests at all.¹¹ They need not lead to the fulfillment of some particular ends or realization of some particular function. These enabling values are especially important in considering the justice of

social arrangements, because if people are unable to have them, their ability to live satisfactory lives is greatly reduced. They thus provide a basic measure of whether people are better or worse off. In the social contract theory of justice we will next consider, enabling values play a critical role.

Conflicting Principles and Priorities

Ethical problems first arise because there are conflicts between different interests that cannot be resolved on the level of interests alone. Higher level principles need to be applied. We have seen that the role of ethical principles of various levels is to resolve conflicts between lower level principles that cannot be resolved on the same level as the conflicting principles.

Thus, individuals have their own interests. There might actually be no need for ethics if everyone could get everything they wanted without conflict with other people. But we live in a world (and in societies) in which this is not true. There are conflicts of interest. These need to be resolved in a fair way. It is also to everyone's advantage to have procedures for handling recurring conflicts that people accept. This gives rise to principles involving negotiated agreements and keeping them. Enough people see that reasons for keeping cooperative agreement have to be given higher priority than reasons of individual interest for these principles to operate at all.

Actually, it is probably incorrect even to think that human beings have any alternative but to live in society. Human beings have evolved as social animals, and this means it is difficult or impossible for them to survive outside of a society. However, there are still questions about the constitution of societies. Individuals can sometimes join a different society or consider alternative arrangements of social rules for their own society. But, just as all individuals can't get everything they want, no one set of social rules satisfies everyone's interests perfectly. The question is how to handle cases in which generally beneficial social rules are worse than they could be for some members of a society.

There are two conflicting considerations in these cases. First, the fact that there is a grievance against the social rules isn't enough by itself to release people from the obligation to obey the rules. The individual can't *directly* opt out of social rules. (Although in extreme circumstances they can; for example, if the society is killing its own members, most obligations to follow the rules are void.) And, second, ultimately a just society is for the individual, so ultimately the

individuals in the society have the right (and sometimes the obligation) to decide that some rules should no longer be followed. John Locke (1690), the strongest influence on the founding fathers of the United States, put this point very strongly: “Who shall be judge whether [government] act contrary to their trust?...The people shall be judge” (Chapter XIX).

Once again, if this conflict is going to be resolved in an ethical way, there must be higher level principles to which to appeal. In the case of a constitutional democracy, higher level appeals can be directed to the electorate, through changing legislators or through initiatives, or to the constitution through the court system. But it certainly has been the experience in constitutional democracies and in the United States that the constitution itself has been flawed and requires revision, or that the electorate itself is unresponsive. The prime example is slavery and the ensuing treatment of African-Americans. The principles appealed to in cases where the regular institutional paths have failed to address the issue are the principles of justice behind the constitution.

In cases of civil disobedience, perhaps most clearly in the United States as practiced by Martin Luther King, Jr., the law is broken not on the grounds that the lawbreakers now have the right to break any law or even particular laws, but rather to address the sense of justice, the commitment of the people to the principles underlying the laws (King, 1963). It should be noted again, that although majority rule is a good choice of procedure to make a group decision, it by no means guarantees a reasonable or fair decision, and there is no reason to change one’s beliefs just because of what the majority thinks.¹² There are actually built-in guarantees that systems of social rules won’t work perfectly.

Also, if it is decided that the constitution needs to be revised, the appeal has to be to principles above and beyond the constitution, so once again we need to appeal to principles deciding what institutions and social arrangements are truly just and which are not. We now turn to the principles of justice.

A Theory of Justice

To determine the justice of institutions and systems of social rules, we also need to draw on the concepts of right, wrong, and value. Assessments of justice are based on our individual ideas of right and wrong and assume that we are able to assess values more-or-less correctly. The theory of justice of this book is John Rawls’ elaboration of the social contract theory underlying the society of

the United States (Rawls, 1999a). The basic idea of a social contract is that a justly ordered society is one to which individuals can freely decide to obligate themselves.¹³ This idea is clearly expressed by the Declaration of Independence of the United States of 1776.

But if we take this idea seriously, our decision will very likely be biased if we base it on our current situation. Hence, Rawls' major addition is to say that the decision must be made prior to being in society, without knowledge of what our position will be in society, and it will be a decision we will be obligated to stick to and expect others to make and stick to as well. Rawls calls this decision about the basic principles of society the *original position*. It is never actually a position we are in, because we are all born into some society or other, yet it is a position we can return to in order to evaluate our institutions.¹⁴

So, what principles would be chosen? Rule utilitarianism is a plausible candidate, that is, act on the set of rules likely to produce the greatest amount of good for the greatest number. But what if in society you end up as a slave? A rule-utilitarian, 19th-century, Southern plantation owner could (and did) feel fine with a system producing perhaps the greatest good for the greatest number, even if it did require some to be deprived of basic liberties. In this respect, the Declaration of Independence and the Bill of Rights of the U.S. Constitution are non-rule utilitarian. They insist that each individual has basic liberties that are not to be compromised or traded off for other benefits. Rawls (1999a) calls this the First Principle of Justice or the Greatest Equal Liberty; that is, society is to be arranged so that all members have the greatest equal liberty possible for all, including fair equality of opportunity.

