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Editorial Note

The Journal of Applied Ethics and Philosophy is an interdisciplinary periodical covering diverse areas of applied ethics. It is the official journal of the Center for Applied Ethics and Philosophy (CAEP), Hokkaido University. The aim of the *Journal of Applied Ethics and Philosophy* is to contribute to a better understanding of ethical issues by promoting research into various areas of applied ethics and philosophy, and by providing researchers, scholars and students with a forum for dialogue and discussion on ethical issues raised in contemporary society.

The journal welcomes papers from scholars and disciplines traditionally and newly associated with the study of applied ethics and philosophy, as well as papers from those in related disciplines or fields of inquiry.

Shunzo Majima
Editor-in-Chief

Three Nuclear Disasters and a Hurricane:

Some Reflections on Engineering Ethics

Michael Davis

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Abstract

The nuclear disaster that Japan suffered at Fukushima in the months following March 11, 2011 has been compared with other major nuclear disasters, especially, Three Mile Island (1979) and Chernobyl (1986). It is more like Chernobyl in severity, the only other 7 on the International Nuclear Event Scale; more like Three Mile Island in long-term effects. Yet Fukushima is not just another nuclear disaster. In ways important to engineering ethics, it is much more like Katrina's destruction of New Orleans than like any nuclear disaster. It is (primarily) a consequence of a natural disaster, the enormous earthquake and tsunami that wrecked much of northeast Japan. One lesson of Fukushima, one shared with Katrina, concerns the different roles engineers have at different stages in an engineering project (planning, designing, management, and operations). In the planning stage, engineers seem to have relatively little power to affect certain early large-scale trade-offs between public safety and public welfare. Another lesson may be the importance of not leaving complex technical systems untended. The events that made the disasters at Three Mile Island and Chernobyl inevitable lasted only a few minutes or hours; the events that made the disasters in New Orleans and Fukushima inevitable were spread over several days. Fukushima avoided a more serious disaster because the plants were not abandoned in the way New Orleans was. A third lesson concerns our ideas of heroism, especially our sense that heroism is sometimes one's duty. An engineer's duty sometimes includes protecting others from harm even at the risk of the engineer's life.

Keywords: Chernobyl, Fukushima, Katrina, Three Mile Island, precautionary principle

This paper began with an invitation from Japan a month after the disaster at Fukushima I Nuclear Power Plant began on March 11, 2011. The paper was to be presented six months later (October 30)—at a conference where I was already scheduled to present a paper on the use of imaginary cases in ethics (Davis, 2012). The disaster was still very much the province of journalism. Its outlines certainly lacked the stability of history. Of course, even history, though it generally seems stable, is not entirely so, being subject to dispute here and there and to radical revision every now and then. At first, Fukushima's facts changed almost daily—if by “facts” we mean those descriptive propositions about which there is general agreement. After a while, the changes were less frequent and more a matter of addition than correction. Today,

a year after I began work on the paper, the outline of the disaster seems settled. Dispute now concerns only details, such as how much land, if any, will have to be abandoned for some years, how many pre-mature deaths are to be expected because of radiation released during the disaster, and so on. At some point, I had to stop worrying about the facts and report my reflections. I stopped worrying about the facts on October 15, 2011. Since then, I have changed “a fact” only when a reader or auditor pointed out that it was no longer fact.

I am an oddity in science and technology studies (STS) because I focus not on science and technology but on scientists and technologists. Indeed, I do not write about “scientists” in general or “technologists” in general but about specific professions, for example, chemists or engineers. While most STS scholars seem

to be interested in what scientists or technologists have in common, I have focused on what distinguishes one discipline from another, for example, what distinguishes chemists from engineers (Davis 2002). I have found that the most fruitful way to study professions, especially the profession of engineering. I am, in short, not a philosopher, historian, or sociologist of technology (though scholars in those fields sometimes find my work useful). The credential that justified the invitation from Japan was a quarter-century of thinking (and writing) about engineering. (For those unfamiliar with my work on engineering, the place to start is Davis 1998.)

That invitation from Japan presented me with a practical problem. The newspapers, websites, and other sources available (at least in English) seldom identified anyone as an engineer. The stories focused on “workers”, “managers”, and machinery. I had to use what I knew about nuclear power plants in the United States to interpret the facts thus given. I had similar problems, though less severe, when interpreting the other disasters to which I chose to compare Fukushima. Interpretations are, of course, open to objection but, without interpretation, facts merely pile up, becoming in time an unmanageable heap. There is no understanding without interpretation. But interpretation relying on changing facts is necessarily the sort of time-stamped enterprise philosophers are inclined to avoid—and I would have avoided it but for that invitation from Japan. There is not much that a philosopher can do about a disaster such as that at Fukushima—except help those seeking to understand it and thereby help to prevent similar disasters. I felt I owed the Japanese that much.

This paper’s title promises “reflections” on Fukushima, not systematic or definitive understanding. Reflections are what one gets when, focusing thought on certain facts, one captures connections one happens to see, connections that seem to jump out of the dark. Reflection is a source of hypothesis rather than proof, the beginning of a discussion rather than the end. We do not need reflection when we can derive a conclusion from what we know. Reflection is useful when we want to discover a conclusion that, though far from provable given the facts we have, invites investigation. There is no algorithm for reflection, no test of success beyond useful surprise.

Why Compare These Four Disasters?

The nuclear disaster that Japan suffered at Fukushima has been compared with other major *nuclear* disasters, especially, Three Mile Island (1979) and Chernobyl (1986). It is more like Chernobyl in immediate destructiveness, the only other 7 on the International Nuclear Event Scale (the upper limit of which is 7). It

is more like Three Mile Island in probable long-term effects (though Fukushima’s long-term effects are likely to be substantially worse than Three Mile Island’s). To date, Chernobyl seems to have directly killed thirty-one reactor staff and workers, to have caused between 200,000 and 1,000,000 premature deaths worldwide, to have forced the permanent abandonment of a city of about 50,000 (Pripyat), and to have ruined perhaps a 100,000 square km of farmland. Over 300,000 people lost their homes to contamination. (All information about Chernobyl here and below is drawn from Wiki, “Chernobyl”, a source valuable both because it is easily accessed and regularly updated.)

In contrast, the radiation released from the Fukushima plant, though significant, will, it seems, leave little long-term contamination, except at the plant itself and in a plume perhaps fifty km beyond. At least six workers have exceeded lifetime legal limits for radiation and more than three hundred have received significant radiation doses. Estimates of future cancer deaths due to accumulated radiation exposures in the population living near Fukushima have ranged from none to a non-peer-reviewed “guesstimate” of a thousand. No one died in the explosions at the plant or from subsequent radiation exposure (though the tsunami killed two workers and evacuation of hospitals in the exclusion zone may have caused as many as forty-five more deaths). The earthquake or tsunami, rather than the nuclear accident, seems to be responsible for the few employees severely injured or killed at the plant. (Wiki, “Fukushima Daiichi”.)

The discussion of Fukushima below relies not only on this source but also on Wiki, “Fukushima I”. Though I shall hereafter refer to “Fukushima”, it is in fact Fukushima I (Fukushima Dai-ichi) that I shall be referring to. There is also a Fukushima II (Fukushima Dai-ni). For details, see Wiki, “Fukushima II”.

Though certainly a nuclear disaster, Fukushima is not just another nuclear disaster. In ways important to engineering, it is much more like Katrina’s destruction of New Orleans than like any other nuclear disaster. It is (primarily) a consequence of a natural—or, at least, much larger—disaster, the enormous earthquake and tsunami that wrecked much of northeast Japan on March 11, 2011, killing about 28,000 people. Fukushima has many lessons to teach, especially if we compare it with these other disasters. Here I shall focus on four lessons: The first concerns the different roles engineers have at different stages in an engineering project, especially the relative powerlessness of engineers to affect certain early large-scale trade-offs between public safety and public welfare. A second lesson may be the need to evaluate risk in ways beyond ordinary cost-benefit analysis when the risks are improbable but catastrophic. A third lesson is the importance of not leaving complex technical

systems unintended. Engineering systems do not work long without engineers. A fourth lesson may concern the way engineers should respond, and typically do respond, to engineering disasters. They should take responsibility for limiting the harm as well as for fixing the underlying problem, even if limiting the harm involves risking their lives. To see what I mean, let us consider these four disasters in greater detail, beginning with the first.

Three Mile Island

Three Mile Island was a “normal accident”, that is, it began with ordinary failures of equipment and practice within a plant itself operating normally. Perrow 1984 also describes Three Mile Island as a “normal accident”. While I agree that it was a “normal accident” in his sense, my use of that term is somewhat different. I mean simply that the accident was a product of what engineers normally do rather than a product of incompetence, negligence, corruption, or other unusual conduct (such as experimentation).

During the night of March 27-28, 1979, workers were engaged in routine cleaning of a blockage in one of Reactor 2’s eight condensate polishers (filters for the secondary cooling loop). At 4 am, the pumps feeding the polishers stopped. We still do not know the cause of the stoppage. When a bypass valve failed to open, water ceased flowing to the secondary loop’s main feed-water pumps. These also shut down. No longer receiving water, the steam-driven generators stopped and the reactor automatically carried out an emergency shutdown. Within eight seconds, control rods were inserted into the core to halt the nuclear chain reaction. The reactor nonetheless continued to generate heat (a byproduct of normal decay). Because steam was no longer being used by the turbine, heat was no longer being removed from the reactor’s primary water loop. (Except where otherwise indicated, the discussion of Three Mile Island here and below relies for its facts on Wiki, “Three Mile Island”.)

Once the secondary’s feed-water pumps stopped, three auxiliary pumps started up automatically; but because some valves were closed for routine maintenance, the system could not pump water. So, the secondary loop was no longer working. Without the secondary loop removing heat, pressure in the primary loop began to increase, automatically triggering a relief valve. The relief valve should have closed again when the excess pressure had been released; instead, it stayed open. That open valve permitted coolant water to escape from the primary system. It was the principal mechanical cause of the coolant-loss meltdown that followed.

The mechanical failures were compounded by the failure of plant operators to recognize the situation as a

loss-of-coolant accident for more than two hours. (One cause of their failure seems to have been an indicator light blocked from view.) That initial failure led an operator to override the reactor’s automatic emergency cooling system manually. With the release valve still open, the quench tank that collected the discharge from the release valve overflowed, causing the containment building’s sump to fill and sound an alarm at 4:11 am (eleven minutes after the first pumps failed). That alarm, along with higher than normal temperatures on the discharge line and unusually high temperatures and pressures in the containment building, clearly indicated that there was a loss-of-coolant accident, but the operators did not respond to these indications. At 4:15, the quench-tank relief diaphragm ruptured and radioactive coolant began to leak out into the general containment building. This coolant was pumped from the containment building sump to an auxiliary building, outside the main containment, until the sump pumps were stopped at 4:39 am.

After almost eighty minutes of slow temperature rise, the primary loop’s four main pumps began to suffer damage as a mixture of steam and water passed through them. The operators then shut down the pumps, believing that natural circulation would continue the water movement, but steam in the system (itself the product of rising temperature) prevented coolant flow through the core. As the coolant stopped circulating, it increasingly turned to steam. Just over two hours after the first sign of trouble, the coolant level fell so low that the top of the reactor core was exposed to the steam. Intense heat then caused a reaction between the steam in the reactor core and the nuclear fuel-rod cladding. That reaction burned off the cladding and damaged the fuel pellets. The pellets then released more radioactivity into the reactor coolant, producing hydrogen gas that probably caused a small explosion in the containment building in the afternoon.

At 6 am (two hours after the incident began), there was a change of shift in the control room. A new arrival noticed that temperatures in the relief valve tailpipe and holding tanks were too high and used a backup valve to shut off the coolant venting through the relief valve. But, by then, about 120,000 liters of coolant had already leaked from the primary loop. Not until almost 7 am (almost three hours after the incident began) did contaminated water reach radiation-activated alarms. By then, the radiation in the primary coolant water was around three-hundred times higher than usual. The plant was seriously contaminated and the reactor’s core had suffered a partial meltdown.

The Nuclear Regulatory Commission (NRC) made an extensive investigation of the disaster, a typical engineering response. Its report ended with recommendations for changes in controls, quality assurance, maintenance, operator training, management,

and communication of important safety information. There was no finding of negligence or more serious wrongdoing having caused the disaster, no suggestion that major redesign of nuclear plants was needed, and no proposal to rethink the place of nuclear energy in the generation of electricity. (Rogovin 1980, pp. 89-93, focused mainly on changes in emphasis and procedures at the NRC; Kemeny 1979, pp. 61-73, focused on “attitudes and practices”). These reports do, however, contain much criticism of other aspects of how Three Mile Island operated.

Chernobyl

Chernobyl was not a normal accident. Its cause was an engineering *experiment* which, though successful, lacked proper approval. That is not to say that the experiment was unjustified, fundamentally improper, or indeed abnormal.

Even when not actively generating power, nuclear reactors require cooling to remove heat produced by the natural decay of nuclear fuel. Chernobyl’s pressurized water reactors (different in design from Three Mile Island’s) used water flowing at high pressure to remove waste heat (about 28,000 liters of water an hour). After an emergency shutdown, the core could still generate a significant amount of residual heat. If not removed, the heat could cause core damage (as it did at Three Mile Island). If the power grid failed, power to run the plant’s cooling system might be unavailable from outside for far too long.

Chernobyl’s reactors had three backup diesel generators. Each generator required fifteen seconds to start up but took over a minute to attain the speed required to run one of the main coolant pumps. Chernobyl’s engineers judged this one-minute power gap unacceptable. Too much can happen in a nuclear reactor in a minute when the cooling system is not working. Analysis indicated that one way to bridge the one-minute gap was to use the mechanical energy of the steam turbine and residual steam pressure to generate electricity to run the main coolant pumps while the generator was reaching the correct RPM, frequency, and voltage. But, of course, the analysis had to be confirmed experimentally. The engineers had to work out and then prove a specific procedure for effectively employing residual momentum and steam pressure.

Previous experiments—in 1982, 1984, and 1985—had ended in failure. The 1986 experiment was scheduled to take place at Reactor 4 during a maintenance shutdown. The experiment focused on refinements in the switching sequences of the electrical supplies for the reactor. The experiment was to begin with an automatic emergency shutdown. Because no

danger to the reactor was anticipated, the engineers did not formally coordinate the experiment with either the reactor’s chief designer or scientific manager. Indeed, the experiment did not even have the approval of the onsite representative of the Soviet nuclear oversight agency. Only the director of the plant approved it (and even his approval did not follow standard procedures).

The experiment began just after 1:23 am on April 26, 1986. The diesel generator started and sequentially picked up loads. The turbine generator supplied the power for the four main circulating pumps as it coasted down. The experiment was all but complete forty seconds later. But, as the momentum of the turbine generator that powered the water pumps decreased, the water flow decreased, producing more and more steam bubbles in the core. The reactor was now ready to begin a destructive feedback loop: The production of steam would reduce the ability of the coolant to absorb neutrons, increasing the reactor’s output of heat. The increased heat would cause yet more water to become steam, further increasing heat. During almost the entire period of the experiment, the automatic control system successfully counteracted this destructive feedback, inserting control rods into the reactor core to keep the temperature down.

If conditions had been as planned, the experiment would almost certainly have been carried out safely. The Chernobyl disaster resulted from attempts to boost the reactor power—and, therefore, temperature—once the experiment had started (something inconsistent with approved procedure). The approved procedure called for Reactor 4’s power output to be gradually reduced to 700–1000 MW. The minimum level established in the procedure (700 MW) was achieved about an hour before the experiment began. However, because of the natural dampening effect of the core’s neutron absorber, reactor power continued to decrease, even without further operator action.

As the power dropped to approximately 500 MW during the experiment, one of the engineers conducting the experiment mistakenly inserted the control rods too far, nearly shutting down the reactor. Control-room personnel soon decided to restore the power and extracted the reactor control rods, but several minutes elapsed between the extraction and the time that the power output began to increase and stabilize at 160–200 MW. The extraction withdrew the majority of control rods to the rods’ upper limit, but the rapid reduction in the power during the initial shutdown and subsequent operation at less than 200 MW led to increased dampening of the reactor core by the accumulation of xenon-135 (an unstable fission product of uranium that absorbs neutrons at a high rate). To counteract this unwanted high-absorption, the operators withdrew additional control rods from the reactor core.

Then, about the time the experiment ended, there was an emergency shutdown of the reactor. The shutdown started when someone pressed the button of the reactor's emergency protection system. (We do not know whether the button was pressed as an emergency measure, by mistake, or simply as a routine method of shutting down the reactor upon completion of the experiment.) Because of a flaw in the design of the graphite-tip control rods, the dampening rods displaced coolant before inserting neutron-absorbing material to slow the reaction. The emergency shutdown therefore *briefly* increased the reaction rate in the lower half of the core. A few seconds after the start of the emergency shutdown, there was a massive power increase, the core overheated, and seconds later this overheating produced the first explosion. Some of the fuel rods fractured, blocking the control-rod columns and causing the control rods to become stuck at one-third insertion. Several more explosions followed, exposing the reactor's graphite moderator to air, causing it to ignite. Since the reactor lacked a containment (a thick concrete shell), the fire in the reactor sent a plume of highly radioactive smoke into the atmosphere, causing dangerous fallout over a huge area (as much as five-hundred km away)—and, eventually, less dangerous fallout over much of the world.

