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FEEDING THE SOUL

Three lectures on Strengthening Moral Courage in Public Life

Lecture One: Moral Analysis

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Tonight, we are going to be doing some moral philosophy, so to wake up our moral antennae consider this situation: there is an aeroplane flying through the air, with the pilot, the Brain of Britain, a retired headmistress and a boy scout. The aeroplane is twin engine and there are three parachutes. The aeroplane starts to make strange and alarming noises. The pilot comes out of the cockpit into the cabin and announces that both engines have failed, and that he is off. Taking one of the parachutes, he leaves the aeroplane. The Brain of Britain makes a short but impassioned speech about being the brainiest person in Britain and therefore a huge loss to the nation were he to die; in the words of the Department of Health's recent guidance to NICE he brought more 'societal good' than either of the other two, and taking another parachute he jumps out of the aeroplane. The retired headmistress looks at the boy scout and says, 'I am certain that at the moment I know more than you and am able to be of more service to society than you. But is my life therefore more valuable? What about the life that you will lead? I'm happy to accept that I've had my innings. Why don't you take the last parachute, and make sure the life that is saved, your life, proves to have been worthy of being saved.'

The boy scout responded, 'It's all right, Miss, the Brain of Britain took my rucksack.'

The title of this series of lectures is 'strengthening moral courage in public life'. My intention is that I will provide, this week, tools to encourage fearless moral *analysis*, next week, *perceptions* for moral inspiration and the courage to fall in love, and the week after an *active* means to develop moral courage and discernment.

We begin with moral thinking, by which I mean the intellectual tools for moral or ethical analysis (I use the words synonymously) of the decisions we make. I will offer a framework for moral analysis, which will form the bulk of the lecture as I think it's worth taking time to understand why it is important. I will look at how it might apply to the work of the public institutions around Parliament Square, well represented in our audience tonight. Finally I will say what I mean by courage in moral thinking.

The framework for ethical analysis which I am going to propose to you tonight was developed during my time at the Centre of Medical Law and Ethics at King's College, London, with Ian

Kennedy (who is, I'm delighted to say, also here tonight). The framework is this: to look at a proposed action from each of three approaches: goal-based, duty-based and right-based morality. The nomenclature is borrowed from Ronald Dworkin firstⁱ, then Sophie Botrosⁱⁱ. The different legs of the three-legged stool the framework creates have excellent pedigrees in moral philosophical thinking, which I will describe, but their combined approach has been described surprisingly rarelyⁱⁱⁱ. I want to suggest that a fearless moral thinker will not drop one or other approach because they come into conflict with the others, but take each approach seriously and decide what to do only after that. The effort leads to robust conclusions, like the three-legged stool which stands firm even on rocky ground.

Goal-based morality rests on the idea that actions are right if their outcomes are right, and at its most straightforward, 'right' means that more people are made happy than sad. On its own, goal-based morality has a refreshing simplicity. Its chief proponent was the famous philosopher Jeremy Bentham, who was an enormous character, and slightly strange. He didn't get on with women at all, but he did give names to some of the inanimate objects that populated his life: his stick was called Dapple and his teapot, priapically, Dick. People set their watches by his daily walks. He left his body to University College, London, not to science, but to be stuffed and brought out to join college dinners so that people could see him and be reminded of the, as he called it, felicity principle. You can see his body even now on display in the great hall entrance of UCL.

So it won't come as a surprise to learn that he disliked messy thinking. And trying to gain agreement on moral principles led, he believed, to messy thinking. What no one would disagree about, whatever their religion or background or education, was that pleasure was good and pain was bad. Bentham argued that notions of religious morality, commands from God, moral principles and values that may or may not be shared by others, unhelpfully complicated moral decision-making. Of one thing only we could be certain: that people do not want pain, and they do want pleasure. He wrote: "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do... By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question."^{iv}

So an action is right if it increases pleasure, and wrong if it increases pain. The calculation could be made quite simply, by taking each person affected by the action as one, and adding up the numbers. More made happy than sad: action right. More made sad than happy: action wrong.