For Americans, there should be no argument that this principle would be chosen above all others to govern society's arrangements. In addition to the basic freedoms, such as freedom of speech, assembly, religion, and so on, it includes equality of opportunity. Thus, society's rules are not biased against anyone in it and allow all to pursue their interests and realize their abilities.¹⁵

The Second Principle of Justice Rawls (1999a) calls the Difference Principle: economic inequalities in society are justified insofar as they make members of the least advantaged social class, better off than if there were no inequality. "Better off" is to be measured against enabling values affected by the social structure that reflect an individual's life prospects. Rawls (1999a, p. 78) cites authority, income, and wealth as those enabling values.

Rawls (1999a) also indicates we should apply the Difference Principle to the background institutions, the major institutions that determine people's life

prospects. Certainly, a market economy, especially with respect to employment, could be part of this background structure. When applying the Difference Principle, we consider the effects of the background structure on the life prospects of representatives from each relevant socioeconomic class—for example laborers, white-collar workers, managers, employers, corporate officers, investors, and so on. Then, of the efficient background structures favoring one class over another, choose the one that makes the worst-off class best off (Rawls 1999a, sections 2, 16). The social contract basis for this principle is straightforward: If you are entering a society with no knowledge of your specific place in that society, the Difference Principle guarantees that you will be no worse off than you need be to keep the society functioning.

Rawls (2001) indicated at one time that the second principle could be replaced by Rule Utilitarianism, with a minimum; in other words, not any economic distribution would be allowed, but only those with an acceptable minimum.¹⁶ So, in an oversimplified example, giving slaves their freedom would be an advance in the justness of society—a serious violation of the Greatest Equal Freedom Principle would be corrected. But if the slaves are kept in the same, or worse, economic situation, then the Difference Principle may be violated. We can understand ongoing debates in terms of these principles. Affirmative action, for example, can be seen both as a violation of the basic freedoms of some (those denied admission in order to allow minorities to attend law school, for example) or an attempt to create fair equality of opportunity for others (minorities denied good public education are given compensatory treatment). Even though there is bitter disagreement, one can see how both sides of this debate can be framed in terms of the two principles of justice.

The same is true for the range of social and ethical issues of IT. Discussions about offshoring often justify the practice in terms of benefits for all. But as we have seen, the contention that all will benefit is hardly the end of the ethical discussion. Even leaving aside the difficulty in establishing this contention, there are still issues about what society we are considering. At this point, for all the talk of a global economy, we don't have anything like a global society with free and equal competitors in that economy. There are consequences for ethical behavior in this situation.

A market economy is a very good candidate to be a background institution in a society obeying the Difference Principle. A market economy's efficiency—no one is able to be better off without someone else being worse off—goes a long way toward satisfying the Difference Principle. Efficiency in a market economy means that there is no slack. And no administrative overhead means

that there are more resources to distribute. But efficiency is not all there is to the Difference Principle.

Economists and social theorists accept that justice (or equity) is more than efficiency.¹⁷ In fact, as Rawls (1999a) points out, there can be many efficient distributions, even including absurd ones where someone has all the economic goods and everyone else has nothing. If Rupert Murdoch were to achieve this situation (he seems to be trying), it would be efficient—he would lose if any economic goods were transferred to anyone else. American society is not based upon a market economy as the primary ethical justification for social rules, even in economic matters. A market economy is a good candidate to be an institution in a just society because of its efficiency and its compatibility with the Principle of Greatest Equal Freedom. But without some social constraints, an unregulated market economy can allow monopolies, which have no competitive pressure to be efficient or to respond to the needs of customers or to price goods in a fair way. This issue is discussed in connection with Microsoft in Chapter V, Justice in a Market Economy.

There is a great deal of evidence that Rawls' Difference Principle is in fact accepted as a basis for the discussion of public policy by both conservatives and liberals in the United States (Rawls, 1999a). Liberal attempts to improve the lot of those worst off are usually challenged by conservatives on the basis that these attempts will make the worst off even less well off. Two examples: attempts to raise the minimum wage are challenged with the claim that employers will be able to hire less people; and attempts to require home developers to build a certain percentage of low-income housing are challenged on the grounds that developers will decide not to develop rather than cut their profits (Svorny, 2004). In both cases, the conservative argument is that proposals intended to make the worst off better off will instead make them still worse off. Regardless of whether these claims are true—and there is a big difference between whether we consider small businesses or multibillion-dollar corporations—both conservatives and liberals in these debates are clearly accepting the Difference Principle as a basis for discussion.

