

Instructor's Manual

Chapter 1, Ethics and the Law

Key Terms

Apprentiary (p. 32)
Cost-benefit thinking (p. 26)
Descriptive theory (p. 14)
Dyad (p. 22)
Ethic of responsibility (p. 22)
Ethic of ultimate ends (p. 22)
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Morals (p. 5)
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Learning Objectives

After reading this chapter, students should be able to accomplish the following objectives:

1. Define *law*, *morality*, and *ethics*.
2. Distinguish between traditional natural law and modern natural law.
3. Distinguish between nonjudgmentalism and hyper-intolerance.
4. Describe social contract ethics.
5. Outline the steps in applying utilitarianism.
6. Define *rational* ethics.
7. Explain the dyadic nature of ethics in government.
8. Explore the need for ethical responsibility in business.

9. Describe the need for law in our society.
10. Clarify how the law and ethics can often benefit from anarchy.

Major Concepts

1-1 Defining the Law, Morality, and Ethics

The law consists of rules of conduct established by the government of a society to maintain harmony, stability, and justice. Morals involve the values that govern a society's attitude toward right and wrong. Ethics, in contrast, attempts to develop a means for determining how to formulate and apply rules in line with those values.

1-2 Ethical Theories

The social contract option holds that right and wrong are measured by the obligations imposed on each individual by an implied agreement among all the people within a particular social system. The utilitarian option is an ethical theory that says that the morality of an action is determined by its ultimate effects. The more good that results, the more ethical is the action. Conversely, the more bad that results, the less ethical is the action. The rational option is a philosophical theory that says ethical values can be determined by a proper application of human reason. The theory assumes, and rightfully so, that because all human beings are rational, all human beings ought to have the same ethical values.

1-3 Ethics and the Government

The government of a nation-state has two objectives that simultaneously justify its power and enable the proper exercise of that power: (1) to protect its own existence and (2) to protect the lives, health, safety, and well-being of its own citizens. To meet those two objectives, national leaders must recognize the conflict that emerges from within a *dyad* or two-level system of morality: (1) the exercise of individual morality, represented by the ethic of ultimate ends, and (2) the exercise of national morality, represented by the ethic of responsibility.

1-4 Ethics and Business

Corporations owe society a level of responsibility because the government has granted certain legal advantages to corporations. Another reason for expecting ethically responsible decisions from corporate executives is that corporations have a great deal of power in the economic structure, and with power comes responsibility. Finally, corporations should act ethically because it is in their own best interest to do so.

1-5 The Relationship between Law and Ethics

In a perfect society, ethics and the law would always coincide. Our society is not perfect and is not likely to become so in the foreseeable future. Therefore, our society needs the law and the legal system to give it structure, harmony, predictability, and justice.

Chapter Outline

I. Defining the Law, Morality, and Ethics

A. The Law and Morality

- The **law** consists of rules of conduct established by the government of a society to maintain harmony, stability, and justice.
- **Morals** are values that govern the difference between right and wrong and good and evil.

B. Values and Ethics

- Values come from ethics.
- **Ethics** is the attempt to develop a means of determining what these values really are and for formulating and applying rules that enforce those values.
- Morality and the law are united in a common bond based on their intrinsic nature.
- **Traditional natural law** sees law as originating from some objective, superior force that stands outside the everyday experience of most people.
- A law with an immoral purpose is not a law at all.
- **Modern natural law** also sees law as originating from an objective origin point; however, that origin point is conceived of by the human mind.
 - An inherent weakness is that the observation and conclusions drawn can be biased by the observer.
- **Nonjudgmentalism** is the tendency to be tolerant of every type of behavior, even the most reprehensible acts.
- **Hyper-intolerance** is as damaging as nonjudgmentalism. It can be defined as open hostility to the views, ideas, traditions, principles, and beliefs held and practiced by others.

C. Ethical Decision Making

- Ethical decisions are made in a variety of ways:
 - Some people act on instinct.
 - Some people try to do what they “believe” is right.
 - Some people act within set guidelines.
- Some professions, businesses, and organizations develop guidelines usually called rules of conduct or canons of professional responsibility.
 - Although such rules are admirable, they are often so long and complex that they end up covering pages of text that require an in-depth study just to understand the basics.

