



**DIVISION OF MEDICAL ETHICS
HIGH SCHOOL BIOETHICS PROJECT**

LESSON 5:

Conceptual Foundations of Bioethics



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Overview

Bioethics has been around for nearly half a century, but long before that philosophers developed conceptual frameworks that contain valuable insights concerning the analysis of questions of right and wrong, good and bad. These ethical theories can help us as we struggle with the problems that bioethicists confront. In the sections that follow, a variety of theories and methods will be explained with reference to the hypothetical scenario described below.

The Case of David Cleaver:

Mr. David Cleaver, age 58, suffered a massive heart attack while shoveling snow. Medical emergency personnel arrived at the scene within minutes and resuscitated the stricken night watchman. During those minutes, however, his brain was starved of oxygen, resulting in permanent brain damage. Two days later several of Mr. Cleaver's family members met to discuss his treatment and future in the lounge outside the ICU in Thales General Hospital:

Bill (son #1): *Dad's heart is beating; he is still alive! We have no right to approve any action that could result in his death.*

Jake (son #2): *Bill, the doctor said that Dad has no chance of recovery. The fMRI showed no activity in critical areas of his brain. Without the respirator his heart would stop. There is more to be considered here than simply keeping Dad's heart beating.*

Bill: *Like what? What could possibly compare to Dad's life? We're talking about life, about the sixth commandment: "Thou shalt not kill."*

Jake: *There are dozens of lives involved. Right now, you are not in your store, I canceled appointments with four clients, Sandy (Bill's wife) is sitting by the phone popping Valium tablets, and the medical bills keep piling up.*

Bill: *You're just afraid of losing a little money!*

Jessica (sister #1): *That's not fair Bill. It's not just money. We are all members of a family. Jake missed Michael's hockey game last night and you haven't seen your kids for days. We are all grieving. We need to support each other. We need to help each other through this.*

Monica (wife): *We need to think about David's wishes. He was always in control of his life, always a part of every medical decision. His advance directive is very clear. He does not want his life to be artificially extended. We need to tell Dr. Alderfer to turn off the respirator.*

Amy (sister #2): *Just pull the plug? Can Dr. Alderfer do that? I can't believe that someone can be killed just because the right areas don't light up on a brain scan. I want to hear about how other patients have been treated, why some are left on a respirator while others are removed. There must be some guidelines as to how to proceed in cases like this.*

Ben (brother): *I think we need to meet with Dr. Alderfer. Amy's point is well taken. We haven't been in this situation before; we need some guidance. Before the meeting, however, I want us all to think about what the Cleavers have stood for, we want our actions to reflect the kind of people we are. We must come through this with our respect for one another intact. We need to be open, honest, caring, and considerate of each other's views.*

Activities

1. Class Discussion

- a. Which family member(s) has/have identified the key moral issue facing the Cleaver family?
- b. Do you think that the Cleavers will be able to reach a consensus about whether or not to turn off the respirator?

2. Role Playing:

- a. Choose a student to take the point of view of each of the family members.
- b. *NOTE:* It may be instructive to repeat activities 1 and 2 after students have studied the remainder of this chapter. This may help students to recognize and come to appreciate the increased sophistication of discourse possible with the precise vocabulary and powerful concepts and distinctions they have learned.

3. Research

- a. Research one of the following topics and report your findings to your class.
 - i. The effects of anoxia on the brain
 - ii. Compromised brain states such as persistent vegetative state (PVS), coma, and brain death
 - iii. Recent developments in brain imaging and their use in the diagnosis of the brain states mentioned above

Consequentialism / Utilitarianism

Bill thinks that the act of disconnecting his father's respirator is wrong because it is an example of a forbidden act—the killing of innocent persons. Jake, on the other hand, is more interested in the consequences of the action than in its form or kind. He wants to consider how all involved would be affected by (1) disconnecting the respirator and (2) leaving it connected. Jake advocates taking the action with the best outcome for everyone involved. Jake is a consequentialist.

Consequentialist ethical theories determine the rightness or wrongness of an action by its consequences rather than by the type of action it is. They define the right in terms of the good. The right action is the one that produces the most good. This begs the question, “What is good?” The most widely supported version of consequentialism is called utilitarianism. Utilitarians consider happiness (pleasure or well-being) to be the only thing that is good in and of itself—the only thing that has *intrinsic* value. Utilitarians strive to follow the *greatest happiness principle*: act so as to produce the greatest overall happiness.