So there is a pretty good case that Rawls' two principles of justice are indeed the ones most Americans accept as higher level principles (Rawls, 1999a). Recall that most Americans are very unwilling to trade off freedom for economic or other benefits. Also, even defenders of offshoring don't simply defend it on the ground that it raises average utility; rather, the argument is that everyone will be better off. So I believe some version of the Difference Principle, making the worst off best off, is being appealed to.

But the principles of justice are sometimes not followed. Rawls (1993) made a critically important change to his original statement of the principles of justice during the 1980s. It is that in a constitutional democracy, such as the United States with freedom of opinion and religion, we can't expect agreement on what Rawls calls *comprehensive doctrines*, that is, doctrines about the ultimate nature of man, or even moral doctrines (Rawls, 1993, pp. 12-15). Such a society must be pluralistic in these matters. Consequently, attempts by religions to embed their own comprehensive doctrines in the constitution are a serious danger to a free society. For example, those proposing a constitutional amendment to prohibit gay marriage, presumably on religious grounds, are a serious threat to the basis of American society.

I have made very little mention of religion as the basis for ethics (besides mentioning the Golden Rule). The difficulty is that, although religion has historically been the repository of much ethical knowledge, the ethical knowledge is usually thoroughly mixed with principles and commands that require commitment to special religious practices. For example, not going to Mass is not wrong for non-Catholics. In some cases, this can lead to a de-emphasis of important ethical principles in favor of principles more central to religious observances. Religion also can add sanctions such as going to Hell for unethical behavior, but these sanctions apply across the board to internal religious requirements and so are no special help to being ethical. Also, as we just saw above, fundamentalism can be a serious threat to a just society. So it is really an open question nowadays to what extent religion is an aid to ethical behavior. In the spirit of Rawls, a democratic pluralist society requires tolerance of all religions, but on the condition that those religions acknowledge that tolerance of other comprehensive doctrines is a condition of their being tolerated themselves (Rawls, 1999a, section 35).

There remain two further levels of principle because there are two further kinds of conflicts that ethics needs to address: one is conflict between societies; and the second is conflict between human needs and the environment. The ethical principles involved will be discussed in detail in later chapters: Principles concerning relations between societies will be discussed in Chapter VII, Offshoring as an Ethical Issue; and principles concerning human needs and the environment will be discussed in Part IV, Ultimate Questions. Here is a brief indication of what those additional principles look like.

In his later work *The Law of Peoples*, Rawls (1999b) considers how to extend the principles of justice to cover the international situation. His account has several distinctive features. First, a social contract view of international justice

requires principles to be chosen, not by the political officials of each nation or nation state, but by *peoples*. On a social contract view, members of a given social group are the source of state and national authority, not the other way around. Rawls notes that this view differs from most discussions of international law since the 1600s.

Rawls (1999b) constructs a second social contract to govern relations between peoples. The principles chosen he calls the Law of Peoples. The basis for the second social contract is that the representatives of any society must be able to agree to principles without knowing how their society would be favored or disfavored by those principles. Once again, the agreement is fair, but this time it is between societies rather than individuals.

The principles that Rawls (1999b) claims would be chosen to regulate relations between societies are analogous to those principles that would be chosen by individuals to regulate their own societies. In priority order, they are:

1. They honor human rights, respect each others freedom, and respect cooperative agreements made between them.
2. Peoples do not intervene in each others affairs and only make war in self-defense. (These principles are analogous to the Greatest Equal Freedom Principle).
3. Peoples have a duty to assist other people living under unfavorable conditions.¹⁸ (This principle is analogous to the Difference Principle.)

Although the United States was a model for the Principles of Justice as a social contract of free and equal people within a particular society, it unfortunately fails as a model for the Law of Peoples as a social contract of free and equal societies. The United States has never endorsed the Universal Declaration of Human Rights (Chomsky, 1996). And, in the case of the recent war with Iraq, it has abandoned the principle of the Law of Peoples concerning war. If we accept the principles contained in the Law of Peoples as ethical principles, then war is justified only in self-defense. It follows that this war is unethical. It is grotesque to propose that destroying the infrastructure of a country, as in Iraq, has much to do with helping them. In any case, helping a country cannot be an excuse for violating the first two principles of respecting freedom and only making war in self-defense.