Goal-based morality, or as it is often known, following Bentham, utilitarianism, is morally serious. First, everyone counting as one has a radical equality. For the goal-based thinker, the child in sub-saharan Africa counts as one, and the Prime Minister of Britain, and one's own offspring, each count as one, equally. I know of three philosophers who try to live according to this principle – with difficulty, but with integrity^v. Second, the outcome of an action provides its motivation. If we didn't seek certain outcomes, we wouldn't act at all. In the context of medical research, for example, it is the desire for a cure for dementia or arthritis or cancer that produces the research proposals. In the context of policy-making and legislating it may be the common good, or economic growth, or justice, or choice, or a healthy environment. There will be over-arching goals,

like ‘the common good’ or ‘a cure for cancer’ and then specific, targeted goals for a specific policy or piece of legislation or research project, such as ‘a national minimum wage’ or ‘the efficacy and effectiveness of tamoxifen’. These goals provide motivation and also parameters. People know what they are aiming at.

It is a worthwhile, I would argue an essential, exercise to be absolutely clear about what one’s goals are, whether in the field of policy-making, manifesto-writing, justice-delivering, or any other field. What am I (really) trying to achieve here, and is it good?

But if we stop just at goal-based morality, as Bentham did, we soon run into difficulties. For we have nothing within goal-based morality to prevent us from performing actions that are not *intrinsically* good or right, if they make more people happy than sad. Indeed, for strict goal-based thinkers, there is a moral requirement to perform those actions that increase happiness, whatever is involved. Moreover, for goal-based thinkers, there are no tragedies, because (assuming you can do the mathematics) there is always a right answer.

Take this slightly absurd example. You (member of audience, name X) are healthy, with a full complement of functioning organs. The person sitting next to you is dying. She needs a heart transplant to save her life. The next person is also dying, in her case of lung disease. So is the person next to her. The next is dying of kidney disease, and so is the person next to him. Next needs a liver to survive. There are six dying people, all in need of healthy organs. We need only kill you, X, to save six lives. We are not distressed by this, if we are simply goal-based thinkers, because we know we are right to kill one in order to save six. And the fact that X is (say) a Permanent Secretary and the person who needs a lung is a Parliamentarian is not relevant, as whoever you are, you count as one.

Except that we are distressed at the prospect, and not just, indeed not at all, because X is a Permanent Secretary. However wonderful and desirable saving six lives is, anyone who is not distressed by the thought of killing a healthy person in order to harvest his or her organs would be regarded as a sociopath at best. Just as, to take a real example, we would be regarded as heartless sociopaths not to be distressed by the people queuing at foodbanks, however much we might want to celebrate breaking benefit dependency. But within this wonderfully simple goal-based morality we have nothing to refer to to help us out of our plight. We have identified, and identify with, our good and desirable goal, and having counted the cost and found it weighs less in the balance, we are content to act.

Goal-based morality is not enough for the morally sensitive and courageous thinker. As I said, Bentham was slightly strange.

Duty-based morality, by contrast, considers not the outcome of actions but their content, what is involved in their execution – X’s execution, if you’ll pardon the pun. The duty-based moral thinker will ask, does my action conform with my moral principles? If it does, the action may be performed, whatever the consequences. If it doesn’t, the action may not be performed, whatever the consequences. Such principles may include not harming and not lying. They may involve scriptural injunctions such as the Ten Commandments, or the Two Commandments to love God and

neighbour, or the Great Commandment found in all religions, to treat others as you would wish yourself to be treated. These principles that tell us our duty are powerful moral guides to those who learnt them from a young age, or strongly adhere to a law-based religious faith. They can, I suggest, also be defended on the grounds that some actions are 'simply wrong'.

But this week, while we are concentrating on clarifying our thinking, we are indebted among others to Immanuel Kant, who provided a reasoned justification for duty-based morality with his Categorical Imperative. The Categorical Imperative is rational, and it goes like this:

Act according to a maxim which can at the same time make itself a universal law.

Act only on that maxim whereby you can at the same time will that it would become a universal law.

To take an example Kant himself uses: suppose I need a great deal of money, and I know that you (person in the audience Y) have that amount of money. I also know that you will not give me your money unless I promise to pay you back. I know that I will not be able to pay you back. My proposed action is to make a lying promise in order to obtain the money from you.

This fails the Categorical Imperative. The maxim of the proposed act is that it is all right to gain money by making lying promises. That cannot become a universal law, because if it were, everyone would be telling them and no one would lend anyone any money. Nor can I consistently will that it should become a universal law, because you, Y, would know that I was lying, and you would not lend me your money.