For the Cleavers to determine the right thing to do, according to this principle, they must perform the following utilitarian calculus:

1. Identify the feasible courses of action
2. Calculate the sum of “utility” (pleasure and pain) associated with each action for everyone affected
3. Choose the action that will result in the greatest amount of utility - the greatest happiness, everyone considered

There are problems with this practice.

First, in order to calculate the sum of pleasures and pains resulting from a given action, comparisons of personal preferences and values must be made. Many consider this to be impossible.

Second, how is the moral agent to predict the consequences of her action? How far in the future should she look? Predicting the future is an uncertain business.

Third, utilitarianism sets an unreasonably high standard for behavior. Using utilitarian assumptions, a middle-class American father, for example, should not buy an ice cream cone for his daughter. Surely, the two dollars for the ice cream could be put to better use if donated to Doctors Without Borders. It could pay for a vaccination—perhaps save a life. The provision of basic health care is likely to produce more utility than an ice cream treat.

Finally, it is easy to construct situations in which utilitarian reasoning leads to conclusions that conflict with our moral intuitions. Consider, for example, a transplant center in a major city hospital. At any given time there is likely to be a waiting list for people in need of kidneys, hearts, lungs, and other organs and tissues. Suppose that a young accident victim is brought into the emergency department with a severe fracture of his femur. Routine surgery and some time in traction should result in a full recovery. It turns out, however, that the man with the broken leg is a good match for several transplant patients whose life can only be saved with replacement organs. Should the man’s organ’s be “recovered” so that three or four others can live? It would seem that the utilitarian decision

machinery could require an affirmative answer. The focus of utilitarianism on the collective is inconsistent with individual rights such as the right to life—which many think are never to be broken.

An attempt has been made to devise a procedure that preserves the fundamental insight of utilitarianism—the importance of promoting the common good, without producing moral judgments that are inconsistent with our ideas about rights, duties, and justice. Rather than applying the utilitarian calculus to each action (*Act Utilitarianism*), *Rule Utilitarians* attempt to identify a set of rules, which if followed, would maximize happiness. Perhaps, “do not kill innocent persons,” is such a rule. But what if the common good would be better served if the rule were modified to say, “do not kill innocent persons except those in persistent vegetative states who have written advance directives indicating that they do not wish to be kept alive under such circumstances.” Rules with exceptions may produce more overall happiness. But as exceptions multiply, rule utilitarianism can become indistinguishable from act utilitarianism.

In spite of its theoretical problems, utilitarianism has an important influence on medical ethics. Public health practices, for example, operate under utilitarian guidelines. Quarantines that violate individual freedoms are justified by utilitarian appeals to the common good.

Activities

1. Class Discussion

- a. Jerry is a fourth-grade student who has difficulty concentrating on a task for more than a few minutes. He often becomes fidgety, initiates conversations with other students, calls out before being recognized, and must be repeatedly reprimanded by his teacher. His behavior has a negative effect on everyone in the class. For several weeks, while Jerry was taking the prescription drug **Ritalin**, the climate in the classroom became much more conducive to learning. He stopped taking the drug because of the negative side effects. *Was it wrong for Jerry to stop taking Ritalin? How should the answer to this question be determined?*
- b. Egg producing hens in factory farms are housed in tiny battery cages stacked tier upon tier in huge metal sheds containing thousands of birds. The conditions are horrible and unquestionably result in much suffering. (See Peter Singer, 2002, *Animal Liberation*.) Scientists may have the capability to genetically engineer a breed of chickens that lacks the areas of the brain necessary for sensation. These creatures could produce eggs under factory farm conditions without suffering. *Would utilitarians support the development of such chickens? Do you? Why or why not?*

2. Interview

- a. Interview a military doctor. Question her about the triage procedures that doctors follow when numerous injured soldiers are brought to a medical center. Report to your class and explain how the triage system is based on utilitarian ethics.

(**NOTE:** It may be instructive to repeat activities 1 and 2 after students have studied the remainder of this chapter. This may help students to recognize and come to appreciate the increased sophistication of discourse possible with the precise vocabulary and powerful concepts and distinctions they have learned.)

3. Research

- a. Research the contributions of Jeremy Bentham, John Stuart Mill, and Henry Sidgwick to utilitarian ethics.