The effort to halt the nuclear contamination and avert a much greater disaster soon involved over 500,000 workers and cost an estimated eighteen billion rubles, crippling the Soviet economy.

Because most of those directly involved in the Chernobyl disaster soon died of radiation poisoning, there are many uncertainties about the exact sequence of events. Nonetheless, we can be sure that the actual disaster would not have occurred had the experiment not been carried out. The Chernobyl disaster combines the "normal failures" of operators and equipment we saw at Three Mile Island with an experiment of the sort engineers often perform, though an experiment necessarily introduces the unexpected. Chernobyl was as much an engineering disaster as Three Mile Island: both the immediate and underlying causes were ordinary engineering decisions, whether in operation or design.

Fukushima

The disaster at Fukushima fits neither of these patterns. The accident was not normal or the result of an engineering experiment. It was also not the result of operator negligence, incompetence, or misconduct. The disaster began with a large earthquake, one larger than any Japan had experienced in 1400-years of recorded history (http://en.wikipedia.org/wiki/List_of_earthquakes_in_Japan, accessed April 25, 2011). The quake was

followed by an enormous tsunami. That double disaster would have happened even if the Fukushima nuclear power plant, one of the twenty-five largest in the world, had never existed. The nuclear disaster is a byproduct of that larger natural disaster.

At the time of the quake, 2:46 pm, Reactor 4 had been de-fueled while 5 and 6 were in cold shutdown for planned maintenance. The remaining three reactors shut down automatically in response to the quake. After the reactors shut down, the plant's own generation of electricity ceased, eliminating one source of electricity used to run cooling and control systems. One of two connections to the national electrical grid also failed. That loss of power started up thirteen on-site emergency diesel generators. These would ordinarily have provided enough power to operate the reactors' control and cooling systems until the lost connection to the national grid could be restored. Had the earthquake been the only disaster to hit the Fukushima plant on March 11, there would have been little to discuss here. The tsunami changed that.

The plant was protected by a seawall designed to withstand any tsunami up to 5.7 meters, but the great wave that struck forty-one minutes after the quake was fifteen-meters high. It flooded the entire plant, including generators and electrical switchgear in reactor basements. It also broke the remaining connection with the national electrical grid. All conventional power for cooling was lost. Only one backup remained: emergency batteries, able to run some of the monitoring and control systems for up to eight hours. Replacement batteries and mobile generators were soon dispatched to Fukushima, but collapsed bridges, debris-strewn roads, and similar obstacles delayed them. The first replacements did not arrive until 9:00 pm (six hours after the first call went in).

The arrival of the replacement batteries and mobile generators did not end the crisis, however. They had to be installed. The normal connection points were in flooded basements. There was also difficulty finding suitable cables. Work to connect batteries and generators was still continuing twenty-four hours after the quake when there was an explosion in Reactor 1's building. The side walls of the upper level were blown away, the roof collapsed, and debris covered much of the floor and machinery.

The roof of the building was designed to provide ordinary weather protection, not to withstand an explosion or to act as containment for the reactor. In the Fukushima reactors, the primary containment surrounded the reactor's pressure vessel. The top floor had no reactors, only water filled pools for storing new fuel ready to be craned into the reactor and used fuel ready for disposal.

This first explosion was probably caused when

hydrogen collected under the roof. Exposed fuel rods became very hot and reacted with steam, oxidizing the cladding and releasing hydrogen. The hydrogen would have leaked upward. Safety devices normally burn such hydrogen before it reaches explosive concentrations. These systems seem to have failed when the electrical power did.

Reactor 1's containment survived the explosion. There were no large leaks of radioactive material, although there was an increase in radiation following the explosion. The explosion at Reactor 1 injured four workers. But this was only the beginning. Hydrogen gas was also collecting at the other five reactors. Over the next few days, hydrogen explosions destroyed the upper cladding of the buildings for Reactor 3 and 4 and the containment inside Reactor 2. Several fires broke out at Reactor 4. In addition, spent-fuel rods stored in the spent-fuel pools of Reactors 1–4 began to overheat as the water level dropped. Fear of radiation leaks led to evacuation of all non-essential persons within a twenty-kilometer radius of the plant.

In short, the Fukushima plant was overwhelmed by forces from outside well beyond what it was designed for. Without heroic efforts by plant staff, some of whom may die over the next few years because of exposure to radiation, the Fukushima disaster might have become at least as devastating as Chernobyl. Even with those heroic efforts, several weeks passed before the plant could be said to be more or less under control. One generator at Reactor 6 was restarted on March 17 (six days after the quake) allowing some cooling at Reactor 5 and 6, the least damaged. Connection to the power grid was restored to parts of the plant on March 20, but machinery for Reactors 1–4—damaged by flooding, fires, and explosions—could not be restarted for several months. Only in early October 2011 did coolant in all the reactors reach safe temperatures.

The Fukushima plant could have been designed to withstand the natural disaster that occurred. A breakwater three times higher than the actual breakwater could have protected the plant against the tsunami (assuming it survived the quake); the plant might have been located far enough away from the ocean to be safe from even so large a tsunami; generator-building basements might have been made waterproof; and so on. Even some less expensive arrangements might have improved what happened considerably. For example, storing more batteries on site would have allowed the cooling and control systems to function longer without repair or resupply, weeks instead of hours. But all of these changes would have been (more or less) expensive, raising the price of the electricity the plant produced. Typically, engineers, though consulted, do not make such decisions. Government regulators, senior management, or public opinion typically decide, for example, whether to protect

against a 500-year, 1,000-year, or 10,000-year quake.

Katrina

When it struck New Orleans on August 29, 2005, Katrina was a category 3 hurricane, a large storm but no larger than storms that strike the Gulf Coast almost every year. (The top of the hurricane scale is 5.) Katrina was nonetheless unusually destructive because it moved so slowly that anything in its path was subject to heavy rains and high winds for many hours. The rain and high winds were, however, only part of what caused so much destruction in New Orleans. (Except as otherwise indicated, all information in this section comes from Davis 2007.)

Even on an ordinary day, New Orleans is a city that must work to prevent flooding. One of the world's largest rivers, the Mississippi, flows through it. From Jackson Park, the jewel of the tourist-drawing French Quarter, one of the *highest* points in the city, one can see the mighty river rushing by about two meters *above* the street. On any day of the year, the Mississippi would flood the city were it not for the levees that hold it back. Nor is the Mississippi the only watery threat. Though the oldest parts of the city are as much as ten meters above sea level, a majority of the city is below, and the sea, the Gulf of Mexico, reaches New Orleans at its back, through Lake Pontchartrain, and underground, through the water table. (While the water under New Orleans is fresh, it is as high as it is in part because the Gulf's salt water is not lower.)

Mostly developed since 1900, the newer parts of the city are, like much of the Netherlands, dry only because water is constantly pumped out. Every year, there is more for the pumps to do. Sea level is rising about a third of a meter a century; some parts of the city have subsided by half a meter or so because the weight of buildings is compressing the soil or because pumping water from the ground allows the soil to compress. Were it not for huge screw pumps working day and night, New Orleans would today be a version of what it was when the French first settled there in 1718, a crescent-shaped string of small islands in a huge swamp. Like Venice in Italy and St. Petersburg in Russia, New Orleans is much more artificial, and therefore much more vulnerable to natural forces, than most cities. Engineers did not found New Orleans, but the city has long survived only because of engineering. The floods the city suffers from time to time are due in part to the engineering not being good enough. That is as true of Katrina as of earlier disasters, for example, the one in 1965 named for hurricane Betsy (nearly as destructive as Katrina).

Katrina flooded New Orleans because the levee system failed catastrophically. Much of the disaster,

however, occurred hours *after* the storm had moved inland as water poured through holes in levees and filled much of the city. There was no attempt to repair the levees immediately. Indeed, for many days, there were no officials in New Orleans even to report damage. Everyone who could be evacuated had been. By August 31 (two days after Katrina struck), 80% of New Orleans, a city almost emptied of inhabitants, was under water, with some parts under water almost five meters deep. The water lingered for weeks.

On March 26, 2007, a year and a half after Katrina passed through New Orleans, the Interagency Performance Evaluation Task Force (IPET) issued its (draft) *Final Report*. IPET was an independent team of more than one-hundred-fifty international and national experts from more than fifty different government organizations, universities, and private companies. The U.S. Army Corps of Engineers commissioned IPET a few weeks after Katrina hit New Orleans. It was to analyze how the levee system performed. Though many questions of detail remain unsettled, this nine-volume report, is (more or less) the last word on both the causes of the Katrina disaster and means of preventing similar disasters.

IPET reports a “system” that grew up piecemeal, only in part under the control of the Corps of Engineers, the government agency officially in charge of waterways. In some places, the system failed because a levee or other barrier to water was not high enough, often because of unanticipated subsidence rather than original design error. In other places, the system failed because, though high enough, the barriers were not designed for the forces to which they were in fact subject (an unusually slow-moving storm). Design of floodwalls along three canals was “particularly inadequate”. A series of incremental decisions between the original plan and the structures actually constructed “systematically increased the inherent risk in the system without recognition or acknowledgment” (IPET 2006, I-2). Many of the failures in the system would not have occurred had implementation of plans for reconstruction not been delayed for almost twenty-five years by inadequate funding, new laws governing the environment, and similar difficulties well beyond the control of engineers. For some important “decisions”, there was no decision-maker at all. The decisions were a mere byproduct of poor communication, poor information, poor coordination, or some combination of these.

The most important lesson IPET drew from its analysis is unsurprising: The way to avoid similar disasters is to use larger safety factors (“conservative design assumptions”) and good materials (“higher quality, less erodible”). (IPET 2006, I-3).

The flood control system now replacing the one Katrina overwhelmed is considerably more expensive

than the old one. For example, the Corps has been replacing the five-meter pilings holding canal walls in place with pilings that would go down *fifteen and a half* meters (three times as deep). The Corps agreed that the use of I-walls along the canals (without or even with the support of a simple earthen levee) was a mistake. It is replacing the canal’s I-walls with heavily-braced T-walls locked down by twenty-one meter H-piles angled out in two directions. The use of simple sand or gravel levees was also judged a mistake. The Corps is now “armoring” all levees where they seem vulnerable to overtopping, that is, covering them with something water will not soak through or quickly wear away. These are expensive changes in design that government was unwilling to pay for without a major disaster and may yet lose interest in paying for before the work is complete.

Conclusions

We can, I think, distinguish four sorts of engineering decision in these four case studies: planning, designing, management, and operations. (In a different context, I would include “disposal” in this list. I do not include it here only because none of these disasters concerns disposal as such, though Fukushima’s problems were due, in part, to fuel rods waiting disposal.)

By planning, I mean such decisions as whether to build a nuclear power plant at all, where to put it, and the upper limit of its budget. For such decisions, engineers are most important for vetoing certain options, for example, a location because the risk of earthquake makes safe construction too expensive. They are also important for suggesting alternatives, for example, conservation or a gas-fired plant rather than a nuclear plant. Engineers are not (or, at least, should not be) mere “problem solvers”. One important function they have is helping to define problems—or re-define them when it becomes clear that the client or employer has not asked the right question.

But, for any large undertaking such as a nuclear plant or flood control system, engineers are generally only one party in a complex social decision in which the other parties include employer, government officials, experts of various sorts (such as geologists), bankers, and civil society (or “the public”). Perhaps the most important contribution engineers can make to planning is developing minimum standards for evaluating and responding to specific risks and benefits of the technology in question.

By designing, I mean the actual drafting of specifications, floor plans, and so on necessary to construct or modify the technological artifact in question. Once planning has set limits, engineers are generally free to work within those limits, for example, to design

a nuclear plant that will fail slowly rather than quickly or cool rather than heat up if left alone. Only when a planning limit is too strict do engineers have a reason to restart the planning process, for example, by suggesting that the budget be raised to provide an adequate margin of safety.

By management, I mean overseeing the operations of a plant, including choosing, training, and directing operators. Much management is not technical—and is therefore not the domain of engineers. But, for nuclear plants or flood control systems, the managers will typically be engineers. For engineers, part of technical management is remaining alert to possible improvements in staff, procedures, and equipment. So, for example, a manager who noticed that operators at Three Mile Island often missed readings on an important gauge because equipment blocked their view of it should recommend, or order, that the control board or control room be redesigned to improve the view.

By operations, I mean actually doing what is necessary for the plant or other technical artifact to work. While engineers do not, in general, operate plants, they do constitute most of the operators in a nuclear plant. So, for example, at Chernobyl, they pushed the buttons that moved dampening rods into the core. While operators can be reprimanded, and their acts reversed, they are, while acting as operators, completely in control of their machines. One of the features we noted in our discussion of the three nuclear disasters is how quickly things can go wrong. What goes wrong in a nuclear plant does not, of course, go seriously wrong for just one reason. Because engineers typically design nuclear plants with a large safety factor, several systems must fail before anything goes seriously wrong. But, given the complexity of a nuclear plant, it is reasonable to expect at least one system to fail now and then because, even with proper maintenance and inspection, technical systems sometimes fail unexpectedly. That being so, it is also reasonable to expect (given the laws of statistics) that all of the independent systems will fail together sooner or later. One of the “systems” that may fail at any given time is the human operator—whether because of distraction, fatigue, poor training, misjudgment, interference, or the like.

How likely is a catastrophic failure at any moment? Not very. Perhaps only 10^{-5} at any time. But over many years and many reactors even such small risks add up. One author recently calculated that there are:

450 nuclear power plants in the world. There have been 4 meltdowns in history, one each at Chernobyl and Three Mile Island and two so far at Fukushima, as partial meltdowns count as meltdowns. That is a ~1% failure rate. (Lindsay, 2011)

This calculation means nothing unless the four meltdowns are statistically significant, that is, a good predictor of what will happen over, say, the next hundred years (rather than a chance concurrence of events—like winning the lottery three days in a row). Still, it is an empirical reminder that even a low-probability event will, given a large enough population, become highly probable.

If we look at our four disasters, two—Three Mile Island and Chernobyl—seem unrelated to any ordinary planning or design failure. Of course, with a higher budget, the Three Mile Island plant might have had more working backups for its cooling system; Chernobyl might have had a concrete containment for its reactor or a better way of controlling core temperature. But that will always, or at least almost always, be true. Engineering is about making things “safe enough” rather than “absolutely safe”.

How safe is “safe enough” is at least as much a social decision as an engineering decision. But it is an engineering decision in part. For small risks, engineers may well make the final decision. Even concerning the largest risks, engineers will be consulted and their opinion given considerable weight. No decision-maker wants to overrule the engineers on a matter of safety only to have the decision (more or less figuratively) blow up in her face.

Engineers generally evaluate risk by multiplying the harm’s (net) disvalue by the harm’s probability. This method of risk analysis works reasonably well for small harms. The method does not, I think, work at all well for the largest harms—those that, even if highly improbable, would be intolerable if realized—such as destruction of the earth or even the sort of devastation Chernobyl produced. For such intolerable harms, engineers should, I think, adopt something like the following principle of prudence in planning: *If we (society at its rational best) would reject any plausible benefit in exchange for suffering that harm, we (that part of society making the decision) should, all else equal, rule out any design that risks that harm* (however small the probability—so long as it is finite). Since this principle applies when we know both the harm in question and its probability, it is (technically) not a precautionary principle (though its spirit is much the same). It is, in this respect, more like advice frequently given to gamblers betting in games of chance with known odds (“Don’t bet more than you can afford to lose”). Precautionary principles are about dealing with uncertainty. (See, for example, Andorno, 2004.)

The principle I am proposing is only about dealing with known probabilities. Yet it is, or at least should be, an important principle in engineering. Failure is part of engineering. While engineers have a very low tolerance for failure of any kind, even in subsystems that are not

“safety sensitive”, I have yet to hear of any complicated system (even one as simple as a mechanical pencil) for which engineers have not calculated a failure rate (often, to be sure, a tiny failure rate, such as 3.4 defects per million—the famous Six Sigma). No product of engineering is (strictly speaking) “failure proof” (all things considered).

Most, perhaps all, nuclear power plants now in operation seem to have been built in violation of the planning principle suggested above (at least when the calculation of probability takes into account that human beings will operate the plant). The analogy with gambling may not be altogether fair, however. For, we always have the option of doing something much safer, such as going to the theater or buying government bonds. For nuclear energy, our choices today are more difficult. Fossil-fuel plants together (though not individually) threaten us with a world too hot to live in. Hydro-electric dams flood lowlands when they fail and are often not available as an alternative to nuclear power. Failing hydro-electric dams may have killed many more people than nuclear power-plant accidents have (depending on how deaths are calculated). Just one dam failure, that of the dam at Banqiao, China, in 1975, seems to have killed at least 26,000 people directly—and another 145,000 through resulting disease and famine (Wiki, “Banqiao”). Three Mile Island itself is only a hundred miles or so from Johnstown, Pennsylvania, the site of the “Johnstown Flood”, which killed more than 2,200 people, the result of a dam failing in 1889 (Wiki, “Johnston Flood”). In contrast, no one died at Three Mile Island and statistical deaths worldwide to be expected from the radiation that escaped is much smaller.

Nowhere has wind and geothermal met the demand for electricity in an industrial country. And so on. Even with the sort of conservation Japan has undertaken since Fukushima, there is, it seems, still a demand for electricity beyond what is available without some method of generating power that violates the principle of prudence in planning. For the time at least, we may face a choice among dangerous friends. We can only minimize the risk of disaster, not avoid it.