II. Ethical Theories

A. The Social Contract Option

- **Social contract ethics** holds that right and wrong are measured by the obligations imposed on each individual by an implied agreement among all the people within a particular social system.
- English philosopher Thomas Hobbes is generally credited with formulating the modern version of the theory in his book *Leviathan*.
 - At the most fundamental level, Hobbes says that human beings have two core rights that cannot be sacrificed, traded, or relinquished in any way:
 - The right to live
 - The right to live in peace and security
- The existence of the social contract permits people to live together in peace and harmony, but it does not permit anyone, not even the leader, to violate the core rights of life and security.
- Social contract ethics is descriptive rather than prescriptive.
 - A **descriptive theory** simply describes the values at work within a social system, rather than explaining how the values originated in the first place.
 - A **prescriptive theory** explains how to come up with the values that permit a society to run smoothly.

B. The Utilitarian Option

- **Utilitarianism** is an ethical theory that says that the ethical quality of an action is determined by its ultimate effects.
- The more good that results, the more ethical is the action.
 - Conversely, the more bad that results, the less ethical is the action.
- The main problem with utilitarianism is developing a commonly understood definition of good.

C. The Rational Option

- **Rational ethics** is a philosophical theory that asserts unequivocally that human beings, because their innate capacity for rational thought, can determine the nature and application of ethical values.
 - It assumes that because all human beings are rational, all human beings ought to have the same ethical values.
- Rational ethics is often referred to as *objective ethics* or *normative ethics*.
- Premised on the belief that it is logical to establish rules that support the continued existence of society.
- Ironically, what makes rational ethics, and natural law ethics along with it, so appealing, that is, their universal, consistent, and value-laden principles, is what makes them both so difficult to follow. This difficulty prompts people to develop defenses that will somehow permit them to do that which they know is wrong. One such defense lies within the idea of penumbra rights.
 - **Penumbra rights** are those that are found in those indeterminate or indistinct shadow areas associated with more uniformly accepted rights, such as the right to a safe and secure life.

III. Ethics and the Government

A. A Governmental and Ethical Dyad

- Weber argues that a **dyad** or a two-level system of morality exists, represented by the **ethic of ultimate ends** for individuals and an **ethic of responsibility** for national leaders.
- Ethic of responsibility demands that moral actors—in this case, national leaders—must consider their responsibilities to those people who depend on that leader for safety and security.
- The primary shortcoming of the ethical dyad not the ethic itself, but the difficulty that leaders have executing one level of that ethic—the ethic of responsibility.
- Bromfield argues that American leaders have mishandled their basic responsibilities by focusing on what Bromfield calls “world responsibility” rather than the duty they have toward their own citizens.
 - He argues that the United States, Russia, China, Japan, India, and the nations of Europe must develop economic alliances with those nations closest to them, geographically and culturally.

B. The Threat of Failed States

- Bromfield suggests that international decision making be based on economic motivations.
- The success of Bromfield's plan depends upon the benevolence of the rich nations; however, the basic rule of Weber's ethical dyad is that leaders must not think benevolently but must, instead, think in terms of national responsibility.
- **Failed states** are those in which the government has completely collapsed or has become so ineffective that it can no longer provide sustenance or security for its own people.
- **Unstable states** are those in which the government suppresses its own people thus inviting a future revolt that might destabilized a region.
- **Rogue states** are those that have stepped outside the parameters of international law and have become veritable outlaws in the global community.

C. The Responsibility to Protect

- **Responsibility to Protect (R2P)** declares that the leadership of every nation has a definitive duty to protect its own people from four major threats, genocide, war crimes, ethnic cleansing, and crimes against humanity.
 - Crimes against humanity include such things as slavery, torture, rape, sexual slavery, mass murder, hostage-taking, terrorism, kidnapping, and apartheid, among several others.

IV. Ethics and Business

A. The Traditional Corporate Culture

- Although all businesses affect the economy and the community, the greatest force in the American industrial state is the corporation, in general, and the multinational corporation, in particular.
- Corporations are legal persons created under the authority of federal and state statutes.
 - This status as a "legal person" gives the corporation certain rights and abilities that other business entities do not always have.
- The traditional view says that privately owned corporations are created solely to make a profit for their shareholders.
- Using utility thinking or **cost-benefit thinking**, corporate managers simply look at the action they are about to take and ask whether the benefit to the shareholders will outweigh the cost to the corporation.

B. Reasons for Ethical Responsibility

- The first argument supporting corporate social responsibility is based on the premise that corporations are granted certain rights as a result of the incorporation process.
- A second reason for demanding ethical behavior from corporations is that corporate decision making clearly has an impact on more people than just the shareholders and corporate managers.
- Accepting social responsibility is actually in the long-term best interests of a corporation.

