

HOW SHOULD WE THINK ABOUT ETHICAL ISSUES? METHOD AND JUSTIFICATION

Learning Outcomes: In this lecture, you'll learn to:

1. Explain the differences between the top-down, bottom-up, and principlism approach to bioethics.
2. Evaluate the method of reflective equilibrium.
3. Reflect on the relationship between metaethical questions and practical ethical decision-making.

In *Principles of Biomedical Ethics*, Beauchamp and Childress adopt an approach called principlism. On this approach, there are multiple equally weighted ethical principles (autonomy, nonmaleficence, beneficence, and justice) that hold *prima facie* (“at first glance”, or “unless there is some reason to think that they don’t”). These principles are based on the common morality, or the set of ethical norms that *every* moral person must commit to. As we’ve seen, B-C think that principlism can cover many of the most important issues of bioethics (such as abortion, assisted suicide, animal rights, and so on), and can also incorporate the best aspects of more traditional ethical theories (utilitarianism, deontology, rights theory, and virtue ethics).

In this lecture, we’ll discuss some other ways of thinking about ethics. In particular, we’ll focus on what it means for an ethical claim to be **justified**, or *supported by sufficient reasons*. In ethical discourse, it is not enough just to have *some* reasons, or even some *good* reasons; one must have sufficient reasons for thinking that your claim is the *correct* claim, and that those who disagree with it are *incorrect*. In order to “know how to be ethical” one must not only act in the right way, but also be able to *defend* this way of acting. One must know the *reasons*¹.

ALTERNATIVE 1: TOP DOWN APPROACH

One alternative approach to ethical justification is the **top down** approach, which consists of “applying” completely general ethical principles, rules, or theories to particular cases of interest. Two examples are as follows:

- **Simple Hippocratic Oath.** “Medical professionals should never, under any circumstances, harm patients [absolute principle, NOT *prima facie*]. Abortion involves causing harm. So, abortion is immoral.”
- **Act Utilitarianism.** “An ethical person should always maximize net well being [ethical theory]. Involuntary euthanasia of sick, old people who take up lots of medical resources maximizes net well being. So, we should euthanize sick, old people.”²

In bioethics, the one popular version of the top-down approach is defended by Bernard Gert and Danner Clouser, who have defended their approach in a series of articles and books³. In *Bioethics: A Systematic approach*, they defend “**morality as a public system**” (which they argue is based on the common morality) consisting of the following rules, which are held to be *absolute*:

The first five moral rules prohibit directly causing the five harms.

- (1) *Do not kill (includes causing permanent loss of consciousness).*
- (2) *Do not cause pain (includes causing mental pain, e.g., sadness and anxiety).*
- (3) *Do not disable (more precisely, do not cause loss of physical, mental, or volitional abilities).*
- (4) *Do not deprive of freedom (includes freedom from being acted upon as well as depriving one of the opportunity to act).*
- (5) *Do not deprive of pleasure (includes sources of pleasure).*

The second five moral rules include those rules that, when not followed in particular cases, usually but not always cause harm, and always result in harm being suffered when they are not generally followed.

- (1) *Do not deceive (includes more than lying).*
- (2) *Keep your promise (equivalent to “Do not break your promise”).*
- (3) *Do not cheat (primarily involves violating rules of a voluntary activity, e.g., a game).*
- (4) *Obey the law (equivalent to “Do not break the law”).*
- (5) *Do your duty (equivalent to “Do not neglect your duty”).*

¹¹ The debates here fall under the general heading of “metaethics,” which is a huge field. If you’re interested in debates about the foundations of the ethics, you can start with: Richmond Campbell, “Moral Epistemology,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2015, 2015, <https://plato.stanford.edu/archives/win2015/entries/moral-epistemology/>; Geoff Sayre-McCord, “Metaethics,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2014, 2014, <https://plato.stanford.edu/archives/sum2014/entries/metaethics/>.

²² This isn’t something most utilitarians would agree with! For an example of how act utilitarianism can be applied to ethical issues, see Peter Singer, *Practical Ethics*, 3 edition (New York: Cambridge University Press, 2011).