Two features that neither Fukushima nor Katrina share with Three Mile Island and Chernobyl is operator error and normal equipment failure. Equipment did fail at Fukushima and New Orleans—the diesel generators failed at Fukushima as did the screw pumps at New Orleans—but both these failed because of flooding, itself produced by a natural disaster (or, at least, overwhelming external events). Insofar as there were managers or operators involved in the Fukushima or Katrina disaster, they seem to have prevented an even worse outcome.

What all four disasters have in common are failures of engineering design, that is, designs that could have been better. So, for example, the canals in New Orleans

could have been designed with T-walls rather than I-walls; Fukushima could have had a higher breakwater; Chernobyl could have had a better design for its dampening rods; and Three Mile Island could have had a control board that took more account of human factors such as sight lines. And, of course, after these disasters, engineering designs made—or, in the case of Fukushima will make—such improvements. Engineers generally learn from their failures. But such failures are, all else equal, present at every disaster. They do not help us to see what, if anything, is special about Fukushima.

For me, what is special about Fukushima compared with New Orleans is precisely what makes Fukushima like Three Mile Island and Chernobyl. The engineers, and their supporting staff, stayed with the machinery—monitoring, trying to prevent things from going further wrong, and even making repairs.

How many of (what the media called) “workers” at Fukushima were engineers? I have been unable to determine that either from news sources or from contacts in Japan. My visits to nuclear plants in the United States suggest that most of those working at Fukushima would have been engineers (say, 90%)—with the remainder divided about evenly between scientists and technicians. My guess (or, as scientists like to put it, “my hypothesis”) is that most were engineers. I hope someone will find out.

The engineers at Fukushima were not as successful as the engineers at Three Mile Island and Chernobyl. Both those disaster were limited to one reactor. At Fukushima, the disaster spread to four of the six reactors—and might have spread to the other two as well but for the restarting of a diesel generator at Reactor 6 to provide power for cooling the fuel in the holding pools of Reactors 5 and 6. Workers also removed roofing from Reactors 5 and 6 to allow hydrogen to escape, thus preventing explosions similar to those that had damaged the other four units.

This aspect of what happened at Fukushima is a reminder that part of what makes engineering so reliable is that engineers design with the (usually) justified expectation that other engineers will be present to look after what they design. The works of engineering, even of civil or mechanical engineering, do not last long without continual maintenance, including continual adjustments as experience identifies unanticipated problems or unanticipated opportunities for positive improvement. The engineering experiment at Chernobyl, despite its disastrous outcome, was part of normal engineering. The engineers were trying to reduce the risks arising from the backup system’s slow startup. Even nuclear plants that are identical when commissioned, slowly differentiate as they operate, because the engineers managing a plant will continually make improvements. Those engineers should, of course, let engineers at similar plants know about the changes, thus advancing the state of the art, but

other engineers may not be able to make the necessary changes immediately because of budget or schedule, or at all because changes that they have already made bar the improvement in question. Engineers may also find an alternative way to achieve the same end. For these reasons (and perhaps others), nuclear plants, however alike at birth, tend to grow into noticeably different individuals, much as biological plants do.

Some people, especially philosophers, seem to think of those who stayed on at Fukushima—those who, for example, worked in the dark in cold waist-high radioactive water to restart the generators—as engaged in “supererogatory” conduct, that is, as engaged in conduct above and beyond what morality requires. The engineers I have discussed this with seem to view the conduct as heroic but required (supposing the “workers” in question to be engineers). An engineer who left when needed would have acted unprofessionally; he would have failed as an engineer even if he left to save his life or look after his family. Engineering sometimes requires heroism (a significantly higher standard than proposed in Alpern 1983)—or so the engineers I have talked with about this seem to think.

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A Pluralist Ethical Decision-making Procedure

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Abstract

This paper claims that the use of *several* moral tests to assess the ethics of a new policy is unavoidable. All the efforts to make credible a methodological monism – by critical or reductionist strategies – have been unsuccessful; moreover, it must be acknowledged that even if there were a single test, when applied successively or by different people it would usually give divergent results. The main aim of the paper is to propose a pluralist procedure of ethical decision-making, using a set of proper ethical tests (such as utilitarian, Kantian, Christian, principlist and casuist) in the frame of an “ethical Delphi” procedure intended to make convergent the supposed variety of verdicts. This pluralist testing process, made by moral experts, is only a fraction of a more complex procedure intended to deliver social sanction for a new moral policy. This longer procedure also shows that the adoption of a new moral policy, rule or law is not only a question of passing a strict ethical test, but also a political (i.e. multi-criteria) decision. In general, the adoption of a new moral rule does not rely solely on an ethical test, but is essentially the outcome of a complicated social agreement. That is why in academic applications of the usual moral tests we do not *take* a moral decision on a new case, but merely *simulate* it.

Key words: ethical decision-making, ethical pluralism, ethical Delphi, pluralist model

Decisions about the moral value of an action, rule or public policy cannot be reduced to a verdict resulting from the application of traditional tests based on the major ethical theories, despite the fact that handbooks still unanimously support this view. The history of ethical test results is more one of surprises than one of predictability. You would expect, for instance, that people who adopt the same moral doctrine do this in order to approach issues in the same way, including the moral assessment of actions. We all believe that this is the main reason it is useful to embrace the same moral creed. Therefore it seems strange to find that several members of the Romanian Parliament, all active supporters of Christian morality, assessed the legalization of prostitution in opposing ways. On the other hand, it is also strange that two people who adopt different ethical theories – precisely because they offer distinct explanations of moral phenomena – can frequently

assess actions in the same manner. When a utilitarian and a Kantian – or a follower of Christian ethics and one of Muslim ethics – debate issues, it is somehow surprising to see them judging situations in the same way *in most cases*, despite the fact they declare themselves to be supporters of *opposing* ethical beliefs. Are these beliefs really opposing? In general, it appears that use of tests based on distinct or even opposing theories, such as utilitarianism and Kantianism, *can* result in different verdicts, but in most cases it results in convergent ones (Kantian and utilitarian moral duties are, ultimately, the same). On the other hand, if we dogmatically adopt a single theory and apply the *same* test repeatedly to the same action we usually get similar results, but some divergent ones also appear (see the cases of divergent utilitarian assessments of the same case given as examples in the textbooks).

The labyrinth of Ethical Decision-making

These results bring to light several lessons: 1) using a single test does not ensure the uniqueness of the ethical verdict, as commonly expected, and using several tests does not guarantee a diversity of verdicts; 2) it is possible to have (a) two distinct, even opposite, tests (such as the utilitarian and the Kantian) leading to the same verdict, but also (b) two different tests resulting in two distinct verdicts; 3) it is also possible to have (c) a single test (used at different times or by different people) that leads to different verdicts, but also (d) a single test leading to a single verdict.

How is it possible that the same test (case c), when applied by different individuals or by the same individual at different times, can lead to different verdicts? And equally, how is it possible that different tests, based on competing theories, lead to the same verdict in most cases (case a)? For instance, how is it possible to evaluate the same case using consequentialist methodology and get sometimes one result, sometimes another? Or how is it possible that a utilitarian and a Kantian, who try to convince us that morality means different things, in most cases get the same results from the assessment process? Is assessment not an intrinsic part of an ethical creed? And if we have the same ethical creed, how is it possible to have distinct verdicts? Are the ethical decision-making frameworks so weak or even simply wrong?

The Unavoidability of Ethical Pluralism

My answer is that if ethical decision-making procedures were algorithms, they would ensure a verdict's uniqueness and thus the overall internal consistency of moral assessments. However, there is no algorithmic ethical test. It is acknowledged that ethical decision-making procedures are not conclusive, in the sense that any verdict is merely probable and therefore revisable. This is because during any test procedure a number of internal factors undermine the uniqueness of the verdict or, in the event of two tests, may generate a spontaneous convergence of verdicts. Among these factors we may mention the probable character of the consequences, the unavoidably subjective selection of the relevant effects, the equally subjective selection of the decision procedure from a class of methods of the same type (for example, there are several utilitarian procedures), the *als ob* character of Kant's principles of application, the deliberative nature of the "power of judging", and so on. Ethical tests consist less in applying rigid rules than in establishing milestones to guide deliberation. They are meant to help by providing an explicit map of the

problem under scrutiny and by facilitating in this way a detailed analysis of the case, but not a final conclusion. In such a situation, since the use of a single test or test type does not ensure the uniqueness of the ethical verdict and therefore the unity of the moral judgment, I suggest that the use of several tests is preferable. Methodological monism is not the most promising solution: ethical pluralism seems to be the single viable strategy of moral evaluation.

Ethical methodological pluralism is a doctrine that claims that: there are several explanations of morality, not one, and that they may be in a state of conflict ... Each of them also gives a partial truth of the matter and each approach also provides a check on the other. We do not look at the conflicts between these branches as bad, at least not always ... Chance to discover the mistakes sooner is enhanced when each branch is critically scrutinizing the other ... Ethical pluralism has as a model a healthy government in which diversity, disagreement, compromise and consensus are signs of vitality (Hinman 1999, 93) .

Although the terminology is not identical, this approach is similar in its purpose to the so-called "integrity approach" of corporations:

The integrity approach advocates the simultaneous and balanced use of the three ethical approaches [utilitarianism, deontologism and virtue theory]. Sound decisions based upon integrity preclude the denial of moral complexity or settling for a simple, narrow-minded resolution based upon less than three key ethics approaches. An understanding of ethics can be achieved only by grappling with the diversity of perspectives it offers. (Kaptein & Wempe 2002, 86)

My approach is, however, broader (not only corporations, but any kind of organization at the local, national and global levels may be the object of analysis) and it is not focused on the moral content of a company but on the systematic moral assessment of important social issues. These include, for instance, new laws with moral content, public policies, and new technologies with a global impact. The big question in both the integrity approach and my approach is: how can such a scheme be implemented and enforced? Before trying to answer this question, we must consider some additional reasons for suggesting that a kind of methodological pluralism is preferable in ethics. First, there are several evaluation frameworks and to choose only one means opening the way for allegations that the choice was arbitrary. Second, an attempt to reduce the multiplicity of tests to a single

one by unifying the background theories (as in R. M. Hare's unification project (1981)) has been proved to be a failure unless the new unified theory is only one of several attempts to theoretical unification. Third, the general strategy currently embraced nowadays – forget the great theories and create pragmatic “assessment frameworks” based on “common morality” – does not ensure the desired methodological unity because these frameworks (for example, ethical matrix, principlism or moral casuistry) have become more and more numerous; even more numerous than the ethical theories. Finally, even if by some act of magic we were left with a single ethical theory and a single test, and these were unanimously accepted, this ideal methodological monism, as we have seen, does not ensure unity of conclusion in applied ethics. We live in a society which is characterized by the pluralism not only of its moral values but also of its doctrines and assessment methods, and we must accommodate the reality of such an irreducible pluralism. Moreover, we must use this characteristic, which defines democratic societies, to find a way to ensure a maximum of objectivity, convergence and rational grounding for our ethical assessments. Methodological pluralism does not exclude convergence of results. Let us pause for a moment to consider this.

At first glance, this seems counter-intuitive. A plurality of methods is supposed to spontaneously induce a dispersion of verdicts, disqualifying pluralism as a possible method of ethical decision-making. If we look at the world through a plurality of ethical theories, we are likely to arrive at a plurality of ethical verdicts; although, of course, it is also possible to have only one. My question is: could we proceed in such a way that the alleged variety of verdicts resulting from the application of a variety of tests is *made* to converge (case b)? In other words, how can we set up a pluralist group of ethical decision-makers, in which each member uses distinct moral principles and distinct assessment procedures, but all members are made to reach a single, common verdict? Obviously, we are not interested here in explaining a spontaneous convergence of opinions, but in a method able *systematically* to generate such a convergence, which for this reason becomes part of the test.

Spontaneous Convergence of Verdicts from Proponents of Opposing Theories

In a study devoted to the analysis of the status of modern applied ethics, Alasdair MacIntyre tackles the assessment convergence problem, starting from the obvious “disagreement” that exists between moral philosophers concerning the profile of a *genuine* moral theory; this contrasts with the hope for a universal rational agreement

nurtured by all supporters of what he calls the “dominant conception of morality” (Kantianism, utilitarianism, contractarianism and their various combinations):

The “dominant conception of morality” is the view that the rules of morality are such as every rational agent would accept them. In this sense, ‘applied ethics’ is concerned with the application of these universal principles to concrete cases that belong to particular social spheres, the usual expectation being that the disagreements between principles automatically mirror the disagreements between the verdicts of applied ethics assessments. (MacIntyre 2008, 50)

This irreducible pluralism of moral theories, views and methods has little chance of being eliminated. However, contrary to the view that plurality of methods inevitably entails plurality of verdicts, it has been proved that people with different ethical views may easily reach the same solution when they are put together to solve a practical problem. MacIntyre gives as an example the story of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, which proved that the disagreement in principles (in the theories or ethical views adopted by members of the team), instead of generating a similar disagreement in their assessment of the case, was compatible with a practical agreement, which was quite easily reached. The *Belmont Commission* is another good example of a pluralist group of ethical decision-makers, including people with various ethical involvements who, instead of spending their time in an unending dispute around the best moral theory, rapidly arrived at a convergence of opinion and agreement in a common verdict. How can this be explained?

MacIntyre sees three possible explanations for the commissioners' straightforward agreement. The first is that adoption of conflicting or rival moral principles may, surprisingly and unexpectedly, lead to the same verdict in the field of applied ethics. There is nothing new in this statement, but the question is: how is such a thing possible? We could use this example to wonder whether the so-called gap between traditionally rival theories (and the distinct explanations they give to moral phenomena) is as great as has been assumed, since their assessment outcomes are similar rather than conflicting. The second explanation is that the members of this assessment group did not actually apply their own principles (or theories, or ethical views); in fact, they judged the matter not following the principles they claimed to adopt, but in the light of typical cases, without being aware of this. They were casuists without knowing it. This *implicit* use of the same method explains the convergence of results. Finally, the third explanation, to which MacIntyre

subscribes, is that the workings of the commission were presented in a false light, with the claim that the deliberation process was completely rational; in fact, all deliberation and decision-making inside the commission were “a social non-rational agreement”. The non-rational ingredient enters the debate in the following manner: ethical principles are indeterminate in the sense that they cannot stipulate all the circumstances in which they may be applied. On the occasion of a future application new circumstances may arise, forcing us to take a decision only after weighing the new circumstances; but “weighing” is only a metaphor, for which there are no explicit rules. Therefore, the assessment process is not a (completely) rational one. The convergent final verdict is the consequence of these reciprocal psychological influences (MacIntyre 2008, 52).

The first of MacIntyre’s points is not an explanation but a finding: we know that competing ethical principles can sometimes give rise to identical verdicts. The second explanation is not very strong: as we have seen, unity of methodology does not ensure unity of verdict. The third explanation seems more probable: ethical assessment is not an entirely rational process. The explanations and the example given suggest a situation where the assessment convergence is something that occurs spontaneously or quasi-spontaneously. The key questions for me are: what factors determine the spontaneous convergence of the verdicts of two or more opposing tests (and is it possible methodically to ensure such convergence in cases where it does not occur spontaneously)? How is it possible that the same test gives different verdicts on the same case: are ethical tests so weak?

Regarding the first question, the most plausible answer would probably be that, in order to reach a partial agreement, the ethicists have to use their “practical wisdom” (*phronesis*): their ability to discuss and negotiate, and various forms of irrational persuasion to convince their interlocutors; they have to refine the methods used and adopt new methods, use various forms of “qualitative judgment”, weigh up the reasons and use tactics of “mutual psychological influence”. And all these *after* the strictly technical ethical tests have been applied by each evaluator and a provisional verdict obtained. The testing process would, therefore, include two stages: the technical stage (involving specialists in ethical decision-making) and the *phronetic*-deliberative one mentioned above (in which lay people may participate democratically). To the second question I should answer that it is exactly this *phronetic* stage – which is not guided by specific rules – that should be introduced to try to reduce the dispersion of verdicts. It is natural to consider this *phronetic* supplementary element, I suggest, as a *part* of the pluralist test and not as a mere aid to be used occasionally.

Convergence Induced: the Ethical Delphi

What I want to propose here is to be even more systematic and to develop a tool that is able to make opinions cohere. This can be based on the “Delphi method”. From this, an “*ethical Delphi*” was obtained by a group of specialists in the frame of a European research project on “ethical tools”, and what I shall propose is a modification of this latter: a *methodological ethical Delphi*. In its original form, this test does not include any moral theory or ethical method for assessing, for example, a new biotechnology: using the standard ethical Delphi “it is not possible to directly deduce from the data analysis the ethical acceptability, or otherwise, of any proposed biotechnology” (Millar *et al.* 2006, 10). This is not a method to discover in facts the supposed ethical difficulties raised by a new biotechnology, but one focused on a pluralist and expert assessment of the moral acceptability of an already formulated public policy concerning that biotechnology.