C. Efforts to Promote Ethical Behavior

- The traditional view of a corporation says that its primary role is to make a profit for its shareholders.
- Some statutes now permit managers to consider factors beyond profit in making corporate decisions.

V. The Relationship between Law and Ethics

A. The Need for Law in Our Society

- Laws are needed because people do not always follow ethical principles.
- The law consists of rules of conduct established by the government of a society to maintain harmony, stability, and justice in that society.
 - It does so by defining the legal duties and rights of the people.

B. Ethical and Legal Anarchy

- As is true of all institutions, the law is flawed.
- Sometimes having an imperfect but functioning legal system is always preferable to anarchy.
- A question is whether having an imperfect but functioning legal system is preferable to anarchy.
- Kropotkin Jean Jacques Rousseau believes that a little anarchy now and again is useful, despite the horrors that often result in such a state, but only when what emerges from that period of anarchy is a system blessed by legal and ethical harmony.
 - To explain this further, Kropotkin introduces two human forces: energy and justice.
- Energy is found in a society that manages to redirect the collective human will toward the welfare of the entire species instead of toward individual or corporate survival

measured only by monetary gain.

- Justice is present when all people are treated equally based on some intangible quality that has nothing to do with money.
- Doing one's duty in a cooperative and unselfish way creates harmony in the society, evokes thanks and appreciation from other members of that society, and gives each person a feeling of self-worth that goes way beyond anything that mere money can do.
 - Kropotkin called this measure of value **appretiare**.
- Kropotkin's socioeconomic theory suffers from an inadequate, or at least unsatisfying, explanation of the mechanism by which the human race promotes cooperation over competition and establishes *appretiare*.

Background Information

A. Cross-Cultural Notes

1. In many traditional African societies, citizens would bring their disputes before a council of village elders for resolution. Men in these societies would often spend their leisure time debating ethical problems, honing the debate skills that might one day place them among the elders. Riddles and ethical problems are still an important part of the African oral tradition.

B. Historical Notes

1. "Augustine shares with the ancient philosophers the conception of ethics as an inquiry into the supreme good: that which we seek for its own sake, never for the sake of some further end, and which makes us happy. He also shares the conviction that all human beings by nature want to be happy, agreeing that happiness is a condition of objective well-being, not merely the pleasure a person might gain from satisfying whatever desires she happens to have, however deluded or self-destructive."

Bonnie Kent, The Moral Life, in *The Cambridge Companion to Medieval Philosophy*.

2. "Spinoza and Hobbes agree in making the selfish desire for self-preservation the foundation of justice and duty. Without a strongly self-interested motive, they reasoned, human beings would have little incentive to obey the rules of social morality, much less restrain their desires to do whatever is in their power."

Steven B. Smith, *Spinoza's Book of Life: Freedom and Redemption in the Ethics*.

C. State Variations

1. Most states have Good Samaritan laws that grant immunity from civil liability to people who provide emergency care to injured persons. There is no legal duty for a person to stop and give aid, but is there a moral duty?
2. The American Medical Association has promulgated the Principles of Medical Ethics, which require that a physician must not divulge any information that should be kept secret. Many states allow a patient to sue a physician who violates this ethical code for damages.

D. Quotations

1. “An eminent lawyer cannot be a dishonest man. Tell me a man is dishonest, and I will answer he is no lawyer. He cannot be, because he is careless and reckless of justice; the law is not in his heart, is not the standard and rule of his conduct.”
—Daniel Webster (1782–1852), American statesman
2. “Fair play is a jewel.”
—Abraham Lincoln (1809–1865), American president

Term

1. Canon is similar to the Greek word “kanon,” which refers to a rule. Canon infers a strictness that the word “rule” lacks, which is appropriate since it refers to norms of behavior and practice.

Related Cases

1. Attorneys are required to keep their clients’ funds that are held in trust in accounts separate from their normal business accounts. An Indiana attorney was disbarred for commingling his clients’ funds and his own personal funds. The attorney had spent at least \$20,000 of his clients’ funds for his personal use. In re Frosh, 643 N.E.2d 902 (Ind. 1994).
2. Paying the appropriate amount of taxes each year is difficult even for the most ethical person. However, in an extreme case, a Connecticut man was convicted of willfully failing to pay income taxes when, for two years in a row, he submitted nearly blank personal income tax returns despite having received personal income. U.S. v. Schiff, 612 F.2d 73 (2d Cir. 1979).