³ Bernard Gert, Charles M Culver, and K. Danner Clouser, *Bioethics: A Systematic Approach* (New York: Oxford University Press, 2006); K. Danner Clouser and Bernard Gert, “A Critique of Principlism,” *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine* 15, no. 2 (April 1, 1990): 219–36, <https://doi.org/10.1093/jmp/15.2.219>.

Gert and Clouser argue that their system does a better job of (a) proving substantive ethical content instead of “empty names” (b) giving specific rules applicable to actual cases, and (c) avoiding potential cases of “conflict” between principles (as often happens in principlism). B-C argue that all of these claims are false, since (a) there is actually quite a bit of content to each principle (that’s why you have to read the whole textbook, and not just remember the principle’s names!), (b) no system, including that of Gert and Clouser, can actually make specific rules that can be mechanically applied to deal with complex real world cases, and (c) moral dilemmas (especially those arising from autonomy and beneficence, both of which Gert and Clouser say are “not real”) are simply a part of life. B-C note that the final rule “do your duty” can be interpreted as being very similar to their principle of beneficence.

ALTERNATIVE 2: THE BOTTOM UP APPROACH

According to this rehabilitated form of casuistry, the greatest confidence in our moral judgments resides not at the level of theory, where we endlessly disagree, but rather at the level of the case, where our intuitions often converge without the benefit of theory. More precisely, moral certitude (or our best approximation thereof) is to be found in so-called paradigm cases, where our intuitions are most strongly reinforced. Moral analysis of a given situation begins, then, with a scrupulous inventory of the particular facts of the case—i.e., the who, what, where, how much, for how long, etc.—on which our judgments so often eventually turn. This nexus of particulars is then compared with the details operative in one or more paradigm cases—i.e., clear-cut examples of right or wrong conduct. In bioethics, many of these paradigms are famous legal cases, such as the case of Karen Quinlan in the area of termination of treatment, or the infamous Tuskegee syphilis study in the area of research ethics. The farther the present case takes us from the decisive features of the paradigm, the less confidence we may have in our judgments. And so we traverse the moral landscape by means of triangulating between the present case and related paradigm cases.⁴

A second approach to ethical justification can be called the **bottom-up** approach, and it focuses primarily on *particular cases*. Historically, this approach has been known as **casuistry** or the **inductive** approach. The approach relies heavily on **arguments from analogy** and on **case studies**.

- Action 1 [the **paradigm case**] has features X, Y, and Z, and was morally OK (or morally wrong). Action 2 has features X, Y, and Z. So, action 2 is morally OK (or morally wrong).
- A competent person with a terminal illness in severe pain has the right to kill him- or herself [paradigm case]. So, the doctor of this patient has the right to assist in this killing [new case].

Defenders of this approach often emphasize the importance of taking history, culture, and context into account. They often argue that top-down approaches (which rely on simple theories and rules) are far too simplistic. They also note that while many people disagree on *theory*, they might still agree on particular *judgments*. So, for example, a Catholic ethicist, a Buddhist ethicist, and an atheist ethicist may disagree on the *reason* that is wrong to use children for dangerous research, but they still agree *that it is immoral*.

B-C agree that analogical reasoning (and case studies) are very important in ethical reasoning. However, they also note several important weaknesses of this approach. They conclude that it can’t function as a “stand-alone” method of ethical justification

- **“How does the justification of a moral judgment in a paradigm case or the choice of a paradigm case occur?”**
For the bottom-up approach to work, we need to be confident that we (1) have reached the right answers in paradigm cases, and (b) have a clear understanding sorts of *other* cases are “analogous” to these cases (and thus ought to be decided similarly). In some cases, this seems OK (the Supreme Court makes a good, clear decision, and everyone knows exactly what other cases this decision applies to). In other cases, however, there is considerable controversy over whether the decision was correct, or (if it was correct) it applies to the case we are currently interested in. In order to solve these problems, we need something like principles, rules or theories.
- **The method can easily be skewed by public opinion, or by biased descriptions/interpretations of cases.**
Applying this method assumes that paradigm cases got it right, and also that the case we are considering has been described/interpreted in the right way. It’s trivially true that people *feel* that “oh, it’s obvious these two cases are similar!”, but research has consistently shown that people are actually pretty bad at reasoning by analogy (we tend to see similarities where there aren’t any, or to ignore relevant differences). In short: this method simply makes it *too easy* to justify our preexisting biases or prejudices. While this incorporation of ethical principles doesn’t make this problem go away, it can help provide a valuable check against our “gut feelings.”