Now, suppose we succeeded in assessing such a policy, using several ethical tests and making the evaluators’ opinions converge using an ethical Delphi. How should we proceed to socially impose the new moral policy, starting from the belief that morality is a *social* product and that a moral rule is a device required by society to protect some of its most important values? Is its social recognition and acceptance determined *only* by the rational criteria included in the ethical tests or should something more be added? My suggestion is that the social recognition (homologation) of a new moral rule as a dominant one in comparison with other types of rule is done following a further assessment process – on *multiple* criteria this time (not only moral), such as political, economic, religious and strategic. My conclusion is that the decision to adopt a complex new moral policy is never merely an ethical one; it is, in the last instance, a *political* multi-criteria one. Moreover, these extra-ethical criteria can often prevail. The moral decision is not exhausted by the application of the ethical tests developed by moral philosophers (and taught in seminars) – even if we add the *phronetic* supplement suggested above – but also needs a *political* supplement. Actual moral decisions do not take place in an ideal, purified social space, in which the common morality is independent of any political, economic or geo-strategic interests; this simplifying mentality is specific to the academic practice of teaching the applicability of an ethical theory using simplified cases. But real ethical decisions are taken *inside* society, where there is competition between various interests, major and minor – some of them local or selfish; others more basic and covering the whole of humankind. Moral rules protect certain broad *fundamental* interests – with historical

variability – and restrict our behaviour to ensure congruence with the interests of all those concerned in a neutral and impartial way. In these circumstances, it is impossible to adopt a new moral rule (such as the ethical principles of biomedical research, a new European policy or a new code of ethics) which is not dependent, more or less, on the economic, legal, political and religious interests of that social community. Moral rules exist in a social context and depend on it. My suggestion is that, beyond the technical moral decision (based on standard ethical methods) – which remains the basic decision and gives the “official” reason for the conclusion – the final verdict itself is a *political* one (i.e. a multi-criteria and only partially a rational one).

This hypothesis appears to be consistent with the facts. For example, let us remember that the *Belmont Report* was a political initiative and its elaboration was an institutionalized process that lasted four years. To apply the principle of utility (or any other traditional ethical test) you do not need four years! During that period a pluralist and interdisciplinary committee held numerous discussions on the text, attended public hearings, and made constant efforts to achieve consistency with other similar reports or existing legislation. The adoption of the final formula was based not only on ethical reasons but also on grounds of taste (“it’s too philosophical”), of practicality, and even on personal, irrational reasons (“let’s not take all these from the beginning”). All committee members remember the influence upon them of the political climate of those times (the civil rights movement, the public scandals concerning biomedical research that pressed the policy-makers to develop a system of moral rules for this professional field for the first time, and so on). For example, Tom Beauchamp remembered on the occasion of the 25th anniversary of the *Belmont Report* the influence the idea of *individualism* – central to American politics – had on the adoption of the principle of *autonomy*. The committee worked “in context”, it was “part of the American culture” with its dominant values (OHRP archive, 2004). The appointment of a Catholic as head of the committee was suspected by some other members to be a political manoeuvre to impose conservative solutions on the issues raised (such as the human status of foetuses); this is further recognition of the political and ideological pressures on the committee’s decisions. Therefore, the establishment of the new moral rule was ultimately a *political* decision, determined by rational arguments – ethical and non-ethical – and irrational factors related to personal feelings or random human reactions. These elements must be included too in the general scheme of an ethical decision-making process.

An Inspiring Case Study: UNESCO

I shall start to shape a new pluralist procedure of ethical decision-making by analysing a specific case study: the setting up by UNESCO, at the global level, of a public policy with a substantial ethical content, trying to capture the actual structure of the process of ethical decision-making (which might be adapted for use by firms or other kinds of institution). The specific example is the *International Declaration on Human Genetic Data* (UNESCO 2003) – a new *moral* regulation claiming universal (planetary) validity. The scheme synthesized from this example can also be found in the adoption of other public policies, national and international.

The background to the setting up of this new and complex moral rule was marked by a widespread feeling of insecurity and uncertainty concerning the protection of some fundamental human interests – such as the violation of human rights and freedoms, and ultimately of human dignity – from the moral misuse of human genetic data. Therefore, a new need was perceived at the level of almost all the countries in the world: to have a new rule on this issue, able to block potential abuses and protect human dignity, to avoid the possible issues arising from an immoral use of genetic technologies – i.e. from improper handling of the human genome that could endanger the identity and the physical integrity of present and future generations. Everyone accepted that this was a case of *moral* regulation, but nobody knew what form it should take in order to be able to serve the divergent interests of the citizens of all states – those of scientists and physicians, the religious organizations and the NGOs – in a manner consistent with other related regulations that had already been adopted.

The initiative to launch an international project to regulate the use of genetic data belonged to the UNESCO Director General. In May 2001 he asked the International Bioethics Committee (IBC) to draft the new regulation. The document was finalized three years later, in May 2003, at which point some voices claimed that the process was a little too fast.

The IBC set up a “drafting group” composed of experts: an interdisciplinary and pluralist group. It deserves to be noted that the organizers believed that the best place to take ethical decisions was in an ethical committee that was “independent, multidisciplinary and pluralist” (UNESCO 2003, Article 6). In this case, the panel was made up of four legal experts, three experts in genetics, three in bioethics, two in moral philosophy, one in anthropology and one in chemistry. The moderators were from France and Jamaica, respectively. All logistical support was, of course, granted. The panel first established the moral foundations of the new regulation (the principle of dignity, which is fundamental; then

the principles of equality, solidarity and responsibility; as well as some form of welfare, precautionary and vulnerability principles) (see UNESCO 2003, Preamble). The group worked in a typical *principlist* manner (see Article 1), the criterion of moral acceptability being “internal consistency” with the moral *principles* accepted and “external consistency” with other moral rules concerning human rights. It also pursued consistency with international and national law, sometimes by broadening the meaning of confidentiality and consent, so that the regulation cannot be imposed unless the legislation of the country allows it (DHGD, 2003). The expert group proposed a number of general philosophical options concerning human nature, freedom and responsibility (as opposed to biological reductionism, for example), in the light of which the document was conceived. The first draft of the document was issued in November 2002 and it was sent to the IBC to be analysed. Overall, there were seven meetings of the expert group, but they did not have the last word in the social and political approval of the *Declaration*: this belonged to a political group, representing all stakeholders.

To ensure coverage of the positions of all parties in the document, the draft was submitted to a public debate. The public character of a moral regulation and the requirement for it to be accepted by society at large (not imposed in a paternalistic way) seemed to be – in the eyes of those who organized the decision-making process – a necessary condition of its morality. This reminds us of Kant. The document stresses that: “States should endeavour to involve society at large in the decision-making process concerning broad policies for the collection, processing, use and storage of human genetic data” (UNESCO 2003, Article 6). In this way, through public debate, it was possible to evince and eventually to capture in the document the variety of interests, from the level of states to that of individual researchers or NGOs. The pluralism of this approach was also underlined: “This decision-making process, which may benefit from international experience, should ensure the free expression of various viewpoints” (Article 6). The steps of this exercise of democratic transparency were completed by international consultation through a questionnaire, plus a special meeting; a public hearing, in which a variety of organizations and individuals were free to express their views; and an assessment by the UNESCO Executive Board. During all these processes the “weight” of the document was established: it would be a “declaration”, so it had no legal force but only moral influence. Thereafter, the document was reviewed by a “working group” of the UNESCO Commission.

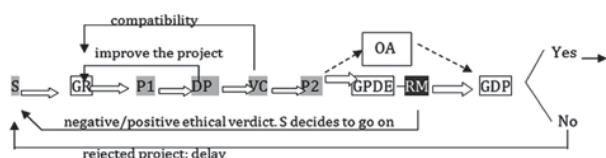
Finally, after going through all these filters in the process of social approval, adoption by the UNESCO General Conference followed, on October 16,

2003. This was essentially a political decision; i.e. one acknowledging that – in addition to the ethical requirements – the new rule must “meet the needs and interests of the states”, which are not only moral but also “economic and commercial”, bio-medical and legal (UNESCO 2003, Preamble). The conference showed a “spirit of tolerance” and received unanimous approval by applause for the *Declaration*. Being a moral rule, this has to be *sanctioned* by feelings of remorse or by the public attitudes, in the case of disobedience. These motivational feelings must be “taught” – an objective that the *Declaration* provides for in Article 24, as a further task of all Member States.

A Model for Ethical Decision-making: A Scheme for Adopting a New Law or Public Policy

What is the general scheme of the process of ethical decision-making suggested by this example? Suppose, in principle, that we are confronting not a normal situation, but an “extraordinary” one; i.e. we want to introduce a new rule in a code of conduct (one disputed by others), or to resolve a moral dilemma which raises questions for members of a corporation, or to adopt a new public policy on a controversial issue arising from several public concerns and complaints. The deployment diagram of the process of moral decision-making seems to have the following plausible form. First, because this is a sensible social issue the moral acceptability of which should be judged, there will be an applicant institution (S) – for example, the government or parliament, a university, a company, or similar – asking for the assessment. It is natural that this requirement should be set up on a contractual basis. The applicant seeks a mature and responsible answer to the question: is a particular public policy, designed to address the issue of, for example, genetic data that has caused frustration in our society, morally acceptable or not? To this end, S has first to appoint an interdisciplinary group of specialists representing the interests of S, and well aware of the issue under discussion, who can identify the *moral* problem within the facts. This drafting group (GR) will propose the first draft (P1) of the new public policy. This draft is then subjected to an extensive and lengthy process of public debate (PD). This is not just a democratic exercise but a necessary condition for the moral acceptability of the project, which has to meet two requirements: i) the requirement of *publicity* (the new moral policy must be public), and ii) the requirement of *autonomy* (the new moral regulation has to be self-imposed by the subjects, not imposed from outside). Both are conditions inspired by the Kantian theory of morality. Suggestions for improving the text collected from the general public are then selectively inserted

by GR. This group also has to check the compatibility (CV) of the new regulation with laws or public policies already adopted. This condition of *consistency* with existing moral values is another necessary requirement imposed on the project to make it morally acceptable. The outcome of this process is an improved version of the draft (P2). Once in this improved form the project text can be delivered to a pluralist group of ethical decision-makers (GPDE), a group designed to give a *moral verdict* about P2, included in a moral evaluation report (RM) which will finally be sent to the applicant. At this level, other independent assessments (OA) may be made – including economic and medical ones – by expert teams. It would be pointless to give GPDE a *raw* version of the project because this group does not make amendments to the draft but assesses the project. The evaluation report is either negative or positive; S is the only participant to decide whether the process continues or not. For instance, there might be a moral assessment rejecting the legalization of prostitution, but the applicant decides to continue the debate of the law in parliament: there – on other criteria, including economic and political ones – the adoption of the law may be decided. To “continue” the process means that P2 (together with RM) is transferred to a group of political decision-makers (GDP), a group meant to represent the whole society (or the whole organization), which is able to give a final verdict. This group, composed of politicians or other public representatives, will inevitably judge by multiple criteria (including moral, economic, religious, political and strategic ones), as well as rational and irrational factors, and will accept or reject P2 together with the RM. It will also establish the *weight* of this new regulation (is it a law or only a political directive?), what kind of penalties should be associated with it, and what educational plan should be adopted to internalize it (such as ethics training programmes). A final rejection of the project (which might also occur for extra-moral reasons) would mean *delaying* its implementation by S. Schematically, this process looks like this:



In contrast to the UNESCO procedure described above, this scheme distinguishes between GR and GPDE (groups with different functions and powers), the kernel of the pluralist decision procedure being represented by GPDE (which does not exist in the procedure used by UNESCO). But GPDE is not a provider of final moral verdicts. Its activity aims at applying moral tests to a given case. Its main objectives are to identify the

divergence and convergence of several expert moral assessments and to identify the roots of their disunity; to provide a professional basis for the final ethical decision, which is a “political” one; to provide a map of the moral problem under discussion for the use of lay people and politicians who will take the final decision; and in general to encourage systematic and professional ethical thinking in the moral assessment of the main practical issues.

It may be objected that the presence of GDP suggests that whether a rule is moral or not depends on its approval or rejection *by society* and not by an *objective* ethical test. Or that this means falling into the vulnerable doctrine of cultural relativism: that all moral rules are dependent on the social context in which they are established. In reality, both things happen: the moral character of a new rule is established by GPDE, not by GDP, and the members of GPDE may use universal principles (I find it is an error to ignore universal moral principles in building ethical codes, as usually happens). GDP does not establish the morality of the new rule, but only decides whether the society *recognizes* the morality of the regulation approved by the GPDE experts. This suggests that the new moral rule or policy acquires its authority ultimately from a kind of *social consensus* and not only from technical ethical reasons such as “maximization of utility” or “respect for human dignity”, and similar. One may ask what Richard Hare (1993) does when he applies his two-level scheme to concrete cases: does he *establish* the moral character of the case? In fact, he only *simulates* a part of the process of moral assessment, conceived as a social phenomenon.

We must consider whether this scheme contains a mix of ethical and non-ethical procedures, the latter risking an alteration of the moral substance of the project. Despite appearances, the first phases of the project (that might be considered non-ethical) have an obvious connection with ethics: identifying and formulating a moral problem, establishing the conditions of publicity and autonomy in the adoption of a new rule, providing consistency with the previously adopted moral rules. What follows is also an ethical step: the application of typical ethical tests (GPDE) and the writing of a moral report (RM) which gives a verdict on the moral acceptability of the new rule or policy. Finally, at the level of GDP a new evaluation occurs; this uses both ethical and non-ethical criteria, but the presence of the non-ethical criteria does not affect the moral nature of P2. This means that GDP should not be seen as a group involved in ethical assessment, but as one meant to socially approve and impose a new moral rule, guided by moral and non-moral criteria. The requirement for the adoption of a new ethical code or new moral public policy (but not of its moral assessment) is that it is always done on non-moral criteria too.

It may also be objected that the procedure is too

complicated. In fact, it is no more complicated than the procedure used for the adoption of any important juridical law. And I believe that the ethical decision-making procedures have to be detached from their traditional handbook simplicity if we believe in their social utility. In current circumstances, when the usefulness of applied ethics is often denied, it seems to me essential to enhance its credibility by a mature development of its procedures, such as that described above.

The Pluralist Ethical Decision-making Group

The procedure of methodological pluralism that I am proposing here requires us to recognize all the tests derived from the great theories and all the decision-making frameworks independent of theories, and to give them an equal chance in the evaluation process; i.e. to use all of them inside a pluralist ethical decision-making group (GPDE). This group should be composed of experts who know the investigated field well and who are also able to handle a moral decision method or know how to apply a general ethical doctrine or moral *gestalt* (such as the Christian one). An important step in such a process is the setting up of a panel of experts which knows the facts and is able to apply one of the following ethical decision-making methods:

- Hare's utilitarian method (or other utilitarian procedures);
- the principlist method;
- the ethical matrix;
- moral casuistry;
- Christian ethics;
- other ethical decision-making methods (such as the Kantian method, the ethics of care, virtue ethics, and so on).

How could we systematically coordinate such a heterogeneous decision-making group, characterized by divergent ethical views? Some would probably say that this process takes place spontaneously, as the case of the *Belmont Commission* shows. But none of us may be sure of that, and therefore it is preferable to control the process. We can do this, I suggest, by making the assessment team work under the procedure called the methodological ethical Delphi – a method that helps the group members to reduce the dispersion of their assessments and ultimately to propose a final (provisional) solution. As we have seen, the ethical Delphi is an “iterative participatory process between experts for exchanging views and arguments on ethical issues. The method is structured around the notion of a virtual committee where the exchange of ideas is conducted remotely through a series of opinion

exchanges” (Millar *et al.* 2006, 5). What this method can provide is a “map” of the experts' opinions on the ethical acceptability of a new policy but it cannot provide definitive judgments. More specifically, it helps to identify areas of convergence and divergence from the experts' points of view, to encourage ethical reflection and provide a rational basis for making ethical decisions. Practically, the GPDE could be structured by this procedure as a virtual group with a latent existence, which becomes functional on demand. It has to have a monitor or coordinator (M) with experience and moral insight. M's task is to coordinate the activities of the panel, allowing the monitor to reach a final synthesis of the views expressed by the experts in the form of a conclusive statistical judgment. The experts' capacity to obtain information about the preferences of all “stakeholders” and about the foreseen consequences of the policy assessed is crucial at this stage. The interaction of the panellists will also ensure clarification of their philosophical, religious or political commitments, so that all evaluators will judge the same facts, as far as possible. At this stage no methodological uniformity is desirable. Rather, methodological pluralism should be encouraged. The moral verdict (RM), even if provisional, has to be prepared by M and relies on the outcome of the panel (the statistical trend of opinions in the panel), on other moral considerations, on M's own moral wisdom and power of persuasion, and so on. Here the *phronetic* supplement in evaluation is also obvious. It explains why the members of the group can reach a common result although they remain supporters of their initial divergent moral beliefs and principles.

The various methods of ethical decision-making mentioned above provide a strictly moral evaluation of the new rule or policy, regarded from various moral perspectives. None of them is conclusive. To reach a consensus does not mean reaching the *correct* result. The ethical Delphi, which is meant to generate convergence of opinions in conjunction with the set of ethical tests, only helps us to ensure a clearer structure of the moral problem under discussion and to offer the political team a solid basis for decision-making. It identifies those topics that the group of experts considers important for the subject examined. The results of a Delphi procedure may support the policy-makers by enhancing their moral creativity and capacity for ethical decision-making when faced with complex moral issues in situations of incomplete or disputed information. This evaluation process of undertaking the same act using several methods produces a strictly ethical verdict signed by the monitor; this moral decision is finalized in a report submitted to S. This report is most often decisive for the final decision. If the result of the report is negative, it is unlikely that S will be tempted to continue the assessment process: that rule or public policy will be

rejected. But this kind of reaction is never entirely certain! It is S's prerogative to decide to continue the process even if the technical ethical verdict is negative. For example, it is known that prostitution is rejected by Kant's tests, as it is by utilitarian and Christian ones; nevertheless, prostitution is legally permitted in many countries (for economic, medical or political reasons, for example, rather than moral ones). By invoking distinct reasons and, on this basis, by furthering the evaluation process, one may arrive at a result that is the opposite of that given by a purely ethical test.