Teaching Tips and Additional Resources

1. Information regarding Federal Communications Commission's (FCC) position on protecting an open Internet is available at <https://www.fcc.gov/document/fcc-releases-open-internet-order>.
2. Information regarding a new drug that is potentially in use by athletes such as cyclists is available on the website of the *New York Times*:
<http://www.nytimes.com/2015/07/30/sports/cycling/fabio-taborre-and-carlos-oyarzun-drug-tests-suggest-use-of-chemical-meant-for-research.html>.
3. Information regarding a Massachusetts law (it's illegal to knowingly lie in political campaign material), which is somewhat similar to the Ohio law discussed in the text, is available on the website of *The Boston Globe*:
<https://www.bostonglobe.com/metro/2015/05/06/will-defend-law-making-crime-lie-campaign-material/mTcCBqjsjOOeW5v3FvkoLI/story.html>.
4. An article titled "China and Russia Reach 30-Year Gas Deal" is available on the website of the *New York Times*: <http://www.nytimes.com/2014/05/22/world/asia/china-russia-gas-deal.html>.
5. Additional information on philosopher Max Weber, referenced in the text, can be found at <http://plato.stanford.edu/entries/weber/>, and additional information about Thomas Hobbes can be found at <http://plato.stanford.edu/entries/hobbes-moral/>.
6. Information on a Corporate Social Responsibility Initiative involving Harvard University and others can be found at http://www.hks.harvard.edu/m-rcbg/CSRI/init_main.html
7. On the issue of reasons for social responsibility in the business sector, see Richard A. Posner, *Overcoming Law* (Cambridge, MA; Harvard University Press).
8. The tendency to complicate moral decision making is nothing new. In her essay, "The Moral Life," Bonnie Kent, a professor of philosophy at the University of California, Irvine, reminds us that even medieval philosophers tended to complicate the rules of moral judgment. Kent explains it this way, "Scholastics classified sins in many different ways. They distinguished between the original sin all humans inherited from Adam and the actual sins one commits strictly as an individual. They divided sins according to seriousness and related punishment, distinguishing venial ('pardonable') sins from the mortal sins that represent a decisive turning away from God, break the relationship with him, and result in damnation unless God chooses to renew the relationship. They distinguished between ignorance, passion, and militia—in increasing order of gravity—as internal, psychological

sources of sin. Finally, they distinguished between sins and vices, treating the first as actions and the second as the settled dispositions that incline a person to such actions.”—Bonnie Kent, “The Moral Life,” in *The Cambridge Companion to Medieval Philosophy*.

9. For an interesting discussion of various theories of morality and their applications in the law, see *Morality, Harm, and the Law* by Gerald Dworkin (Boulder: Westview Press, 1994).
10. The use of fetal tissue for medical treatment is heavily debated. Discuss the topic with students. Then, ask the students to analyze it by applying the ethical theories discussed in this chapter.
11. Discuss examples from recent events that involve moral atrocities committed by individuals whose moral code should have forbidden such actions.
12. Discuss examples of social systems from which ethical systems appear absent or in which they seem highly flawed. Ask students to address the following questions: What brings about atrocities such as the genocide in Rwanda; the war crimes of former Yugoslav president Slobodan Milosevic; North Korea’s unprovoked bombing of a South Korean island; and the almost weekly suicide bombings that occur in Afghanistan? How do individuals victimized by such horrors respond to a lack of morality in their society or government? How do individuals act morally amid such widespread corruption or lawlessness?
13. Discuss how ethical or unethical behavior is illustrated in recent movies.
14. Discuss the following situation with students: A poor man’s wife is dying of an unusual illness. Medication is available that will prevent her death and allow her to live a normal life, but the man cannot afford to buy it. He appeals to doctors, pharmacists, church groups, and government officials for money, but they all refuse him. As his wife’s health continues to decline, the man, in desperation, breaks into a pharmacy and steals the medication. Is his conduct ethically correct? Should he be prosecuted?
15. Explain to students that communication between an attorney and a client is strictly confidential. When a client confides in his or her lawyer that he or she is about to commit a crime, the attorney has a legal duty to disclose this information to the police. Lead the class in a discussion of how serious a crime would have to be before the attorney has an ethical duty to act. Would the attorney–client privilege benefit proportionately if this exception were not in place?

16. Conduct a discussion with the class based on the following scenario: An employee at a small grocery store takes home a bag of groceries each day without paying for them. Who is harmed by this action? The employee? The employer? The owners of the store? Or the community?
17. Politicians often speak about the United States' loss of family values and ethics. Suggest that students write a report expressing their opinion on whether or not the government should attempt to change society's values and ethics by passing laws. Ask them to back their opinions up by including examples of how the government's efforts have or have not worked.