Divine Command Ethics

For Mr. Cleaver's son Bill, there are certain kinds of actions that are simply wrong. Bill feels that taking a life is wrong no matter what could be gained by doing so. He considers neither the economic consequences nor the negative effects on other family members of keeping his father on the respirator as relevant to the decision at hand. "Thou shalt not kill." Period. When faced with a moral decision, Bill consults the revealed word of God and applies the appropriate rule to the case under consideration. Bill adheres to the Divine Command Theory of ethics.

The Divine Command Theory claims that an action is morally wrong if God forbids it. Similarly, an action is right if God does not forbid it, and obligatory if God commands it. Furthermore, actions are right or wrong because of God's commands. It is God's will that *makes* actions right or wrong.

Divine Command Ethics has played an important role in the thought of many influential philosophers and theologians and continues to have a strong influence on the moral reasoning of the general public. It is central to the Franciscan ethics of John Duns Scotus and William Ockham, was adopted by both Luther and Calvin, and figures prominently in the writings of the British moral and political thinkers Locke, Berkeley, and Paley. For those brought up in the Judeo-Christian tradition, the Divine Command Theory resonates with lessons learned at an early age. From the Ten Commandments in *Exodus* (20:7-17) to the injunction to "love your neighbor as yourself" in *Matthew* (22:39), Jews and Christians come to associate moral questions with religious teachings delivered in the form of commands.

There are serious objections to the Divine Command Theory, however. First, the theory is only useful to those who believe in God. When there is an atheist involved in a discussion about Divine Command Theory, the debate quickly turns to the question of God's existence. Second, the theory is incomplete because it does not supply a procedure for discerning the will of God. How is one to decide which religion promotes God's true commands? Finally, and most fundamentally, the Divine Command Theory implies that the list of prohibited actions is arbitrary.

This last objection was famously explored in Plato's dialog *Euthyphro*. In this work, Socrates poses a question to Euthyphro equivalent to the following: Are actions wrong because God forbids them, or does God forbid them because they are wrong? If it is the latter, then there must exist a basis for morality independent of God's commands. If God has reasons for making particular commands rather than others, for example, then it is these reasons, and not God's commands, that make the actions right and wrong.

On the other hand, if actions are wrong simply because God forbids them, then any action could be wrong—even loving your neighbor—if God forbade it. The theory is in trouble with either interpretation.

Many, of course, are not swayed by these objections. Divine Command Ethics continues to influence medical decisions. Medical professionals need to understand and respect the religious traditions that shape the moral lives of their patients.

Activities

1. Class Discussion

- a. Mr. Cleaver wrote an advance directive in which he clearly stated that he did not want his life extended by extraordinary means. While the sixth commandment forbids killing, the fifth requires us to honor our fathers and mothers (*Exodus 20: 12*). *Is it possible for the Cleaver family to satisfy both commandments?*
- b. *Is turning off a patient's respirator morally equivalent to killing the patient?*

2. Research and Writing

- a. Research one of the following topics and write a short paper summarizing your findings:
 - The distinction made by some bioethicists between killing and allowing to die
 - The laws concerning a patient's right to refuse medical treatment even if his/her life is at stake
 - Advance directives- living wills, values inventories, and durable powers of attorney
 - One of the landmark cases involving the medical treatment of incompetent patients at the end of life:
 - i. Karen Quinlan
 - ii. Nancy Cruzan
 - iii. Terri Schiavo
 - The standards of brain death
- b. Class discussion

Deontological Ethics

Advocates of Deontological Ethics agree with Divine Command Theorists that certain actions are right or wrong in *themselves*, regardless of what consequences they may have. For deontologists, however, actions are forbidden or required not by the commands of God but by the dictates of reason.

The most influential philosopher to espouse this view—and, arguably, the most important European philosopher of all time—was Immanuel Kant (1724–1804). Kant was born and spent his entire life in the little town of Königsberg in East Prussia. He was raised by Protestant parents and studied at the local university. While at the university, his study of science led him to question some of the religious doctrines he had learned as a child. He yearned to find a way to justify fundamental Christian values through “pure reason.”

Kant argued that the highest good—the only thing that is good without qualification—is a good will. Kant uses the expression “good will” to signify the motivation to do the right thing simply because it is the right thing—to act from a sense of duty. Right actions done by chance or for ulterior motives deserve no moral approbation. For something to be good without qualification, its presence must improve any situation. This, Kant claims, is true of good will alone. Adding happiness to an action, for example, does not necessarily result in a morally superior event. A murder may, in fact, be considered more heinous if the murderer was found to have enjoyed the act.