There is another foundation for duty-based morality, called natural law ethics, in which I discover the right way to behave from observing what is natural to me. Thomas Aquinas argued that it is right for a man and a woman to stay together for life because 'there is in men a certain natural solicitude to know their offspring'^{vi} and if the relationship were broken and other sexual relations engaged in, no man would know which child was his. From the 'is' of a man's solicitude to know his offspring comes the 'ought' of a man and a woman staying together for life. As you can no doubt already see, this approach only works if we can agree what 'is', what we mean by natural. If we think homosexual activity is unnatural, by natural law ethics it is also, and because of that, wrong. Some have argued as much. Unlike many moral philosophers, I don't think that this weakness destroys the basis for natural law ethics. I think our growing understanding of physiology and psychology, among other disciplines, requires us to rethink our natural law ethics. Just as we understand better the natural rhythms of the soil and the weather and adjust our farming techniques accordingly (or ignore them at our peril) so we should adjust our treatment of each other as we understand each other better, in some cases hastily given prior outrageous behaviour due to lack of understanding and knowledge.

But even if you don't believe you can derive an 'ought' from an 'is' (and libraries of books have been written demonstrating that you can't), I think it is uncontroversial to assert that a professional role brings with it moral responsibilities: the 'is' of being a doctor brings with it the 'ought' of having - always - a duty of care to one's patients. The 'is' of being a teacher brings with it the

‘ought’ of pedagogy and example to one’s students. Similarly, the ‘is’ of taking up public office brings with it the ‘ought’ of selfless decision-making and moral rectitude articulated, inter alia, in the Nolan principles. They come with the territory. They are duty-based moral requirements.

Duty-based morality is a much-needed counter balance to goal-based morality that doesn’t know how to explain why killing X to harvest his organs is wrong. One needs to be clear about the goals of a proposed action, and then one then needs to consider what is involved in executing the action. What will I, the moral agent, have to do in order to achieve that goal? Is it morally justifiable or not? Not to ask ‘do the ends justify the means’ but simply, regardless of the ends, are the means acceptable?

Let’s just imagine, for a moment, a Kantian, duty-based world. One where no one lied to anyone else, under any circumstances. I ask you [audience member] how I look in this outfit, and you answer truthfully. You ask me what I think of your policy proposal (and let’s say you are the Minister and I am a Civil Servant in your department) and I answer truthfully. And remember, in this thought experiment, that you and I both know, for certain, that the other is telling the truth. So the praise as well as the criticism can be believed, without exception.

What an extraordinary world that would be.

We could, in this extraordinary world we are imagining, trust each other completely.

How’s the thought experiment? Impossible? Either to imagine or, I might tentatively suggest, desirable??

Kant famously stated that since lying failed the Categorical Imperative and was always wrong, even if a murderer chasing his victim asked you if the victim went ‘that way’ and you knew, you should tell the truth.^{vii}

Duty-based morality quickly tips into paternalism. My moral certainty about how I should behave is not necessarily going to be the best thing for you. I secure my place in heaven, never mind what you think or want.

Right-based morality, our third moral approach, is a counter to this paternalism. I am understanding ‘right-based morality’ as the right to express one’s autonomy. And the focus is on those most affected by one’s action, the stakeholders. It is their views, rather than an overall goal or one’s own sense of moral rightness, that determine the action. In the medical profession, and in society more broadly, right-based morality has come to take precedence. In short, we have replaced responsibilities with rights: my action is ethical because it respects your autonomous choice rather than expresses my responsibility.

In the context of healthcare ethics and law, Ian Kennedy is an articulate defender of patient autonomy, arguing that between the doctor and the patient there is an imbalance of power that the law has to rectify by giving the patient the right of refusal to treatment, such that regardless of what the doctor thinks the patient needs, if the patient does not consent, any further treatment would be

battery, illegal. Immanuel Kant suggested a characteristically robust basis for this, coining the phrase ‘so act always as to treat the other as an end in himself, and never merely as a means withal’^{viii}. Thus the doctor’s duty of care - always and everywhere applicable - is countered by a patient’s autonomous disagreement. And the patient’s view is the one that holds sway.

In the sphere of elected public office, there is a wrenching right-based test every five years as those who feel you have power over them (whether you do or not) have the opportunity to let you know whether they want you to continue to have such power, and their decision, of course, is final. Those public servants less close to the people affected by the consequences of their decisions should nevertheless seek to know how they are affected and how they feel about it. There’s a very good document by the Institute for Government on the art of policy-making that emphasises this, as well as the importance of clarity over goals (it’s a good echo of the three approaches, which is probably why I think it is so good!)