Moreover, a moral rule is a rule imposed by society (*pace* Mill); however, it is not imposed from outside, but self-imposed (*pace* Kant). To be self-imposed it must be known and publicly discussed. Public debate is an early step in the decision-making process. This can be carried out through press releases, manuals, consensus conferences, and similar. The democratic accreditation of the new rule is not a political fad, but a necessary condition of its morality. Moral rules are public rules and a necessary condition of the existence of an ethical code is to be public. Therefore, to complete an ethical decision-making process we need to set up a second group, often consisting not of experts but of politicians, representatives of public opinion, lay people, and so on; this second group is meant to take the final decision concerning the issue under assessment. It will consider first of all the ethical decision of the expert panel, but will judge the case having in mind other criteria too, including political, economic, legal and psychological ones. The strictly ethical (technical) verdict is only *one* element of the broader political decision (which we might call the "broad ethical decision"), the latter being taken as a result of multi-criteria analysis. Ultimately, responsibility for the final decision belongs to the group of policy-makers and commoners – at the limit, the whole community concerned must participate in the development of new moral rules they will obey in the future. This is part of the modern conception of morality.

In fact, it is easy to see that this broad ethical decision, or *social homologation* of the new moral rule, is not done simply by calculating the balance of consequences or the impact of the new policy on stakeholders, but requires a public debate, using various perspectives and ideological commitments regarding (for example, in the case of the new biotechnology) environmental protection, animal rights, a general ideal of life, the future of industrial agriculture, and the political and ideological choices of the evaluators. This multidimensional social homologation process occurs either spontaneously and quietly (this is the way various moral "habits" have traditionally been adopted) or it may be organized by institutions, in the form of public debates, citizen juries or consensus conferences (Beekman & Brom 2007). In any case, the whole community must feel that the new

moral rule belongs to it. From this perspective, it is increasingly held that one of the defining characteristics of moral rules is that they acquire authority ultimately by a kind of "social consensus", with the community's agreement that they are the best means to achieve the objectives of morality; i.e. to provide for human "flourishing" and to oppose those factors which could harm us and affect the quality of our lives (Shoene-Seifert 2000, 117). To subscribe to a new moral rule or ethical code is to recognize that it is a *social* code: that it must be imposed by society at large, generally respected and culturally transmitted.

This means that after completion of the experts' RM, the political group assesses the "weight" of the new policy – and therefore the degree of its "overridingness" – bearing in mind the social importance of the values it protects (we may live in a society that considers values such as dignity, equality and justice either important or unimportant). Depending on the assessment and negotiation of the degree of "overridingness", some sanctions will be associated with the new policy (some typically moral ones, such as educating individual moral sense and public attitudes; but also some legal ones). Finally, the group of political decision-makers checks the consistency of the new regulation with existent moral and non-moral rules, the amount of resources available (to guarantee its applicability) and the degree to which it satisfies other criteria relating to the political, economic, religious or philosophic beliefs of the members of that society. For example, an ethical decision regarding abortion or the status of human embryos will be influenced by the religious or political beliefs of the decision-maker, the pressures of public opinion, certain specific emotional episodes, and so on. Or, to consider another example, a strictly technical ethical decision requiring the isolation in hospitals of some dangerous mentally ill people, if taken during the Cold War period, might have been suspended for reasons of political and geo-strategic *expediency* considered more important than the ethical ones *in that context* (in the case of a dispute around the incarceration of anti-communist political dissidents in psychiatric hospitals, for instance). All the above factors influence the final verdict. They will probably not change the experts' *moral* assessment (politicians will not say that to free those dangerous mentally ill people and therefore to risk the security of the rest of the population is a *moral* action) but they may postpone approval of the new rule for reasons of *political expediency* (although we might accept, as rational people, that the isolation of some mentally ill people in hospitals is a *moral* act, it is not *expedient* for political and geo-strategic reasons). To facilitate these choices, the Council of Europe agreed that ethical issues in general have precedence over those of expediency or financial convenience, asking at the same time that

a new scientific research or technology be assessed with the long-term potential consequences in view, even where uncertain in the light of current science (the “precautionary principle”).

Moreover, to have moral character the process of adopting a new policy ought to be *autonomous*: that is, it should not come from outside (from “rulers” or the staff of a company), but from inside (from the will of all the members of a country or organization). A code of ethics is morally imposed not by a paternalistic procedure but by one which is assumed freely and autonomously (L’Etang 1992). This reminds us again of Kant: the typical moral sanction is the *internal* sanction. Which brings us to another important point: an ethical code should be *public*. Moral evaluation issues should be moved from the narrow circle of experts to the public arena; they must be debated in a transparent manner with those affected by them. In a successful democracy the citizens’ attitudes should be known by the rulers and the rulers’ intentions known by those governed (the principle of transparency or publicity). This process may be left in the hands of hazard or it may be managed rationally.

Regarding the moral assessment of actions, policies and similar, the most objective human point of view is not that of a *certain* moral theory or method, but the combined points of view of *several* theories or methods used for the benefit – and with the democratic participation – of a large number of people.

Concluding Remarks

The issues approached in this article do not belong to ethics in a narrow sense, nor to the practice of public policy among a group with divergent views on topics that have an ethical dimension, but to a kind of research that is intended to show how ethics could be introduced in the practice of public policy among a group with divergent moral views: they belong to *applied ethics*. Again, not to applied ethics in the classical, academic sense, but to what is now the *new applied ethics* as it is practised in specialized centres offering services to the non-academic public. Part of this *new applied ethics* – to which the main topic of my article belongs – is “ethics management” among those organizations that make policies at the global, regional or national levels. It tries to introduce ethics there where they are most lacking.

Currently, public policies at these high levels usually lack a genuine moral dimension; in many cases it is only claimed, at best: consider how laws are adopted in parliaments. Moreover, we live not only in a world with precarious means of enforcing morality, but also one with a plurality of systems of moral values, where several ethical theories and meta-theories are cultivated simultaneously by various groups of moral philosophers:

a world where several methods of ethical decision-making, several ethical tools and a variety of ethical frameworks are used at the same time. This article tries to offer an answer to the question: how can we manage this diversity? My answer is: a virtual ethical pluralist Delphi group inserted in a larger decision-making structure focused on cultivating the moral dimension of a new law or public policy.

I have stressed those moments in the decision-making process where various known ethical principles manifest themselves, such as the principle of publicity, autonomous adoption of a new policy, normative consistency or democratic participation in setting up a new moral establishment. But the kernel of the process is the GPDE. The moral content of a public policy or law should be carefully identified and treated as it deserves during the decision-making process. Finally, I propose that we should think more attentively, contrary to an academic practice which isolates the “ethical tests” in their theoretical technicality, that in the last instance, a real moral decision is a question of *social agreement*, and in some cases a political decision. Morality is a social institution, not a private choice.

As for the GPDE, I see it as an expert group functioning on the following “theoretical” background: imagine the members of the group using not simplistic ethical tests (such as the calculation of consequences, the casuistic comparison of a new case with the basic model, the categorical imperative, or similar), whether or not they are grounded on ethical theories; instead, they use as a test a kind of *Kuhnian paradigm*, including several devices (including theories, fragments of theories, principles at different levels, the usual tests, paradigmatic examples, relevant analogies, ethical explanations which are not theories, and their own *phronesis* formed by using a given paradigm) that could be used when and where needed. In short, they use a *moral paradigm*, which gives them a kind of *gestalt* for judging all concrete cases. Instead of the utilitarian test we shall have the utilitarian paradigm. In fact, this is the way we function as moral evaluators. If we are Kantians, we see the moral world in Kantian colours. The theologian in the group will, for example, firmly claim the immorality of abortion (which is obvious in his *gestalt*), while the utilitarian may support the morality of abortion (which is also obvious in his *gestalt*), and a doctor with religious sensibility will adhere to the views of the theologian, and so on. The question is: how can we make compatible these various assessments in order to obtain a coherent single verdict? Of course, the *coherentist* procedure of rational critique and rational compromise will be one of the mechanisms to obtain a “reflective equilibrium”, but it is hard to believe that we could force members of the group to make their views compatible only by rational argument. We cannot reach an “overlapping consensus”

if the members of the group are not *determined* to adhere, at least in part, to the views of the others. This supposes a “change of paradigm”, a *gestalt switch*, which is a difficult and essentially irrational process, the result of an intense and common activity of convincing partners by using both rational and irrational (persuasive) means. The moral discourse is used in this case, at least partly, as an instrument of persuasion, (in the *emotivist* meta-ethical tradition). And the result may be the adoption of one of the paradigms, or of a partly modified one. This could explain why a text as that of the Oviedo Convention on cloning was finally written in a Kantian style and not in another. In this approach, an ethical decision such as the setting up of a new moral rule is not a completely rational process. The result of this negotiation will be a verdict which is never final.

Of course, not all ethical decision-making tools are like those proposed in this article. This is a large scale one and, generally, ethical tools are relative to the context. Members of the community of applied ethicists are called to elaborate such instruments in accordance with various organizational and individual contexts, all of which fall under the form of a hierarchy of procedures. The individual methods of ethical decision-making may serve, for instance, the institutional formation of an ethical mind among all the employees.

To conclude, imagine at one extreme the moral philosopher with her ethical and meta-ethical complex problems, without a great interest in application; then a middle ground populated by applied ethicists of various kinds (among them managers of ethics, makers of methods, builders of ethical codes, specialists in ethical training and the formation of ethical thought); and at the other extreme the interested users of these new products originating in ethics – the managers and personnel of various organizations and the public at large. These all participate in specific ways in the contemporary game of applied ethics. The professional applied ethicist has to address the issues and try to help. Using what? Not the *Nicomachean Ethics* or the articles of Prichard on intuitionism, but an appropriate “ethical toolbox”. This article was intended as another tool in this ethical toolbox.

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Business Ethics and Military Ethics:

A Study in Comparative Applied Ethics

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Abstract

In the past three decades, philosophers have delved into applied ethics, pursuing a surprisingly wide range of practically oriented normative questions, and a number of fields of applied ethical research and teaching are flourishing. There have, however, been few comparative studies of different fields in applied ethics, but such studies can, I believe, teach us something. Accordingly, this essay compares and contrasts business ethics and military ethics as distinct disciplinary or sub-disciplinary areas. The two subjects might appear to be worlds apart. Yet there are not only differences, but also intriguing similarities between them. Specifically, I discuss the skepticism that often greets the idea of both business ethics and military ethics, compare the emergence of the two as academic fields, and examine some pedagogical issues they face. I then try to put some central questions in both fields in fresh light by comparing and contrasting the goals and responsibilities of corporations and their managers, on one hand, and of the military and its officers, on the other.

Keywords: military ethics, business ethics, managerial responsibility, military officers, teaching

In the past three decades, philosophers have delved into applied ethics, pursuing a surprisingly wide range of practically oriented normative questions, and a number of fields of applied ethical research and teaching are flourishing. There have, however, been few comparative studies of different fields in applied ethics,¹ but such studies can, I believe, teach us something. Accordingly, this essay compares and contrasts business ethics and military ethics as distinct disciplinary or sub-disciplinary areas.² The two subjects might appear to be worlds apart.

Yet there are not only differences, but also intriguing similarities between them. Specifically, I discuss the skepticism that often greets the idea of both business ethics and military ethics, compare the emergence of the two as academic fields, and examine some pedagogical issues they face. I then try to put some central questions in both fields in fresh light by comparing and contrasting the goals and responsibilities of corporations and their managers, on one hand, and of the military and its officers, on the other.

1 On managerial versus engineering ethics, see Charles E. Harris, Jr., Michael S. Pritchard, and Michael J. Rabins, *Engineering Ethics: Cases and Concepts*, 4th ed. (Belmont, Calif.: Wadsworth/Cengage Learning, 2009), pp. 172-175, and the works they cite.

2 The reflections that follow were stimulated by an academic year that I, a long-time teacher of business ethics, recently spent at the U. S. Naval Academy. I thank the Academy's Vice Admiral James B. Stockdale Center for Ethical Leadership for its financial support and my colleagues at the Center for many valuable and stimulating conversations.

Is Ethics Even Possible In These Areas?

As anyone who teaches or writes on either business ethics or military ethics knows, laypeople tend to view these subjects with skepticism or disbelief. They joke that the concept (business ethics/military ethics) is oxymoronic or that business (the military) certainly needs more ethics. Naturally, those who work in these

fields regard these comments as ill-informed and, in a social context, simply shrug off them off with a smile. But because analogous comments are rarely made to someone who teaches medical ethics, say, or environmental ethics, it may be worth beginning with the layperson's underlying question, Is ethics even possible in these areas?

But let's turn this question around: Why might one think that it was not possible? To begin with business, there is a widespread perception, at least regarding large enterprises, that business is a totally self-seeking, amoral activity, driven only by a concern for profit and lacking any intrinsic regard for employees, customers, suppliers, or society at large. Popular American novels and films frequently depict business leaders and the corporations they direct as villains—ruthless, greedy, and untroubled by ordinary moral scruples—while the daily news seems filled with stories of corrupt business conduct. It must be granted that such people and such companies exist, but the question is whether they represent the true, inescapable nature of business.

The problem with thinking that they do, with thinking that business is at its core a totally amoral activity, is that this view ignores the extent to which business activity presupposes adherence to certain elementary moral standards. Without widespread, if perhaps unconscious, compliance with certain norms, without some degree of trust, business could barely function.³ It would certainly fail to be very efficient or effective at providing society with the goods and services it needs or wants. Indeed, without some sense of ethics, business would descend into gangsterism. Those businesspersons who act unscrupulously attempt to take advantage of the ethical restraint and rule adherence of others, just as liars try to exploit the fact that communications are generally assumed to be truthful. These points may be simple, but they suffice to show that one cannot plausibly maintain that ethics and business have nothing to do with each other. This conclusion tallies with commonsense morality, which does not hesitate to identify and criticize some business conduct as wrongful—for example, when a company avoids paying vendors the money it owes them, misleads its stockholders about its financial condition, fails to provide customers with the goods or services they were led to believe they would receive, or loots the pension fund of its employees.

If skepticism about business ethics arises from business appearing to be a completely self-serving and egoistical enterprise, skepticism about military ethics arises because of the violence inherent in combat and the deadly, destructive, and inhumane nature of war itself.

3 Amartya Sen, "Does Business Ethics Make Economic Sense?," *Business Ethics Quarterly*, vol. 3, no. 1 (January 1993): 45-54.

How can there be anything ethical about it? As with ethics in business, though, further reflection suggests that morality can and does apply to war.

First, almost every culture has thought that under some circumstances waging war would be, not merely imprudent, but wrong or irreligious. And the commonsense morality of most people today condemns some wars, such as those of national aggrandizement, as wicked and immoral while deeming others, such as wars of national defense, to be morally permissible or at least necessary evils. Second, throughout history the warriors of many, perhaps most, cultures have recognized certain restrictions on their conduct: Certain weapons, certain tactics, or certain ways of fighting have been considered dishonorable or even taboo.⁴ This, too, tallies with commonsense morality, which unambiguously repudiates certain ways of fighting, for example, the systematic use of rape as a terroristic military tactic. However, if these two points are correct, then one can quite sensibly ask, as military ethics does, (1) when if ever is it morally permissible to wage war and (2) if and when wars do break out, how is one permitted to fight them?

So ethical analysis and argument seem perfectly applicable to both business and war. But this fact by itself does not explain why business ethics and military ethics have become recognized and, indeed, flourishing fields of academic endeavor. Teaching and university life raise interesting ethical issues, and some people have written insightfully about these important matters,⁵ but academic ethics is not, or not yet anyway, a recognized academic field with courses in the subject, textbooks, journals, and a community of researchers. Let's look, then, at the origins of business ethics and military ethics as academic subjects, their institutional contexts, and the nature and purpose of ethics education in schools of business, on the one hand, and military service academies, on the other.

Business Ethics and Military Ethics as Academic Subjects

Although the occasional course on ethics in business was offered before 1960, the number of undergraduate courses on business ethics exploded in the late 1970s and early 1980s.⁶ These days such courses are commonplace,

4 For two examples, see Victor David Hanson, *The Western Way of War: Infantry Battle in Classical Greece*, 2nd ed. (Berkeley: University of California Press, 2009), and David Wetham, *Just Wars and Moral Victories: Surprise, Deception, and the Normative Framework of European War in the Later Middle Ages* (Leiden and Boston: Brill, 2009).

5 For example, Steven M. Cahn, *Saints and Scamps: Ethics in Academia*, rev. ed. (Lanham, Md.: Rowman & Littlefield, 2011).

6 Richard T. De George, "The Status of Business Ethics:

and most state and large private universities not only offer them, but also see such courses as an important and necessary component of the university curriculum. Furthermore, any self-respecting business school must be seen to provide its students with some sort of ethical instruction, and undergraduate business majors are frequently required to take a separate course on business ethics, often taught by instructors from the philosophy department.