But how can a person of good will know what is right? Kant gives us a rational method for determining the rightness or wrongness of potential actions—a way for us to rise above our desires and emotions and act on the dictates of reason. He calls his principle the Categorical Imperative (CI) because it is expressed in the form of a command that must be obeyed under all conditions. In *Groundwork of the Metaphysics of Morals* he writes: “Act only on that maxim through which you can at the same time will that it should become a universal law.”

This principle is consistent with our natural inclination, when assessing the moral status of an action, to ask, “What if everyone did that?” The categorical imperative instructs us to test each rule or maxim we plan to follow by universalizing it and then checking to see if the universal version is logically consistent with the personal maxim. For example, suppose you take as your personal maxim: “I will make false promises whenever I can benefit from doing so.” Now, make this a universal law: “All people will make false promises whenever they will benefit from doing so.” A moment’s reflection makes it clear that it is logically impossible to adopt the personal maxim *and* will that it become a universal law. Any advantage you gain by making false promises depends on a tradition of promise keeping. If breaking promises were the rule, no one would expect you to keep your promise. In making your personal maxim, you must will that keeping promises is

universal (except in your own case); in making the universal law you must will that not keeping promises is universal. The personal maxim fails the CI test because it leads to a logical contradiction. By following this procedure each of us can generate his or her moral duty not to make false promises.

Critics of this approach point out that the method generates commandments that are absolute, exceptionless, and inflexible. Kant seems to think that the duties derived from the CI would not conflict. Moral life is certainly more complex than this. How is a member of the French Resistance supposed to respond to a Nazi SS officer who asks if he is hiding Jews? Should he honor his duty to tell the truth or his duty to protect human life?

In a second formulation of the CI Kant instructs us to “act so that you treat humanity... always as an end and never as a means only.” This formulation instructs us to be mindful of the infinite, intrinsic value of human beings. Because of this value, they cannot be used only as things to help us achieve an end; each human being is an end-in-herself. Kant thought that this formulation is equivalent to the first in the sense that it will generate the same set of rules. We cannot make false promises to achieve personal ends, for example, because we would be using another as a means only.

Kant’s emphasis on reason, duty, and motives has influenced the development of bioethics. His idea of human beings as ends-in-themselves, for example, has had a strong influence on standards for the use of humans as research subjects.

Activities

1. Creative Writing

The dialog at the beginning of the chapter does not include a family member from the deontological school of thought. Rewrite the dialog with such a character.

2. Class Discussion

How could Mr. Cleaver’s family treat him as a means rather than an end-in-himself?

3. Problem Solving

Suppose that you are a member of the Cleaver family. Write a personal maxim that prescribes the conditions under which Mr. Cleaver is to be taken off the respirator. Universalize your maxim. Are you prepared to will that your maxim become a universal law? Why or why not?

4. Trivia Search

What modern health/fitness practice did Kant regularly—and I mean regularly—enjoy?

Rights

The Cleaver family dialog begins with Bill's claim that the assembled relations have no right to approve an action that would result in Mr. Cleaver's death. What exactly is Bill asserting?

The idea that human beings have rights can be traced back to Roman law. Roman legislators established legal procedures for Roman citizens to make claims to the protection of their personal interests. This concept was later extended to moral rights using the theory of natural law.

In the Declaration of Independence, Thomas Jefferson declares that humans are "endowed, by their Creator, with certain unalienable Rights." Jefferson doubtlessly borrowed this idea from John Locke's masterpiece *Two Treatises of Government*. Writing in the natural law tradition, Locke argued that people are entitled to certain protections and benefits, not because their government grants them, but because God ordains them. Therefore, Locke concludes, natural rights cannot be taken away by a government; protest and even rebellion are justified when a government fails to respect the natural rights of its citizenry.

The idea of moral rights that transcend human legislatures also follows from the Kantian, duty-based ethics discussed in the last section. Kant makes a distinction between perfect and imperfect duties. An imperfect duty, such as the duty to help others, can be discharged in numerous ways. The duty is not to help all who need assistance—an impossible task—but simply to make an effort to offer some aid on some occasions. Therefore, no one can claim a right to your assistance on a particular occasion. Perfect duties, however, such as the duty to keep promises, require specific actions. Therefore, people can expect to be told the truth; they have a *right* to be told the truth.