REFLECTIVE EQUILIBRIUM AS A MIDDLE WAY

B-C describe their own ethical methodology as a form of **reflective equilibrium**⁵. This method was first described by the political philosopher John Rawls in his book *A Theory of Justice*. Rawls describes this as follows:

⁴ John Arras, “Theory and Bioethics,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2016, 2016, <https://plato.stanford.edu/archives/win2016/entries/theory-bioethics/>.

⁵ Norman Daniels, “Reflective Equilibrium,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2018, 2018, <https://plato.stanford.edu/archives/fall2018/entries/reflective-equilibrium/>.

From the standpoint of moral theory, the best account of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium...[T]his state is one reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (and the corresponding conception).

B-C describe reflective equilibrium as the idea that “justification in ethics and political philosophy occurs through a reflective testing of moral beliefs, moral principles, judgments, and theoretical postulates with a goal of making them coherent.” The method begins with **considered judgments**, which are moral principles/beliefs that we are very confident in. For example, this might include things like:

- “Put the patient’s needs first” or “Do no harm” or “Don’t lie, except in exceptional cases”
- B-C argue that all of the judgments of the common morality should be treated as considered judgments, and should thus be revised only if there is VERY good reason to do so.
 - Why do B-C think this? (1) The common morality is widely accepted across all known cultures (the **empirical** justification), (2) all major ethical theories support its fundamental conclusions (the **normative** justification), and (3) it’s part of what it means to be “ethical.” In some sense, once you give up the common morality, you simply aren’t talking about ethics any more (the **conceptual** justification).

One then builds these core beliefs into a moral general set of principles or rules that can apply to *new* cases. In many cases, you will have to choose between (a) giving up on some of the ethical beliefs you had *before* starting to think about ethical theory, or (b) changing the ethical theory so that you can keep these beliefs. At the end (which you will never actually reach, since this is a lifelong process), your ethical beliefs, ethical principles/rules/theory, and factual beliefs about the world should be in **wide reflective equilibrium**.

They also note several potential drawbacks of reflective equilibrium: (a) by itself, it doesn’t tell you *which* considered judgments to start with (your own? The common morality?), (b) it’s very tough to assess “how well you are doing”, and (c) there may be certain elements of the common morality which simply don’t go together, no matter how hard we try to make them. If so, reflective equilibrium won’t be able to tell us much besides “you need to get rid of one of these things.” B-C emphasize that they do NOT think we will ever arrive at a nice, neat “common morality theory” that answers all of the ethical questions we can dream up.

REVIEW QUESTIONS

1. In your own words, how would described the difference between the top-down (deductive) approach, the bottom-up (inductive approach), and B-C’s model of “reflective equilibrium.”
2. Do you agree with B-C that principlism, with its focus on reflective equilibrium based on the common morality, is a better approach to justifying claims about ethics than the other two approaches? Why or why not?
3. Some recent critics have argued that reflective equilibrium gives too much weight to the “status quo” in that it starts by assuming that our “considered judgments” are more-or-less trustworthy (even though they might be subject to revision). For example, many European and American philosophers writing in the early 19th century *began* with the considered judgments that women were inferior to men, that black people were inferior to white people, that parents basically “owned their children,” and that massive redistribution of wealth from rich to poor was morally wrong. While reflective equilibrium might lead them to reconsider *some* of these ideas, it also could (and did!) lead them to reject philosophical theories like utilitarianism, on the grounds that these ideas “were just too radical” or “out of touch with common sense.”
Do you think this a problem with reflective equilibrium? Does B-C’s idea that we ought to start with the “common morality” help? Why or why not?