Once universities began offering business ethics courses, then textbooks soon appeared, along with academic conferences, professional societies, and specialized journals. This reversed the more common academic pattern. Usually, a new area of scholarly study is first explored in professional articles and books and at conferences of specialists and is then further institutionalized as journals devoted to the field begin to appear, before the subject begins trickling into the undergraduate curriculum. In the case of business ethics, however, the demand for it as a subject of instruction came first. As this demand grew, and as more and more people found themselves teaching courses on business ethics, many of them became intellectually engaged by this new subject and began writing on the issues they were teaching, organizing scholarly conferences, or founding journals for publishing work in business ethics.

So business ethics as a specialized academic subject was a spin-off of the teaching of business ethics. But whence came the demand for university instruction in business ethics in the first place? In the United States, that demand emerged during a period of political turmoil and business scandal—think of Watergate or the revelations of overseas bribery by American firms—and of widespread disillusionment with the nation's political and business elite. The image of big business, in particular, was tarnished, and its moral legitimacy called into question. As a result, in the universities and in some business quarters, the need was felt to counteract immoral or harmful business behavior by inculcating a greater sense of ethical responsibility among America's future business leaders, and the teaching of business ethics to undergraduates was seen as one very important way to do this. Today it is taken for granted that the business curriculum must include ethics education.⁷

Military ethics offers some interesting contrasts and comparisons. For philosophers and political theorists,

Michael Walzer's 1977 book, *Just and Unjust Wars*,⁸ opened up an important realm of moral reflection that professional, analytically trained philosophers had largely ignored. This came at a time when Anglo-American moral philosophy had just shaken off its almost total preoccupation with metaethics. Rawls's *A Theory of Justice*⁹ had recently put beyond doubt the importance and viability of substantive normative theorizing, and a younger generation of analytically oriented philosophers was keen to examine socially salient moral and political issues, such as abortion, civil disobedience, and affirmative action. In this environment it was natural that a number of them, stimulated by Walzer, would take up some of the many moral questions raised by war. For a long time this was a relatively small current, but political events of the past dozen or so years have increased dramatically the number of publications on ethical issues related to war.

The best of this work is quite good, indeed, and of fairly broad intellectual appeal because it connects to basic questions in moral and political philosophy.¹⁰ Indeed, it is likely to have an impact on those broader fields that goes well beyond questions of war. By contrast, the leading work in business ethics, for example, on the topic of corporate social responsibility, say, or on whistle-blowing or manipulative advertising has—rightly or wrongly—not yet been seen by other philosophers as connecting in important or stimulating ways to central issues in moral or political philosophy more generally. This work, despite its importance within business ethics, seems to have had little impact on those broader fields and is largely restricted to business ethics journals. For example, if one scans the prestigious journal *Ethics* over the past two or three decades, one can find much that could qualify as military ethics but little that could be labeled business ethics.

Because work on ethical issues in war has had more outlets, there has been less demand for specialized journals to provide a platform for it than has been the case with business ethics. The demand has also been less because far fewer people teach military ethics and because most of those who do teach the subject do so at military academies, where the imperative to publish has, until relatively recently, been less strong. Still, as the service academies have been hiring civilian philosophers or training military officers to teach ethics and, in particular, military ethics, a small but vigorous philosophical community has emerged, complete with

Past and Future," *Journal of Business Ethics*, vol. 6, no. 3 (April 1987): 201, and Richard T. De George, "A History of Business Ethics" (2005), available on-line at the website of Santa Clara University's Markkula Center for Applied Ethics (www.scu.edu/ethics). See also Michael Davis, *Ethics and the University* (London: Routledge, 1999), chapter one.

⁷ See, for example, the Association to Advance Collegiate Schools of Business's 2004 report, "Ethics Education in Business Schools," available at www.aacsb.edu.

⁸ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977).

⁹ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

¹⁰ For example, Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009).

its own professional organizations¹¹ and conferences and its own journal, the *Journal of Military Ethics*, now ten years old. This, in turn, has increased the production of research on more specialized or applied topics in military ethics, for example, on the use of drones, on aspects of command responsibility, or on the subordination of the military to civilian leadership—research that is often carried out at a lower-level of abstraction than one finds in mainstream philosophy journals.

Although comparatively modest in size, the military ethics community is, proportionally speaking, more international in character than is the business ethics community because of the links between faculty teaching ethics at American military academies and their counterparts in other western countries. Unsurprisingly, both the military ethics and the business ethics communities have links with practitioners in their fields, that is, with business people and military personnel. That this should be so is obvious for those teaching in military academies. By contrast, in my experience, philosophers who teach business ethics or even write on topics in business ethics seldom have much business experience or much contact with business leaders. However, many non-philosophers working in business schools also teach business ethics or at least take an interest in it, and they do tend to have links with people in business, including business leaders who care about social responsibility and ethics in business.

But to return to the emergence of military ethics as an academic subject, why did America's service academies begin teaching ethics to their cadets and midshipmen? This development is linked to the profound changes in curriculum that those institutions have undergone over the past forty years as they have transformed themselves from being, in essence, schools of engineering, navigation, or aeronautics into institutions that in a surprising number of ways look very much like their civilian counterparts, complete with departments of history, English, and philosophy. In short, the military academies have come to have an expanded, liberal-arts view of officer education, that is, of the sort of intellectual preparation and training that is necessary for the future leaders of a modern military organization in an advanced democracy—a point that is underscored by the number of senior American military leaders with PhDs. Thus, as the service academics have evolved and as their teaching faculty have come to resemble the American professoriate in general in terms of their values and attitudes, it is not so surprising that they should accept the centrality of ethics to their mission.

Because being a military officer has always been seen to involve a sturdy sense of duty and honor, to some extent the ground was already prepared for

this development. To be sure, in the past the service academies simply assumed that everyone knew what duty required and what was honorable and what was not—and if they didn't, the academies would tell them.¹² Nevertheless, this institutional emphasis on duty and on living up to certain standards was fertile ground for those who came along later to argue that future military officers needed to be taught to think more directly and explicitly about the ethical choices they would later be called on to make and to emphasize that an important part of being a leader involves the ability to engage in informed and intelligent ethical reflection. Given this prior institutional commitment to ethics, it was natural, furthermore, for people inside them to argue that the service academies should foster original research on the ethical dimensions of war just as they do research on other aspects of war.

This is not to say there is unanimity on this point at the service academies. Despite the firm and unambiguous commitment of their senior leadership to the importance of ethics and to strengthening the moral development and capacity for moral reasoning of cadets and midshipmen, there are, no doubt, those at the academies who would be taken aback by the technicality, abstractness, and—to their way of thinking—abstruseness or irrelevance of some of the ethical topics that their colleagues take up. Still, the situation may be similar when it comes to business ethics for there are, undoubtedly, many business professors who think that it is enough to exhort their students to act rightly and see little point in exposing them to Kant, to different formulations of utilitarianism, or to other ethical technicalities. Likewise, in both cases, there will be those who because of their own disciplinary orientation will think that advanced academic work in either business ethics or military ethics is not very important.

As in the case of business ethics, larger social attitudes, no doubt, help to explain the importance that the service academies have come to assign to teaching and, to a lesser extent, to doing research on issues of military ethics. The military, as an institution, is sensitive and responsive to the social and political currents that shape the society in which it operates. And it is certainly true that the service academies' enhanced concern with ethics followed in the wake of the Vietnam war and events such as the massacre at My Lai, which challenged the blithe assumption of many Americans that their country's wars were always morally justified and its military personnel always upright

11 In particular, the International Society for Military Ethics.

12 It is true, too, as an anonymous reviewer has pointed out, that military personnel can sometimes act immorally or even criminally without, apparently, disturbing their sense of duty and honor (consider German military officers during World War II).

in their conduct. Nevertheless, I tend to think that in contrast to business ethics the emergence of military ethics as a discipline, as a subfield of teaching and philosophical research, reflected developments that were to a significant extent organic or internal to changing ideas of military education and less a response to, or a reflection of, a perceived social need on the part of the public for more moral behavior by members of the armed forces. Although the Vietnam war tarnished the U. S. military, today it is a highly respected institution¹³ (a state of affairs that contrasts with popular attitudes toward big business and its leaders, which mix distrust and cynicism with admiration for worldly success). Even those Americans who have been critical of the wars their country has recently chosen to fight have not blamed them on the military or reproached it for fighting the wars it has been directed to fight.

Some Pedagogical Issues in the Two Fields

Business ethics presupposes something like the moral legitimacy or potential legitimacy of capitalism whereas military ethics assumes something like the moral legitimacy or potential legitimacy of some wars. Obviously, these presuppositions can be contested: Socialists would reject the former, and pacifists the latter. Both fields, however, take such objections seriously. Any philosophically oriented course on business ethics will spend some time examining the pros and cons of capitalism. Likewise, any respectable course on military ethics will consider the criteria that must be met for a war to be morally justified and whether those criteria are in fact ever met. In both cases, a student might be left with something less than a full positive justification of either activity. Perhaps business or war can be justified only to extent that the alternatives to them are worse, or perhaps they are simply inevitable activities that we should strive to humanize as much as possible. This situation contrasts with other areas of applied philosophy, such as medical ethics, where almost no one thinks the underlying activity is morally suspect.

Teachers of ethics often struggle to get undergraduates to overcome their sophomore relativism and appreciate that not all ethical stances are equally defensible. We want our students to take ethics seriously, that is, to

appreciate the ethical dimension of their lives and the need for critical self-reflection on the choices they make now as well as the choices they will be called upon to make later in their careers. In my experience, business students and students at the military academies are neither more nor less reflective than are their peers elsewhere. They are, perhaps, rather more likely to have imbibed the view that their future professions (business and fighting) are ethics-free zones—where the only consideration is triumphing over one's opponents, and ruthless, dog-eat-dog conduct is the path to glory. But, on balance, their ethical ideas are probably no more naïve than those of eighteen- to twenty-year-olds elsewhere.

What should we be teaching these young people? To the practically minded, it may seem a waste of time to discuss with them possible moral justifications of either business or war. These are broad questions, well outside the potential decision-making province of students of either subject. Exposure to them, one might think, will not make them better businesspeople or better soldiers. As mentioned above, the same sort of point is often made with respect to ethical theory. Neither business students nor cadets and midshipmen, it is sometimes contended, need to be exposed to the intricacies of ethical theory. If they are to receive ethical instruction at all, it needs to be practical and relevant. And this point is strengthened by the fact that almost all those who teach courses in applied ethics or contemporary moral problems complain about the difficulty of connecting traditional ethical theories to specific normative problems. After all, it is not easy to determine what utilitarianism implies about abortion or what Kant would say about affirmative action. A lot more can be said about these matters,¹⁴ but I will restrict myself to a few relatively uncontroversial points.

First, exposure to normative theory as well as to basic ethical questions about war or capitalism can help students to grasp certain concepts and principles that can improve their ethical thinking about specific problems. Second, between highly abstract ethical theories and broad questions about war or capitalism, on the one hand, and specific, practical moral problems, on the other, there is an important space for “mid-level” conceptual and normative theorizing—for example, about such topics as (in business ethics) whistle-blowing, insider trading, or conflicts of interest or (in military ethics) assassination, collateral damage, or the use of drones. Work at this level is obviously pertinent to thinking about certain real-world decisions, even if it, too, sometimes tends to be more abstract or academic than many students

13 Today the public has higher confidence in the military than in Congress, the press, the clergy, or colleges and universities, and young people are more likely to trust it to do the right thing than they are the Supreme Court, the president, Congress, the United Nations, the federal government, or the media. See the 2008 presentation “Attitudes and Formation of Attitudes toward the U.S. Military,” prepared by David C. King and John Della Volpe of Harvard's Kennedy School of Government (available on-line).

14 For a debate over the usefulness of moral theory for practical ethics, see the articles by C. E. Harris and Michael Davis in *Teaching Ethics*, vol. 10, no. 1 (Fall 2009) and by Bernard Gert, C. E. Harris, and Michael Davis in *Teaching Ethics*, vol. 12, no. 1 (Fall 2011).

are used to. Finally, because professional philosophers often fiercely contest all these matters—broad questions about war or capitalism, abstract ethical issues, and mid-level theories—exposure to them can strengthen students' critical thinking skills and get them to question their own principles and values and those of the society around them. Ideally, it can encourage them to rely less on their gut feelings and more on their intellect. For these reasons, then, people in both business and the military may do better in those roles if they have spent some time thinking about certain theoretical matters and somewhat abstract or general questions.¹⁵ Finally, there is the Socratic point that thinking about these things is worthwhile for its own sake, but this is obviously a value judgment, not an empirical claim.

Even if, as I believe, various theoretical issues and broad questions about war or capitalism all have a role to play in the teaching of business or military ethics, the important thing, pedagogically speaking, is to find the right balance between theoretical and more practical or applied issues; after all, in both fields we want students to be able to deal effectively with the concrete and context specific problems they will end up encountering in their professional lives. No doubt, some courses in both areas do not do enough to prepare their students for the messy real world of moral decision making. There is in particular a tendency for instructors to focus on big, sexy issues at the expense of seemingly more humdrum nuts and bolts issues, for example, concerning the fair treatment of subordinates by their superiors. Related to this is the tendency for textbooks and other pedagogical materials to focus on ethical questions that can arise for managers, on the one hand, or officers, on the other, as opposed to the ethical choices that ordinary workers or enlisted personnel are likely to encounter. That's natural, of course, because one is presumably addressing the country's future business managers or military leaders and because those issues may seem more complex or more foundational than those that lower-level personnel are likely to run into. Still, both business and military ethics can and should encompass more than the moral quandaries that managers and officers can encounter. And even if that remains the focus, it is important for both future managers and future officers to have thought about some of the moral challenges that their subordinates can face and to rid themselves of the implicit assumption that it is their job to think and the job of their subordinates merely to obey.

When it comes to teaching applied ethics, in general, or military or business ethics, in particular, there are a variety of legitimate approaches and a range

of possible topics to take up. In the case of business ethics, the market for teaching materials is so large that there is a wide assortment of pedagogical options for instructors. In addition to single-author texts and textbook anthologies, pitched at different levels, aimed at different kinds of students, and representing different approaches to the subject, there are various sources of case studies for classroom use as well as a diverse range of pedagogically helpful materials available online. By contrast, there are far fewer published teaching materials for use in courses on military ethics—a market that barely exists outside the military academies, though courses in ethics or political philosophy often take up issues of war for part of the semester. In fact, there are hardly any traditional looking textbooks devoted to military ethics¹⁶ although, to be sure, there are a number of good books on the morality of war, which although written for a wider audience could be used effectively in the classroom.¹⁷ There are also some large, historically oriented anthologies on the ethics of war.¹⁸ A valuable resource for professors, they are, however, probably not well suited to most undergraduate courses. To target their particular students, in fact, the service academies often develop or assemble their own teaching materials on ethics and war.

As mentioned before, as the military ethics community has grown and become increasingly active, much more work is being produced on applied topics or mid-level theoretical issues as opposed to the relatively abstract and highly theoretical work on issues of war that journals like *Ethics* or *Philosophy and Public Affairs* tend to publish. In business ethics, of course, there is already a great deal of published work on specific issues and mid-level concepts and theories. Much of this new work in military ethics will probably find its way into the classroom, if only by influencing the thinking of instructors. For one thing, it will make it easier for instructors to build a course around debates that cadets and midshipmen are likely to find both interesting and pertinent.

When one visits a U.S. military academy from another university, one is likely to be surprised by the seriousness with which ethics is taken and the importance assigned to ethical training and the development of moral character

15 Obviously, we do not know that they will do better (nor do we know for certain that anything else we do in an ethics classroom will have beneficial long-term results.)

16 One such text is Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 3rd ed. (Englewood Cliffs, N. J.: Prentice Hall, 2003).

17 For example, Brian Orend, *The Morality of War* (Peterborough, Ont.: Broadview, 2006).

18 Gregory M. Reichberg, Henrik Syse, and Endre Beby, eds., *The Ethics of War: Classic and Contemporary Readings* (Oxford: Blackwell, 2006), and Larry May, Eric Rovie, and Steve Viner, eds., *The Morality of War: Classical and Contemporary Readings* (Englewood Cliffs, N. J.: Prentice Hall, 2005).

across the board. This institutional commitment to, and concern with, ethics is evident in a variety of way. Here is one example: Although a team of professional philosophers at the U. S. Naval Academy teaches its required ethics course, weekly discussion sections are led by officers or former officers who volunteer to teach them. The fact that people they respect, who have often seen combat and whose careers they aspire to emulate, take ethics seriously sends a clear message to young midshipmen about its relevance and importance. This contrasts strikingly with many secular universities, especially the large state universities. Although they all have statements about values, ethics, or social responsibility in their student learning objectives or institutional goals, those goals and objectives often appear to be largely window dressing, added on to satisfy external evaluators, but underwritten by little substantive institutional commitment to ethics education. Indeed, it is difficult to find a secular institution that requires all students to take an ethics course, taught by philosophers.¹⁹ And even when particular groups of students, for example business majors, are compelled to take ethics, this can be seen by them as just another seemingly arbitrary requirement, just another hurdle that has to be cleared on the way to their degree, not as something that lies at the core of their future profession.