The concept of rights enters into many debates in medical ethics. Some argue that modern advances in brain-scan technology pose a risk to our right to privacy. The right to privacy has been recognized in the United States since 1965 when the Supreme Court found state laws that prohibited physicians from dispensing contraceptives to be unconstitutional. Clearly, brain scans that promise to give us the ability to determine if someone is telling the truth are as relevant to privacy as contraceptive behavior and are sure to be tested in the courts.

Many modern thinkers contend that human rights go well beyond protection against lies or invasions of privacy. In addition to these *negative* rights, they argue that there are *positive* rights—entitlements to the necessities of life. The distinction between negative and positive rights can be easily understood by noting that for every right there is a corresponding duty. If you have a negative property right, then I have a duty not to take

your possessions. If you have a positive right to housing, then I, probably through my taxes to our government, have a positive duty to provide it for you. Negative rights are associated with negative duties that can be discharged by doing nothing; positive rights are associated with positive duties that require action.

The United States is alone in the developed world in not providing its citizens with universal health insurance. Those who claim a positive right to healthcare claim that this is unacceptable. What do you think?

Activities

1. Essay Writing

What exactly is Bill asserting? Is he making a claim about a right of the family, or about his father's right to life and the family's duty to respect that right? Discuss Bill's use of the term "right" using what you have learned about positive and negative rights and duties.

2. Analyzing Original Sources

In 1948, the United Nations issued the Universal Declaration of Human Rights. Obtain a copy of this document. Which of the rights included are negative rights? Which are positive rights? Which rights involve medical issues? Are additional rights needed as a result of recent developments in brain science?

3. Class Discussion

At the present time, brain-imaging technology is incapable of accurately diagnosing mental disorders, predicting behavioral tendencies, or even determining whether or not a subject is telling the truth. Progress is being made, however, and in the future we are sure to see pressure to use developing technologies for these purposes. If imaging techniques with the following capabilities become available, should they be used? What role does the protection rights have in your assessment?

- i. Screening teachers for potential child abuse
- ii. Assessing the veracity of court testimony

The Ethics of Care

The utilitarian William Godwin once argued that if the Archbishop of Cambay's palace was engulfed in flames, and he could save either the archbishop or his valet but not both, then he should save the archbishop. Godwin reasoned that many under the care of the archbishop would suffer from the loss of their spiritual leader. The greatest happiness principle, therefore, demands that he save the archbishop. Godwin claimed that this would be true even if the valet were his father, brother, or mother. Do you agree?

Many consider the impartiality of the accounting of pleasures and pains advocated by utilitarianism to be one of the theory's greatest strengths. Selfishness— preference for one's own interests—is often seen as a vice and the utilitarian calculus clearly and unequivocally demands that everyone's interests receive equal consideration. In the early 1980's, however, feminist writers began to question this view.

In 1982 Carol Gilligan published a book, *In a Different Voice: Psychological Theory and Women's Development*, in which she presented evidence that the process that women use to arrive at ethical decisions differs markedly from that followed by men. Gilligan found that interpersonal relationships play a larger part in the deliberations of women than they do in those of men. When debating an ethical issue, men tend to emphasize justice, duties, rights, and principles. Their analysis is abstract and intellectual. For many women, however, this semi-legalistic approach ignores important values such as trust, cooperation, and care. The shift in emphasis advocated by feminists is more than simply a matter of replacing one virtue with another—nurturing trumping justice. The idea is that moral decisions should grow from particular characteristics of the caring relationships between the people involved.

In the Cleaver family dialog, Jessica represents the Ethics of Care approach. She is concerned about the grief family members are experiencing and their need to be supportive of one another. She laments the fact that their relationships with their children are suffering. Jessica's inclination is to begin with the details of Cleaver family life and to choose healthcare options that will strengthen the relationships between family members.

Jessica's attitude toward the moral implications of interpersonal relationships resonates with many people. Readers were horrified by Godwin's suggestion that he should save the archbishop over his mother. They did not feel that moral life is, or should be, an impartial business. The special relationships we form with siblings, parents, children, and friends are morally significant and require special consideration.

Like all ethical theories, the Ethics of Care has shortcomings. It is not a complete theory of ethics. It gives us little guidance when interacting with those beyond our circle of friends and relations. It does not address, for example, how emergency medical personnel should balance their duties to their families with their professional duties during

medical emergencies involving strangers. Nor does it tell us how to resolve conflicts when partners in a caring relationship advocate different courses of action. Some would argue that those in dispute must necessarily fall back on rules, principles, and abstract reasoning.