Important as is right-based morality, that is, allowing autonomy to determine action, as with the other two approaches, on its own it is not enough. Strictly applied, if I were to give you (member of the audience Z) a knife, and ask you to kill me, because I really want you to, that would be sufficient moral justification for you to do so, because you are not to tell me what is rational or right behaviour, and you don’t have to refer to any inner moral code, nor indeed to whether the consequences of such an action are more widely desirable. It is my autonomy that you are respecting. Such thinking can be found in some of the arguments around euthanasia. Right based arguments are important, but they are not enough on their own.

For those in public office, seeking to please the public rather than lead or govern wisely has complicated and unsatisfactory consequences for everyone concerned. But the views of stakeholders matter, and not only because it is our duty to take them into account. It is the stakeholder’s right to be heard that is the moral imperative here. Thus right-based thinking rounds off the other two approaches: once one has established the goal of one’s action, and determined what one has to do in order to achieve it, one should consult those most affected by the action without assuming their consent, however good one believes one’s action may be.

So to sum up: I have offered three different ways of considering the morality of a proposed action: goal-based, which judges the rightness of the outcome of the action; duty-based, which judges the rightness of the action itself, regardless of outcomes; and right-based, which judges the action according to the wishes of those most affected by it. I have suggested that each of these approaches has strengths and weaknesses, and each has a place in our moral thinking. A thoughtful moral agent will take all three approaches into account when considering how to act. Like a three-legged stool, between them they provide stability, even on rocky ground.

Let’s test the method against some cases as they might present themselves to the institutions around Parliament Square. First, what of the subtle art of policy-making? Take the work of BIS, for example. There are three overall conceptual drivers of policy: to grow the economy, to bring about fairness in the workplace and in society more broadly, and to develop skills in people. On the face of it, these drivers broadly fit onto the moral framework I have proposed. Economic growth is a goal-based concern; fairness in society is a duty-based concern; creating people with skills and

talents and hence autonomy is a right-based concern. So the interesting and challenging question is how to frame policies that honour all three? Or, if we are to frame policies that don't, which ones are we prepared to compromise on? Better, I suggest, to be clear which of the three approaches we are prioritising than to try and argue, as perhaps Ministers are pressured to, that every policy can be good for all three. If one thinks for a moment about the policy of minimum wage one can see the tensions (it favours the duty-based fairness in society approach, but may be bad for goal-based economic growth, and denigrate right-based incentives for individuals to learn). A clear thinker will ease those tensions into the light and look hard at them, to see what the moral choices are. This does not make the moral choice easier. But it will be made thoughtfully, and the process of its being made will thereby be capable of being explained to others.

In fact I think it more accurate, from BIS's point of view, to take each of these policy drivers as goals. Then they can be interrogated as such: are they desirable? Do they serve humanity and the planet? On that basis, economic growth might reasonably be downgraded. It is not, surely, a goal in and of itself? What then is the limit on growth? And what might fairness in society look like? What skills are we wanting to teach? And having satisfied ourselves on the desirability of the goals, to think about the duty-based and right-based issues that arise in their implementation.

Of course one institution's goals may be another's duty. One of the Environmental Audit Committee's goals is sustainable development across Government Departments. It recently reviewed policymaking in BIS to that end, and found it was not paying attention to sustainability as much as it might in seeking economic growth. Sustainability may be thought by BIS to be a duty-based concern that conflicts with its goals. This assumption may, too, need to be scrutinised.

For DEFRA, goal-based concerns may be a healthy natural environment; good food for all; a successful farming industry. Its duty-based concerns relate to the extent to which human suffering may flow from protecting biodiversity; or farming methods and animal welfare. Its right-based concerns can only be expressed by humans, of course, since the natural world and animals do not have autonomy to assert. Arguably that requires stronger duty-based thinking about protecting that which cannot speak for itself.

For the Armed Forces, goal-based concerns include questions such as whether their role is to protect British interests or secure international peace. Duty-based concerns include the cost of conflict, to local communities, to armed forces personnel, to reputation both of Government and the armed forces themselves. Right-based questions relate to local populations and Governments of other countries where the Forces are based and, controversially, service personnel themselves.

In the context of the law (another public service institution neighbour around Parliament Square), for example, a case that recently came to the Supreme Court involved the withdrawing of treatment from a very sick patient whose family were contesting a previous judgement that had allowed this. The arguments flowed in which the right-based concerns for the patient's autonomy were strenuously considered: though the patient was himself unable to express any wish, the court spent time considering what he might have wanted were he able to. (Despite the need for a great deal of interpretation, the Mental Capacity Act is to be applauded for its intention to recognise, even retrospectively, the wishes of individuals.) The court spent time considering the wishes and views

of his family. It pondered the duty-based question of the inherent value, the sanctity of life. The goal-based issue of resource allocation was perhaps the unnamed elephant in the room: no counsel or judge would say of an individual patient that he or she is not worth saving, given the cost: but the question is there, and increasingly so as an ageing population descends into infirmity and dementia^{ix}.