I do not, however, want to paint too rosy a picture of ethics instruction at the military academies. It involves many of the same problems and challenges that teachers of philosophy encounter elsewhere. Furthermore, some report that in practice Socratic dialogue and open, classroom discussion of challenging ethical issues tend to give way to the search for pre-approved answers.²⁰ But even if this is or has been a problem,²¹ the situation will certainly continue to improve as the military academies employ more and more civilian philosophers and other academics (often, these days, in leadership positions). Still, it is probably true that some in the military approach ethics education as a training issue, attempting to turn philosophical problems into technical ones to be solved by developing the right protocols.²² There can, of course, be a somewhat analogous tension in business ethics education, with some instructors (usually from the philosophy department) tending to adopt a more open-ended, Socratic style and other instructors (often from the school of business) favoring a more practical, step-

by-step approach to resolving moral questions. This, of course, relates to the unsettled pedagogical question, discussed earlier, of finding the right balance between theoretical issues and practical matters when teaching either business or military ethics.

In the military academies, there is also a tension between the extremely rule-bound institutional regime to which cadets and midshipmen must submit, which has the goal of inculcating in them an ethic of automatic adherence to orders, and the philosopher's goal of encouraging students to question and to think for themselves. This is not to say that this tension is insurmountable. Ideally, graduates of the academies will appreciate that there are situations in which they must think for themselves about ethical matters (and to learn to identify those situations) while at the same time seeing the importance of their having been trained to follow orders. Still, there is a tension there which has no real counterpart in the education of business students although, to be sure, university students are often presented with institutional rules that seem to them arbitrary and for which they are rarely given any explanation, at least not one that connects the rules to underlying ethical principles.²³ And there is a tendency in both institutional contexts for the authorities to take a legalistic view of the rules, one that emphasizes self-interested reasons for compliance.

I turn now from pedagogical matters to (1) the nature and purpose of business and the military and (2) the moral responsibilities of managers, on the one hand, and officers, on the other. These topics involve issues that are central to business ethics and to military ethics. Analyzing them in comparative perspective should throw some fresh light on both fields.

Business, the Military, and Service to Society

Although people sometimes say that the job of the military is "to kill people and break things," this vulgarizes military service and obscures a larger truth about it. It vulgarizes it at the micro level because much of what people do in the military has little or nothing to do with killing and breaking, and it vulgarizes it at the macro level because the military can be, and often is, called upon to perform nonviolent tasks. The phrase "called upon" brings us to the larger truth obscured by the above slogan, namely, that the military's *raison d'être* is to serve the state and the country it is presumed to represent. That and not violence, and certainly not killing and breaking for their own sake, is its ultimate purpose or goal. The military hopes, of course, as do

19 Princeton University appears to be one. And at many universities, ethics courses, even if not required, often satisfy university-wide general education requirements.

20 J. Joseph Miller, "Squaring the Circle: Teaching Philosophical Ethics in the Military," *Journal of Military Ethics*, vol. 3, no. 3 (2004): 206-208.

21 I should state, for what it is worth, that it does not correspond to my experience at the U. S. Naval Academy.

22 Miller, "Squaring the Circle": 214.

23 Derek Bok, "Can Higher Education Foster Higher Morals?," *Business and Society Review*, no. 66 (Summer 1988): 8.

all reflective people, that it is never called upon to do what is unjust—and hard moral decisions arise for the organization and for the individuals in it if it is—but the military is always animated by an ideal that is larger than itself, namely service to the country.

Like other organizations, the military, of course, has an interest in maintaining itself as an organization and in increasing its influence and stature, but these are not the rationale for its existence. Rather, in a modern democracy, the military is an instrument of the civilian authorities. The latter determine the size, structure, and capacities of the military as well as its specific mission in any given context, such as, defeating a guerilla force in another country, propping up a failed state, or supplying humanitarian aid after a natural disaster. Given civilian control of the military, the military cannot act autonomously, or fully autonomously, in pursuing those objectives. These general points apply obviously to sub-units of the military as well, for example, to divisions and brigades. In a business organization, too, sub-units must follow instructions and carry out policies and directives from above. But business organizations as a whole are not subordinate to some higher authority; they are autonomous and free (subject to certain moral and legal constraints) to advance their own interests as they see fit.

To be sure, business provides the goods and services that society needs, and in this way it serves the country. However, on the most prevalent view these days, which harks back to Adam Smith, the provision of those goods and services is a side-effect of the pursuit of profit. The point of business activity is simply to make money. Outside of business ethics classrooms, this is the message that students frequently receive, implicitly or explicitly, from their business courses: Maximization of profit (or, alternatively, of shareholder wealth) is a business's only goal. Providing socially useful goods and services is only a means to that end (although, strictly speaking, neither necessary nor sufficient for it). Conservative and liberal economists may disagree about the extent to which business activity should be constrained by rules and regulations and what those rules and regulations should be, but they tend to agree that, once we have the right sort of legal framework—once we have set up the rules of the game—then companies should be left to go about their business, that is, to pursue profit as best they can, within that framework. Only in this way will we get the economic results that we want.

The rules of the game are not limited to laws and regulations. As mentioned before, business activity presupposes adherence to certain ethical norms, a point emphasized by Milton Friedman himself,²⁴ because

a market system cannot flourish without widespread acceptance of certain elementary norms or moral rules, such as honesty and good faith. Does business have social or moral responsibilities above and beyond the pursuit of profit within the rules of the game, thus understood? The answer to this question is hotly contested, and debate over it is likely to loom large in any class on business ethics. As I have intimated, economists are likely to believe that the answer is no, that the trick is to get the right laws and regulations and then to turn business loose. Some business theorists and probably most of those who teach business ethics believe, to the contrary, that businesses do have such responsibilities—responsibilities to employees, to suppliers and other business partners, to consumers, to the environment, and to the larger society—beyond what the law and the elementary norms of business practice require. The practical implications of the two views often coincide. That's because those who believe that business has broad social or moral responsibilities also argue that companies who embrace those responsibilities tend to be more profitable than companies that do not whereas those who deny that companies have those responsibilities in the first place acknowledge that it may be in their interest to act as if they believe that they do.

The thesis that businesses have responsibilities beyond attempting to maximize profit within the existing framework of law, regulation, and accepted business practice can be understood in two ways. The first is that these putative responsibilities are additional side-constraints on business activity, that is, additional restrictions on the pursuit of profit beyond those already laid down by law and customary business morality. The second is that business has, or should acknowledge itself as having, other goals besides the pursuit of profit, for example, providing certain goods or services or satisfying the interests of its customers. On the former view, then, business has a single goal (profit) although pursuit of it is subject to constraints beyond those implicit in the rules of the game. By analogy, one's only goal in playing tennis may be to win, even though one acknowledges various constraints, beyond those specified in the rule book, about what one may do to win. On the second view, business lacks a single maximand. Rather, it must pursue several different and independently valuable ends, balancing them as best it can. By analogy, in playing tennis one might be pursuing several goals at once—striving not just to win but also to exercise or have fun with friends—with none of these goals lexically prior to the others. If something like this held true of business, that is, if business were best understood as having multiple goals, then—depending, of course, on exactly what those goals were understood to be—its role would no longer be defined by self-interest; it would

24 Milton Friedman, "The Social Responsibility of Business Is to Increase Its Profits," *New York Times Magazine*, September 13, 1970.

have a service component to it.

There is a view of business activity that is more radical than this. Like the view with which I began, it sees business as having only one goal. However, this goal is not profit, but the provision of some good or service. For example, John Mackey, founder and CEO of Whole Foods, claims that customer happiness, not making a profit, is his company's true end.²⁵ In response to Milton Friedman's insistence that Whole Foods is simply maximizing its profits through providing consumers with a service they value, Mackey insists that his company does not treat customer satisfaction as a means to an end. Rather, it is the whole point of his business, the reason for its existence. Profitability is a side effect of pursuing that goal well. At the same time, profitability is a necessary means of continuing to pursue it effectively because a company that fails to make money will not be able to go on providing the goods and services that are its rationale for existing in the first place.

To summarize the discussion schematically, if A = producing some socially useful good or service, and B = making a profit, then there are three positions:

- (1) Business has only one goal: A is merely a means to B.
- (2) Business has at least two independent goals, A and B.
- (3) Business has only one goal: B is merely a means to A.

One might object that this scheme is too simplistic and ignores the possibility of more sophisticated variants of these positions. I can ignore this objection here, however, because I am not trying to settle the debate over the proper role and responsibilities of business, but rather to draw some broad comparisons between business and the military, and my schema suffices for that. As I argued above, the military has one defining organizational goal (service to the country), and its ability to employ force is merely a means to that end. Certainly if one embraces view 3 and probably also if one embraces view 2, then a business enterprise is akin to the military in being a kind of service organization—an activity the ultimate point of which is not self-interest but the social good.

The Contrasting Responsibilities of Managers and Officers

On views 2 and 3, managers obviously have broad responsibilities; by definition, in running a company they must have goals other than or in addition to maximizing profit. View 1, in contrast, seems to entail that profit

is a manager's only concern. But this is incorrect. Even if the sole purpose, point, or economic role of a corporation is to make money for its owners, it does not follow that maximizing a company's returns is the only responsibility that managers have. View 1 grants that there are legal restrictions and moral side-constraints on what corporations can do in the pursuit of profit. Economists differ about what those legal restrictions should be, and moral philosophers disagree about whether those side-constraints go beyond merely obeying the law and adhering to elementary market morality. But internal to any version of view 1 is the idea that what managers should do is not determined simply by the goal of maximizing profit, even if that is the only goal of a corporation. They must manage within the rules of the game and possibly also within other social or moral constraints as well.

Suppose that a very minimal version of view 1 is the most tenable and that the rules of the game impose few restrictions on the pursuit of profit. This would not rule out managers' having responsibilities that are other than, or more extensive than, those imposed on a company as a collective entity. To argue that the obligations of the whole determine the obligations of the part is to commit the fallacy of division. To be sure, managers are hired to help the company make money, and they do indeed have a fiduciary duty to advance its interests and, in particular, not to enrich themselves at its expense. But it does not follow that pursuit of profit, even within the rules of the game, is their only moral responsibility or that their fiduciary duty always takes priority over other moral concerns. Managers are autonomous agents, and what they should or should not do is not something that we can derive directly from the goals, even as constrained by law and by elementary market morality, of the company of which they are part.

Military officers have even stronger duties to the organization and to cooperate actively and constructively in achieving its legitimate ends. The analogy with the fiduciary responsibilities of managers is obvious although (1) the stakes can be considerably higher here than in business and (2) the organization that officers serve is itself premised on service and not, as view 1 would have it, on self-interest. Like managers, officers are autonomous moral agents. Just as the rules of the game or their own sense of responsibility constrains the pursuit of profit by managers, so the rules of war, that is, the moral and legal restrictions on the conduct of war that philosophers call *jus in bello*, constrain what military personnel can do in pursuit of the objectives they are given. Some of these restrictions are fairly detailed and legally codified, for example, those that govern the treatment of prisoners of war. Others are broader and their application to, or implications for, certain specific situations are often contestable, for example, the duty to

²⁵ John Mackey, Milton Friedman, and T. J. Rodgers, "Rethinking the Social Responsibility of Business," *Reason*, October 2005.

respect civilian immunity or refrain from force that is out of proportion to its military objective. Still, the norms are real and widely accepted even if hard cases abound.

The laws and norms that govern business behavior are generally justified by their social utility. Thus, economists and other business theorists debate whether having businesses operate within this or that framework will produce better results—although, as I have suggested, even the best set of laws and rules may fail to provide adequate guidance to the moral manager. Similarly, the rules of war do not provide clear answers to every moral problem an officer might encounter, and even where they do provide answers, it is possible that morality might require more or, conceivably, less, than the rules of war do. The rules themselves, on one plausible view, are analogous to those that govern business in being norms or conventions that states have found it in their collective interest to adopt. Or to put it in a more explicitly utilitarian way: Given that wars will be fought, whatever philosophers say, then the task is to identify those rules that, given the world as it is and governments and people as they are, will bring about the most good, taking into account, among other things, the likelihood of states being brought to accept and comply with those rules.²⁶

This is not the only possible way of thinking about the rules of war, of course, but whatever view we take of them, the rules will sometimes require one or other side of a conflict to refrain from acting in ways that could benefit it; that is, the rules may make victory more costly or more difficult than it would otherwise have been because they prohibit certain sorts of conduct. Similarly, even on the least restrictive version of view 1, a business will sometimes be required to forgo making a profit in a certain way. On the other hand, of course, it will often be in the long-term interest of a business, just as it can be of a state or military organization, to forgo any short-term advantage that would come from breaking the rules of the game.

Human beings, however, are only human, and they sometimes allow short-term interests to trump long-term interests. Moreover, some business or military situations may be so asymmetrical that the dominant party has little reason to concern itself with reciprocity. So if the rules are to be adhered to, thus benefitting everyone in the long run, then individuals will have to have internalized a commitment to them. In business, that internalization must be able to overcome financial temptation and the diffuseness of responsibility in large organizations. In the military, that internalization needs to be robust enough to withstand the heat of battle when emotion runs high, when decisions must be made quickly, and when the

facts are shrouded in fog. It must also withstand the psychological proclivity to dehumanize one's opponent and to disregard the safety and well-being of enemy civilians.

Still, two things make the task of inculcating a commitment to the rules of war firm enough to stand up under these conditions less daunting than it might otherwise seem. First, men and women in the military can be trained ahead of time to respond correctly, that is, to act in accord with the rules of war, under battlefield conditions just as they are drilled to act without hesitation in other desirable ways. The military itself insists that its personnel obey the laws of war; it teaches them that unlawful orders are to be refused, and it tries to assist officers in thinking through ahead of time the hard dilemmas that they can face in the field. In contrast, although businesses always try to ensure that their employees behave in ways the company wants, it is doubtful that many of them endeavor to strengthen their employees' ability to make sound, independent moral decisions under duress or that the message that young managers end up getting has changed much from what Badaracco and Webb identified it to be back in the 1990s: "don't break the law" but "don't overinvest in ethical behavior," either.²⁷ True, some large corporations have ethics training programs, but—judged by the sorts of programs that filter down to the university—one suspects that these are legalistic and compliance oriented.

Second, as part of their profession, soldiers, sailors, marines, and air force personnel explicitly assume certain demanding moral responsibilities. The concepts of duty and honor loom large in their traditions, and they are well aware of the possibility of being called upon to sacrifice themselves for their country or for their comrades. For them to risk their lives, say, to safeguard noncombatants trapped in a battle zone requires selflessness, but selflessness is something that their profession already demands. The virtues associated with being a warrior have varied across time and cultures, but in the western tradition the warrior ideal is not that of a bloodthirsty killer who seeks to preserve his own life at all costs. Whatever else a soldier is, he is not the rational, self-interested, maximizing agent hypothesized by economists and implicitly taken for granted by some business theorists.

The military ideal of sacrifice finds no obvious counterpart in the world of business, nor do at least three other aspects of the responsibilities of officers. First, officers are responsible not only for the conduct of their subordinates but also for their moral development. They must try to protect the young people in their command

26 Henry Sidgwick, *The Elements of Politics*, 3rd ed. (London: Macmillan, 1908), p. 238.

27 Joseph L. Badaracco, Jr., and Allen P. Webb, "Business Ethics: A View from the Trenches," *California Management Review*, vol. 37, no. 2 (Winter 1995): 10.

from the moral coarsening that so often accompanies war; that is, they have a duty to help them retain their moral compass and preserve their identity as moral agents. There is nothing analogous to this in the world of business. All companies and all managers are concerned with how their employees act, but only very rarely with what kind of people they become, or risk becoming, as a result of working for the company.

Second, although the military ethos embraces sacrifice, it also stresses the importance of loyalty to one's comrades. This can sometimes lead to military personnel being too concerned with "force protection," that is with preserving one's unit or those under one's command from excessive risk of harm. Admirable in itself and a healthy antidote to the indifference with which some past military leaders often squandered the lives of their own men, a concern with force protection can sometimes translate into a disinclination to take the risks that are necessary, say, to avoid placing civilians in harm's way—or even the risks necessary for accomplishing the mission. One might see this as somewhat analogous to a manager's allowing the interests of the people who work for him to blind him to other responsibilities, but this does not do justice to the strength of the obligation that officers have to look after the well-being of those in their command or the moral importance of loyalty. In some business situations, to be sure, one must balance responsibilities to co-workers or subordinates against other leadership responsibilities, but usually the stakes are lower and the ties of loyalty weaker than in the military.²⁸

Finally, everyone acknowledges that officers have serious *in bello* responsibilities. But what an officer is to do if he or she suspects, believes, or knows that his or her country is fighting in an unjust cause is less often discussed, especially in the military itself. Officers themselves gravitate toward the view that their only responsibilities are *in bello*, that is, to fight within the rules of war, and that *ad bellum* issues are not their concern. Memorably expressed in Shakespeare's *Henry V* (Act 4, Scene 1), this stance has a long pedigree, and is accepted by many moral theorists. It is, however, not beyond challenge and remains an ongoing subject of debate among philosophers.²⁹ There is no real analogue to this in business ethics. (One might, I suppose, maintain that managers are not to be held responsible for whether the corporate project in which they participate is immoral [for example, providing software to be used for a vicious end by a despicable regime]—an *ad bellum*—

like question—but are nevertheless responsible for carrying out that project in a way that breaks no moral rules [e.g., no one is cheated, misled, or bribed]—an *in bello*-like responsibility. But I know no one who actually holds this position.)