At a minimum, however, the Ethics of Care reminds us of the special relationships we enjoy with others and the obligations that flow from those relationships. It is an important adjunct to other ethical frameworks. It grounds moral discussion in the details of moral life: the caring interactions we have with others.

Activities

1. Class Discussion

The renowned philosopher Peter Singer makes a concerted effort to follow the utilitarian principles he advocates. He has, however, directed a generous quantity of his personal resources to the care of his aging mother in spite of the fact that the overall happiness of mankind could be increased if these resources were used to relieve the suffering of the inner-city homeless, African refugees, or tsunami victims. Is Professor Singer violating the greatest happiness principle? Can his action be justified according to the Ethics of Care? Is truly ethical behavior impartial?

2. Sharing Personal Experiences

Describe an ethical decision you have made in the past. To what extent did Ethics of Care concerns enter into your deliberation?

Virtue Ethics

As the Cleaver family moves toward a decision about David's treatment, his brother Ben shifts the focus of their deliberation from the question "What is the right action?" to another: "What kind of people should we be?" Ben is more interested in virtue than in following rules or calculating consequences.

The attempt to establish a system of ethics on the virtues began with the Greeks. The idea was to begin with character, in particular the *ethika aretai* (skills of character) that enable humans to flourish. Actions were to be judged based on whether or not they were characteristic of the men who exemplify these "skills." Right action is defined in terms of the behavior of the virtuous.

For the ancient Greeks, what it means to flourish is determined by human nature. Man can experience *eudaimonia*—happiness, fulfillment, success, satisfaction—only when his essence as the "rational animal" is fully developed. They felt that this development could

be accomplished by practicing the intellectual virtue of wisdom and the moral virtues of courage, temperance, and justice. These admirable human qualities lead to behaviors that represent a balance or “golden mean” that fosters the good life. Cowardice, for example, consists of an excess of fear while foolhardiness or rashness results from an insufficient measure of fear. Courage represents the balance point, neither too little nor too much fear.

Later, Christian thinkers also focused on the virtues. Flourishing for them, however, involved God’s plan for human life on Earth and the possibility of life everlasting. The theological virtues of faith, hope, and love were added to the four “cardinal” virtues to support this new view of the good life.

Modern virtue ethicists such as Alasdair MacIntyre point out that what it means to flourish is affected by one’s role in society (doctor, teacher, carpenter), events in one’s life beyond one’s control (war, family hardships, educational opportunities), and the cultural tradition in which one is raised. But in spite of these complications, some philosophers still believe that the proper foundation for ethics is the virtues, not right action. The purpose of morality, after all, is to foster the good life, and it is the virtues that lead to human flourishing. The virtues are fundamental.

The inclination to look toward the wise, the mature, the virtuous, comes naturally to many. Children, separated from their parents and faced with an emergency may ask, “What would Mom and Dad do?” “WWJD?” (What Would Jesus Do?) buttons adorn the lapels of young Christians. Philosopher Elliot Cohen published a book in 2003 entitled *What Would Aristotle Do?* Life is complex, too complex to be navigated according to a rulebook; we often look toward the virtuous for guidance.

Virtue ethics has much to recommend it. It is grounded in concrete facts about human nature, cultural traditions, and individual lives, rather than in abstract concepts. It strives to build underlying moral fiber—the dispositions, goals, and habits that enable people to behave in exemplary ways under extreme and novel situations. Virtue ethics strives to dig beneath the superficial decision-making process and create an enduring foundation of habits and character traits from which decisions can be made that will enable men to flourish in a complex world.

No approach to ethics is without detractors, however. The critics of virtue ethics pose many challenging questions. With no universally accepted definition of human flourishing, how are we to establish a list of virtues and procedures for developing positive character traits and habits? What do we do when virtue ethicists disagree? With no principles to turn to, how can disputes be resolved? And isn’t there something a little circular about defining right action in terms of the behavior of the virtuous while identifying the virtuous as those whose actions promote the good life? Does virtue really come first?

Whatever its shortcomings, virtue ethics has encouraged us to think about character, its relationship to behavior, and methods of instilling admirable traits in the young. Aspiring doctors are given every opportunity to pattern their behavior after senior practitioners. The apprentice-based system of medical education is designed to develop both the intellectual and moral virtues.