And what of the legislature? Goal-based questions are: what is this legislation trying to achieve? To pacify hurt stakeholders? To criminalise newly discovered unacceptable behaviour? To regulate or de-regulate new or old practices? Duty based questions include: will any group will be harmed by the legislation? Can the harm be anticipated and clauses added to prevent it? Does that increase the bill's complexity (and secure plenty of future employment for lawyers to interpret!)? Right-based questions include whether the bill is what those most affected by it would want. A thought-provoking question from a former Archbishop of Canterbury brings together goal and right based approaches: does the legislation so framed ensure that self interest will serve what justice demands?

The overall title of this lecture series is 'strengthening moral courage in public life'. So what does moral courage look like in the kind of analysis we have been exploring? Moral courage shows itself in our thinking when we see clearly and face up to the moral imperatives at stake in any decision, and do not back away when they conflict. Moral courage shows itself in thinking when we hold in our minds two conflicting statements that are nevertheless both true, or important, such as 'we need to make the economy grow' and 'everyone is entitled to at least the minimum wage'. Or, 'we must protect the land upon which we all depend' and 'people's homes mustn't flood'. Or 'people must be allowed to die and to die well' and 'the intrinsic value of human life must be protected'. Moral courage in our thinking is waiting with the paradox because it makes our understanding grow to hold two conflicting but true statements together, and makes possible a new solution not hitherto imagined because our understanding wasn't yet able to encompass it. Moral courage in our thinking is waiting and looking and thinking and judging and clarifying and reconfiguring and, sometimes, coming up with a solution that allows both to happen, or, if a decision has to be made and no magical solution has presented itself, making a compromised decision but knowing and honestly admitting that that is what one has done, and knowing exactly what has been compromised for the decision to be taken. Moral courage in our thinking is, sometimes, concluding that one should do nothing.

The image I'd like to leave you with is that of the three-legged stool for the three approaches of goal-based, duty-based and right-based morality, the three-legged stool that stands firm even on rocky ground.

Enough analysis. We are in armchairs solving problems in theory and with our brains only. Next week we become much more theological. The Judeo-Christian tradition has given us a treasury of perceptions to draw upon as we consider what strengthens moral courage in public life, and next week I should like to share some with you, with the intention of inspiring you at an emotional level. And I'd like to finish tonight with another moral puzzle related to the value of human life: that is, the fraught question of when life begins. A Roman Catholic priest, an Anglican vicar and a Jewish rabbi were discussing the matter. 'Life begins,' declared the Roman Catholic priest, 'when the egg is fertilised by the sperm and a unique genome is formed. Life begins at conception.' 'No, no,'

asserted the Anglican vicar, gently. 'Surely life begins with independence outside the womb? Life begins with the first breath.' 'You're both wrong,' said the rabbi, shaking his head. 'You want to know when life begins? It begins when the kids leave home. And the dog dies.'

Thank you very much.

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- ⁱ Ronald Dworkin, *Taking Rights Seriously*, 1977 (Harvard: Harvard University Press)
- ⁱⁱ Sophie Botros and Claire Foster, 'The moral responsibilities of research ethics committees', in *Dispatches*, **3:3**, Summer 1993
- ⁱⁱⁱ Claire Foster, *The Ethics of Medical Research on Humans*, 2001 (Cambridge: Cambridge University Press)
- ^{iv} Jeremy Bentham, 18?? *An Introduction to the Principles of Morals and Legislation*. In Mary Warnock (ed) *Utilitarianism*, 1962 (Glasgow: William Collins Sons and Co) p.33
- ^v Jonathan Glover, Peter Singer and Dan Orty
- ^{vi} Thomas Aquinas, *Summa Contra Gentiles*. transl. Vernon J. Bourke (London, University of Notre Dame Press; New York: Doubleday, 1975) p. 147
- ^{vii} Immanuel Kant, *On a supposed right to tell lies from benevolent motives*. 1797.
- ^{viii} Immanuel Kant, 1785, *Fundamental Principles of the Metaphysic of Morals*, translated by TK Abbott, 1985 (New York: Prometheus Books) p 56-7
- ^{ix} Supreme Court of the United Kingdom (2013) *Aintree University Hospitals NHS Foundation Trust (Respondent) v James (Appellant)*