Finally, there are ethical principles concerning conflicts between human needs and the environment. Many of the relevant issues are discussed in Chapter XII, The Ultimate Value of Technology, and Chapter XIII, The Ultimate Value of information technology. There is again a choice of principles, and which are chosen depends on high-level beliefs about human technology and its relation to nature. If one believes that technology can correct its own errors in a timely manner and that a policy of unregulated technological progress is most conducive to overall human progress, then technological progress becomes the ultimate value and touchstone for policy. If one believes human technology has built-in unanticipated conflicts with the ecosystem, then what is called for is a policy of minimum mutilation of the ecosystem. The relevant point here is that the principles governing the overall utilization of technology, because of the far-reaching nature of that utilization, have to be on a higher level even than principles of justice and even those of principles of international justice.

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Endnotes

- ¹ For a similar criticism of Bennett's *Book of Virtues*, see <http://www.kellysite.net/bennett.htm>
- ² Earlier versions were developed by David Hume and Jeremy Bentham.
- ³ This is a restatement of one of Steve Markoff's principles, "The highest value has the most overall view."
- ⁴ The application of the matrix to ethical principles is due to David Gauthier (1967), "Morality and Advantage."
- ⁵ Kenneth Arrow won the Nobel Prize in 1972 by proving in his "general possibility theorem" that a consistent and very minimally just amalgamation of individual preferences is impossible. Such an amalgamation is called a "social choice." Utilitarianism as a usable theory would need to make such impossible social choices. Arrow's proof uses fairly abstract mathematics (theory of partial orderings) and is not accessible to non-mathematicians. For a brief (but still technical) account, see encyclopedia.thefreedictionary.com/Arrow's+theorem.
- ⁶ Other philosophers, notably the Logical Positivists centered in Vienna until Nazism forced their dispersal, thought that this emotive content was all that there was to ethics. In effect, all ethical judgments are similar to cheers or boos: Murder, boo! Or Unselfishness, yea! This view would make it nonsensical to debate ethical issues, as people have done for several thousand years at least. So there would need to be a very good reason for holding this radical view, and there really isn't. The Logical Positivists generalized on a narrow view of science, which they took to be a standard of meaningfulness. For them, since ethical judgments didn't meet these narrow standards (direct verification by experience), they had to be explained some other way. However, theoretical scientific statements are rarely directly verifiable by experience. Also, the positivist standard of meaningfulness isn't verified by experience either. So on their own terms, the positivists were really saying, Verification, yea!
- ⁷ These distinctions follow those drawn by Rawls (1999a, Sections 18 and 19).
- ⁸ The cost would be too great if doing the action would interfere with your ability to fulfill your duties and obligations. That includes keeping up one's own well-being. For example, working for charitable organizations to such an extent that one's health is damaged would be too great a cost.

- ⁹ See Chapter V, Justice in a Market Economy.
- ¹⁰ Similar versions of this definition of value appear in Aristotle (350 BCE), Ziff (1960), and Rawls (1999a).
- ¹¹ Rawls call these *primary goods*.
- ¹² See Arrow (1951) and Sen (1961). The problem is that majority rule violates some minimal conditions on fair and reasonable group decisions. An even worse problem is that all procedures for group decisions violate the same minimal conditions. This result is called the Arrow Possibility Theorem. See also Endnote 5, this chapter.
- ¹³ Various influential early versions of social contract theory include Hobbes (1651), Locke (1690), and Rousseau (1762).
- ¹⁴ The original position is not unlike other positions in which our knowledge and interests are deliberately disregarded, for example, being a juror.
- ¹⁵ Rawls includes fair equality of opportunity under the second principle, but it seems to me to belong with the freedoms of the first principle which guarantee an unbiased starting place in society.
- ¹⁶ Rawls later feels that the “social minimum” cannot be clearly enough specified to provide a workable basis for assessing the justice of institutions, and, therefore, the Difference Principle without a minimum will yield better results (Rawls, 2001, 278-9). My own view is that the absence of a clear minimum will make the justification of the principles as reflecting a social contract much more difficult. Perhaps, as Rawls argues, the Difference Principle always does better for the least advantaged than principles including a minimum (Rawls, 2001, 61-65). But the considerations establishing this are so esoteric that their chances of being applied or understood in practice are not good.
- ¹⁷ This condition is known by economists as *Pareto optimality*. For Rawls’ discussion of Pareto optimality and the Difference Principle, see Rawls (1999a, Sections 12 and 13).
- ¹⁸ In *Law of Peoples*, Rawls (1999b, pp. 35-38) states eight principles. “No World State” is not itself regarded as a principle, and I have condensed a few others. The one omission I find striking is agreement that there be a mechanism for dealing with violations of the principles.