Activities

1. Class Discussion

- a. Aristotle thought that the moral virtues could only be taught by doing: virtuous acts must become habits. Would Aristotle support mandatory community service requirements for high school graduation? Would you?
- b. What virtues are needed to be an excellent medical professional? Consider both the intellectual virtues and moral virtues. Is it more important for a physician to be a competent technician or a sympathetic human being?
- c. Historically, character building was seen as hard work; it was thought that much study and practice was required to become a virtuous person. Developments in psycho pharmaceuticals and electronic brain stimulation may make it possible to positively affect a person's character without effort on his/her part. Is "virtue from a bottle" real virtue?

2. Interview

Interview a physician. Discuss her training outside the classroom both in medical school and during residency. How is the idea of virtue ethics reflected in the kind of experiences arranged for doctors in training?

Principlism

What role should Mr. Cleaver's doctor, Dr. Alderfer, play in the decision concerning whether or not Mr. Cleaver should continue to receive respirator support? While Ben seems to want some direction from Dr. Alderfer, no one in the Cleaver family is ready to turn the decision over to medical professionals. While they may disagree on the theoretical foundations upon which medical ethics decisions should be made, they appear to agree on who should make them: patients and their families.

In 1979, Tom J. Beauchamp and James F. Childress published a book, *Principles of Biomedical Ethics*, in which they argued that all morally serious people share a *common morality* based on a set of pre-theoretical, commonsense, non-absolute (*prima facie*) principles. Because there is far more agreement on these principles than there is on the theoretical foundations of ethics, the principles constitute useful tools for decision making in medical ethics. Beauchamp and Childress list four such principles: autonomy, beneficence, nonmaleficence, and justice.

In the case of Mr. Cleaver, respect for patient *autonomy* is the critical principle. A respect for autonomy demands what John Stuart Mill's claimed in *On Liberty* (1859)—that the individual is sovereign over his own mind and body—be taken seriously. Patients should be provided with the information necessary to make medical decisions and should be allowed to do so without coercion from medical professionals or family members. Problems arise, however, when patients, like Mr. Cleaver, are not competent to make such decisions.

Autonomy concerns have led to such practices as informed consent, confidentiality, and truth-telling. In contrast to the paternalistic practices common as late as the 1960's, modern physicians provide their patients with honest, objective information concerning their medical conditions, outline treatment options, and allow patients to make the final decisions concerning their own care. Patients have the right to refuse treatment, including life-saving interventions. "Living wills" and "advance directives" provide patients with the opportunity to actively participate in the decision-making process even in the event that they no longer possess the capabilities to do so when these tough decisions need to be made.

Another principle with which most people can agree concerns the ancient injunction against doing harm. Medical school graduates still take the "Oath of Hippocrates," in which they promise to "abstain from whatever is deleterious and mischievous." The principle of *nonmaleficence* supports the establishment and enforcement of standards for physician competence and the prohibition of the use of human subjects in nontherapeutic experiments.

While nonmaleficence prohibits harmful acts, *beneficence* requires helpful acts. Most agree that health professionals have an obligation to act for the benefit of others. Patients visit health care professionals (and pay hefty fees) in order to be treated in a beneficial manner. Unfortunately, beneficence sometimes conflicts with autonomy.

Suppose, for example, that Mr. Cleaver was conscious and competent to make medical decisions, in horrible pain, had no chance of surviving more than a few days or weeks, and was completely dependent on the respirator. Furthermore, suppose that several of his family members were deeply distressed by his suffering. Should his attending physician respect Mr. Cleaver's desperate and futile desire to remain on the respirator in order to cling to life as long as possible and at whatever cost, or should he minimize Mr. Cleaver's suffering and that of his family by withdrawing treatment -- including the use of the respirator? Which takes precedence, autonomy or beneficence?

Principles of justice can also be found in the previously discussed theories of morality. Since Aristotle, the notion that equals must be treated equally has been widely accepted. Translating this insight into concrete medical policies has been difficult, however. Without a definition of "equality" and a determination of what differences are relevant in comparing

individuals and groups little progress is likely. Should scarce medical resources be allocated by free market exchange or by lottery, according to most critical need or according to merit? While everyone is for justice, there is little agreement concerning the material principles of distributive justice. In this regard the common morality is not common enough.

In spite of its shortcomings, principlism is the dominant paradigm in medical ethics. It provides an easily grasped structure for clinicians to make ethical decisions concerning patient care and is quite effective in identifying many ethical obligations, including those related to informed consent, equitable rationing, and medical malpractice. As Autumn Fiester has pointed out, however, in the clinical setting where principlism is operationally reduced to a checklist of concerns, important moral obligations such as the obligation to apologize and make amends when a patient has been wronged can be overlooked. Medical professionals need to be supplied with a more extensive ethical toolbox.

Activities

1. Class Discussion

- a. Mill supports autonomy in *On Liberty* and utilitarianism in his book *Utilitarianism*. Is Mill being inconsistent?
- b. If Mr. Cleaver had written an advance directive that clearly indicated his desire not to have his life extended on a respirator, do you think all members of the Cleaver family would agree to ask Dr. Alderfer to disconnect him? Do the Cleavers share the “common morality” principle of autonomy?
- c. Are there conditions under which other principles take precedence over patient autonomy?
- d. Who should make medical decisions for children?

2. Public Policy Research

Investigate the laws in your state concerning advance directives, living wills, substituted judgment, do not resuscitate (DNR) orders, and durable powers of attorney. Share your findings with your class.

Casuistry

Mr. Cleaver's sister Amy is not about to make a decision concerning her brother's treatment until she has discussed similar cases with Dr. Alderfer. Before anyone pulls the plug on her brother's respirator, she wants to know "why some [patients] are left on a respirator while others are not." She recognizes that it is difficult to apply general ethical principles to particular cases and that individual circumstances matter.

The difficulty in bridging the gap between moral norms and particular decisions can be seen as early as the confrontations between Plato, who sought universal moral principles, and the Sophists, who claimed that matters of right and wrong are a function of circumstance. By the eighth century, when the Christian practice of confession and penance became common, the need to connect theory with practice became critical. Priests needed to prescribe specific actions to be performed by wrongdoers to make amends for their moral failings. But, certainly, all cases of a particular moral indiscretion—lying for example—do not require the same penance. Intentions, aggravating circumstances, and consequences must be considered. Priests were aided in their deliberations by books of penitential cases. Eventually, these books became very elaborate: systematic collections of well-documented cases with Christian moral commentary.

Martin Azpilcueta's book, *A Handbook for Confessors and Penitents* (1556), grouped cases according to the commandment violated, allowing for the subtleties of circumstances to be compared more easily. Analysis in each section began with relatively clear, paradigmatic cases and then moved on to complicated situations. This case-based method of moral analysis came to be known as casuistry.

In the 1960's, the civil rights movement, the unpopular war in Vietnam, and developments in medical technology led to an interest in practical ethics. The complexity of ethical problems in business, government, and medicine seemed to require attention to the details of circumstance. In 1988 Albert Jonsen and Stephen Toulmin argued that the casuistic approach could prove to be useful for the resolution of contemporary problems.

The method they advocated involved collecting all relevant details concerning a case, and then placing the case in the context of other cases. Analysis takes place by analogy with paradigmatic cases. An attempt is made to discern morally relevant differences and similarities between the cases. In contrast with the deductive approach of applied ethics, where ethical principles are derived from theoretical considerations and then applied to particular situations, the new advocates of casuistry claimed that principles are discovered by analyzing simple, clear cases, and that our understanding of these principles is deepened as we encounter more complex cases.

During the past two decades some bioethicists have concluded that only the case-based method can capture the complexities of modern medical practice. In evaluating Mr. Cleaver's situation, they would compare his case to well-studied cases such as those of Karen Quinlan, Nancy Cruzan and Terri Schiavo. From the stories of these women, we have learned much about what is morally relevant in such cases. We have made distinctions between killing and letting die; we have set standards for diagnosing coma, PVS (persistent vegetative state), and brain death; we have devised policies concerning the refusal and withdrawal of treatment; and we have established guidelines for advance directives and proxy consent. The ethical concerns surrounding Mr. Cleaver's case can be better understood when placed in the context of similar cases and the principles that have been made clear through the discussion of those cases. Moral meaning and certainty are to be found in experience. Amy has a point: *Why try to make a decision without the benefit of past experiences with similar situations?*

Activities

1. Class Project

Collect information on the three cases mentioned above: Quinlan, Cruzan, and Schiavo. How did each of the women come to be in a compromised mental state? What were the clinical indications in each case? What was the basis for controversy in each case? How was each case resolved? Divide up the work. Share your results and discuss the following questions: Knowing what you now do about the three cases, are you better equipped to form an opinion about how similar cases should be handled? What would you want to know about Mr. Cleaver's case before making a decision concerning his treatment?

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