Conclusion

For the first two-thirds of the twentieth century, to study ethics was to study metaethics.³⁰ That has changed for the better. Work on normative theory and on concrete or applied ethical problems now flourishes as it never has before. Indeed, a number of areas of applied ethics can be considered distinct, semi-autonomous academic fields, complete with professional societies, journals, conferences, undergraduate courses, and graduate students writing on cutting edge topics. But there have been few comparative studies of different fields in applied ethics. In the belief that such studies can teach us something, this essay has compared and contrasted business ethics and military ethics along several different dimensions. After responding to skepticism about whether ethics is even possible in these areas, I examined their origin and development as academic fields, some pedagogical issues that arise in these areas, and the contrasting goals and responsibilities of the military and its officers, on the one hand, and of corporations and their managers, on the other.

The emergence of business ethics as a specialized academic subject was largely a spin-off of the fact that so many universities began offering business ethics courses in the late 1970s and early 1980s. Now seen as an important aspect of their curriculum and of the mission of their schools of business, business ethics offerings expanded so rapidly, I believe, because of a perceived social need to instill a greater sense of ethical responsibility among America's future business leaders. In the case of the military academies, the emergence of academic instruction in ethics probably reflected more internal developments as these institutions evolved into genuine undergraduate universities with an expanded liberal-arts view of officer education. With more military and civilian professors involved in teaching ethics, the community of those interested in issues in military ethics grew. Although a number of professional philosophers have been writing about the ethics of war since the 1970s, the growth of this community has stimulated more research and writing in the field, especially on applied or specialized topics.

Both fields face similar pedagogical questions in finding the appropriate classroom balance between

28 This is not to imply that all questions of loyalty in the military involve dramatic or high-stakes situations. For example, should a soldier help cover up a buddy's minor malfeasance?

29 For rival perspectives, see Michael Walzer, *Just and Unjust Wars* and Jeff McMahan, *Killing in War*.

30 Roughly speaking, from Moore's *Principia Ethica* (1903) to Rawls's *A Theory of Justice* (1971).

theoretical and practical or applied issues. Because it is much larger, the field of business ethics offers instructors a much wider range of possible pedagogical materials. The military academies, on the other hand, are more likely to have to put together their own materials. More significantly, ethics instruction in the two fields takes place in quite different institutional environments. The service academies take very seriously the ethical dimension of military leadership and place a high priority on developing the character and ethical reasoning ability of those in their charge. The seriousness and broad, institutional nature of this commitment are not something that secular universities have been able to match. On the other hand, Socratic reflection and independent thinking about ethical matters fit more easily and naturally into a traditional university context.

Several intriguing contrasts between the two fields stem from the fact that whereas service to country is at the heart of the military's identity, the purpose or proper social role of business is a contested matter,

with conflicting views about the responsibilities of corporations and their managers. As we have seen, there is no consensus whether or to what extent business is required to do anything other than strive to make money within the rules of the game. To be sure, business managers have duties to the organization just as military officers do, and on any view of the social role or function of the corporation, managers have responsibilities that restrict what they may do on behalf of the organization. Nevertheless, although all those who teach business students wish them to act morally, morality is not usually thought to be at the core of what it is to be a good manager. By contrast, military ethics takes it for granted that the military is a service calling, which has a goal or purpose that is noble and transcends self-interest, and those who teach it emphasize that morality—upright conduct, the acceptance of moral responsibility, and the exercise of moral judgment—lies at the very heart of what it is to be an officer.³¹

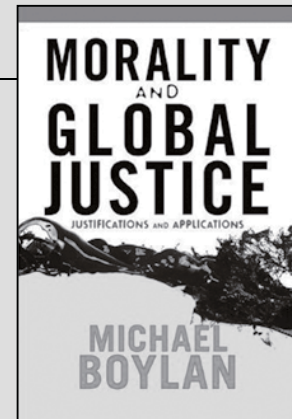
31 An earlier version of this essay was presented at the Sixth International Conference on Applied Ethics, held on October 28-30, 2011, at the Center for Applied Ethics and Philosophy, at Hokkaido University (Sapporo, Japan). I thank conference participants for their helpful comments.

Author Meets the Critics: Michael Boylan's *Morality and Global Justice*

Introductory Note

The following exchange occurred at 21st Annual meeting of the Association for Professional and Practical Ethics held on March 1–4, 2012, in Cincinnati, Ohio. The session was an author meets critics session on Boylan's 2011 book published by Westview Press, Boulder, Colorado. The topic of the discussion is a controversial treatment of immigration by Boylan in his chapter on immigration.

The critics were: Gabriel Palmer-Fernandez and Julie E. Kirsch, who provide critical assessments of Boylan's claims. Boylan then offers a reply to their arguments.



Boylan on Immigration

Gabriel Palmer-Fernandez

Youngstown State University

My remarks¹ on Boylan's ideas on Immigration divide into four brief sections. First, I describe an exchange of ideas with Michael Boylan on his earlier book, *A Just Society*; second, I turn to his most recent work, *Morality and Global Justice*, and focus on his chapter on immigration; third, while I share the basic thesis of that chapter, I try to expand the analysis on immigration; finally, I briefly note harms of immigration caused by the globalization of production.

1. *A Just Society* and Its Critics

A few years ago I had the very good fortune to be part of a group of scholars who were invited to comment on Michael Boylan's work, *A Just Society*. Our contributions were published under the title *Morality and Justice: Reading Boylan's A Just Society*, edited by John-Stewart

¹ These remarks are on the occasion of a panel on Boylan's, *Morality and Global Justice: Justifications and Applications* (Boulder, CO: Westview, 2011) at the Association of Practical and Professional Ethics, March, 2012.

Gordon. A few of us challenged Boylan with what I will call the Cosmopolitan Challenge.

1.1 The Text

In a number of places in *A Just Society*, Boylan identifies our fellow compatriots as the relevant population for our considerations of justice – i.e., citizens or members of our political community rather than persons, as such. For example, he writes: “I do hold that at this moment in history our first responsibilities are toward those in our own society,” basic goods (i.e., food, clothing, shelter, protection) “are to be distributed equally to all citizens” (Boylan 2004-a, 174, 245); and elsewhere he writes, “at this moment in history, it seems that the only way to execute duties is first through one's sovereign state and then remotely via ... international bodies” (Boylan 2004-b, xxxi, n 1). In giving priority to fellow compatriots, Boylan, I argued, limits the scope of justice. Others made a similar argument. For example, Christopher Lowry and Udo Schüklenk focused their discussion on justice and global health and noted the same matter, namely, the limitation on the scope of justice to domestic society – call it, conational priority.

The limitation on the scope of justice to the domestic scene is, of course, not unique to Boylan and it is a matter of important discussion among philosophers, political theorists, and others. Some argue that it is no longer possible or desirable to think of justice as tethered to a territorial state as there is very little regional or domestic economy left. Even my local farmer's market does not escape the reach of globalization. There are very strong empirical reasons for thinking that an image of the world as comprising self-sufficient national states is no longer valid. Others acknowledge this point and go on to claim there's an important practical reason for this limitation: although liberalism argues that all persons have equal moral status, the level of social unity needed to make egalitarian justice feasible requires a bounded political community. So we close discussions on justice at national borders, even when we agree that national states are neither self-sufficient nor self-contained.

1.2 The Challenge

The challenge Christopher Lowry, Udo Schüklenk, Edward Spence, John-Stewart Gordon, and I put to Boylan was to expand the doctrine of justice, to remove territorial restrictions on the just distribution of goods and thereby transcend conational priority. After all he already had the foundation for a global, cosmopolitan doctrine of justice in what he calls the Table of Embeddedness, comprising a schedule of basic goods, universal in scope and absolutely necessary for human action. As I suggested in my essay, given the characterization of basic goods "one would reasonably assume that in a needs comparison between the hungry in Bangladesh, Congo, or the Philippines and those in New York City priority in needs satisfaction must go to the former" (Palmer-Fernandez 2009, 152). I wanted to move Boylan toward a cosmopolitan or global perspective. No borders or walls. So, too, did others.

1.3 Boylan's Response

To say that Boylan limits justice to a world bounded by borders and walls does not capture his whole thought. Indeed it would be unfair and unkind. Unbeknownst to some of us – at least unbeknownst to me – Boylan had already moved in the desired direction: justice would no longer be territorialized to political communities but globalized to persons – independent of national or state membership there would be an equivalent schedule of rights for all. Following Saskia Sassen and Seyla Benhabib we can call this the "unbundling" or "disaggregation" of justice and territory (Sassen 1998, 92; Benhabib 2006) – a phenomenon of contemporary globalization that is in line with what Benhabib calls an "international human rights regime" (Benhabib 2006, 27-31).

To our challenge, Boylan responds thus:

[Their] essays concern themselves with cosmopolitanism [and raise the question] why I did not extend my conclusion in the argument for the moral status of basic goods to the whole world. Since I justify my argument not by institutions or nations, but rather by individuals viewed generically, it seems reasonable that national boundaries not be introduced. After all, as Palmer-Fernández suggests, there is no moral status for national boundaries... I am inclined to agree with the general thrust of these remarks. I am contracted to write a textbook on global ethics and plan a sequel to *A Just Society* entitled *A Just World*. But why did I limit myself to an individual state as the boundary conditions of *A Just Society*? ... I limit my conclusion to societies ... because ... I believe that most of the effective large-scale social action at this moment in history will occur *within* societies. (Boylan 2009, 208, 212).

It's an important empirical claim - "that most of the effective large-scale social action at this moment in history will occur *within* societies." Some, including myself, believe otherwise: national states are at this moment in history neither self-sufficient nor self-contained. No hard shell surrounds most of them. The few exceptions prove the point. Bhutan and North Korea come to mind. If correct, large-scale social action will occur both *within and beyond* territorial states, for example, the International Day of Protest Against the War in Iraq in February 2003, protests against WTO, and the recent Occupy Movement from Tel Aviv, Israel to Barcelona, Spain and Youngstown, OH where I live.

At any event, so far as his published writings go, in 2011 Boylan was somewhere *within and beyond* the state. In his new book, Boylan goes *beyond* the state. I turn to that text next.

2. *Morality and Global Justice*

The book works from a basic cosmopolitan premise: "the world is structured nationally but moral rights exist ultra-nationally ... [t]his does not mean that the state becomes irrelevant, but merely that the horizons of moral applicability extend to people, as such – wherever they live" (Boylan 2011, ix, 203). The cosmopolitan premise is, I think, an important development that flows quite naturally from the earlier book's emphasis on basic goods. Here there is no parsing of justice's demands by states, their borders, and walls. It is not tethered to territory. Like capital, finance and labor, music and art, terror and pollution, narco-trafficking, information networks and social media, justice now has universal, i.e., global, reach.

2.1 Immigration in *Morality and Global Justice*

Chapter 14 of this book directs our attention to immigrants and refugees and on grounds of basic goods argues for open borders, at least as a prima facie right that, under some pressing conditions, can be restricted. The rights to flee and to enter a country are thereby secured. Together call them the right to free movement. Crucial to my analysis of this chapter are the causes or conditions that motivate people to migrate, that give rise to large-scale migrations. Of these Boylan lists four: violence, especially, intrastate violence; economic causes; political causes; and environmental degradation and natural disasters. These causes look to conditions of the sending state – the *push* factors in migrations. They are well documented in many international studies. But there are equally important causes of migration that Boylan misses.

3. Expanding the Analysis on Immigration

Migrations are usually understood as motivated by poverty, persecution, overpopulation or other facts about persons and the sending states. Brute facts – frequently horrible facts – *push* people out of their native land. There is truth in that. Most of us, after all, do not wish to leave home. It takes an ugly, bad scene to get us to do so. It's hard. That was certainly the case with my family and myself, as a very young boy. Facing serious threats of violence, the imprisonment of a family member, and execution of several close associates by a revolutionary government we migrated to the USA; and over the past several decades, so too have some 1.5 million of my fellow Cuban-Americans. But why did those 1.5 million migrate and not some others? And why the United States? After all, Puerto Rico, Venezuela, Mexico, Spain or any other Spanish-speaking country would have been a more natural destination state, making the cultural change less traumatic. Yet those did not *pull* most of us. In my family's particular situation, we came to the US because we had business interests here, in New Orleans. We were in some manner already established here, certainly sufficiently so to exert a strong pull on us. More generally, there were long-established business, military, political, and ideological relations between the two countries and these made our journey a sort of natural flow in a single transnational entity (Sassen 1988). The dynamic of being simultaneously pushed and pulled as part of an international process more adequately captures the reality of immigration than the usual notion.

From my immigration experience I think it is safe to say that large-scale migrations do not just happen. People do not just get up, leave home, and move to another place. Rather these migrations are produced. They are,

as Sassen observes, “patterned and bounded in duration and geography ... [and] transcend the brute facts of persecution, poverty, and overpopulation” (Sassen 1999, 2). They are produced, patterned, and bounded not only by the *push* of conditions in the sending nation, but also by the *pull* of existing “linkages” that serve as bridges to the receiving state. So there are at least bilateral – perhaps it would be more accurate to say historical or global - conditions that together produce migrations.

Sassen writes:

If migration is thought of as the result of the aggregation of individuals in search of a better life, immigration is, from the perspective of the receiving country, an exogenous process, one formed and shaped by conditions outside the receiving country ... [and its] experience is understood to be that of a passive bystander to processes outside its domain ... [But] if immigration is conditioned on the operation of the economic system in receiving countries ... [it] emerges as an integral part of the spaces and periods of growth of the receiving economy ... *The economic, political, and social conditions in the receiving country set the parameters for immigration flows* (Sassen 1999, 136-137—emphasis mine).

José Moya reaches a similar finding in his remarkable study of Spanish emigration to Buenos Aires, Argentina between 1850 and 1930 by. He writes:

Spanish emigration ... was not a national phenomenon but part of a global one ... Individual agency normally exists within the boundaries of, and interacts with larger historical forces ... [Mass emigration] results from ... the alloy of global trends and locally based networks (Moya 1998, 4, 5, 386; cf. Anderson 2005).

If Sassen and Moya are correct that large-scale migrations are “conditioned largely by the operation and organization of the receiving economies, politics, and societies” and result from the “alloy of global trends and locally based networks,” at least two important points follow. First, Boylan's description of the phenomenon of large-scale migrations is incomplete. He accounts for the *push* but not the *pull*. He is correct in the analysis of those conditions in life that motivate people to leave their homelands, but does not explain why they go to a particular destination – the patterns and trends that act upon individual agency over and above our wanting and doing. Second and more importantly, the incomplete analysis misses what I will call the double harm of immigrants in current large-scale migration flows to the US.

4. Double Harm of Immigrants

Current law in several of our states imposes significant privations on undocumented immigrants. Alabama makes it a misdemeanor crime for an undocumented immigrant to enroll in any postsecondary education institution or to apply for, solicit, or perform any work. It punishes United States citizens who hire or rent to them, or charitable organizations and religious institutions if they provide food, housing, or transportation to them and permits law enforcement officers to detain persons suspected of being in the country illegally. So important goods that are taken for granted by Alabamians – education, housing, work – are denied to undocumented immigrants. These are privations of rights that otherwise would not occur. These are preventable harms. Similar anti-immigration laws have been adopted or considered in Arizona, Mississippi, Georgia, Indiana, Oklahoma, South Carolina, Missouri, Tennessee, and Virginia. In the gubernatorial races in 2010 some 20 candidates, both Republicans and Democrats, supported anti-immigration laws.

Harms caused directly by current anti-immigration laws can be mitigated – for example, by opening our borders to the free movement of people or adopting different pathways to residency and citizenship. The Dream Act has some ameliorative properties in this regard. But large-scale migration to the US, with or without anti-immigration laws, is not very likely to decrease, as it is an integral part of the globalized economy. Again, Sassen:

The emergence of a global economy ... contributed both to the creation abroad of pools of potential emigrants and to the formation of linkages between industrialized and developing countries that subsequently were to serve as bridges for international migration. Paradoxically, the very measures commonly thought to deter immigration – foreign investment and the promotion of export-oriented growth in developing countries – seem to have had precisely the opposite effect. The clearest proof of this is the fact that the several newly industrializing countries with the highest growth rates in the world are simultaneously becoming the most important suppliers of immigrants to the United States (Sassen 1998, 34).

How foreign investments contribute to the creation of potential emigrants from developing nations is a long, complicated story. If Sassen is correct, some of the central elements of the story are these: the disruption and uprooting of traditional ways of life (for example, subsistence farming replaced by commercial agriculture

and recruitment of young women into industrial areas) give rise to the internal displacement of people and force their migration to cities, ultimately creating an urban reserve of cheap labor that potentially becomes a large-scale migration. In Mexico and the Caribbean Basin the wage laborer migrates to the United States, at once being *pushed* by the lack of work at home and *pulled* by the availability of low-wage jobs abroad. In Southeast Asia where Japan has been the major foreign investor the same pattern can be observed. In short, Sassen notes, foreign investment in export-production “transforms people into migrant workers and, potentially, into emigrants” (Sassen 1999, 41).

This transformation of people into emigrants involves a series of harms directly caused by the processes of globalization, particularly foreign investments and the internationalization of production. Even when there is rapid employment growth in the manufacturing sector, people are made worse-off, their rights to basic goods are violated, and then illegally entering their destination state they suffer further privations by anti-immigration laws. Many of us are beneficiaries of the undocumented immigrants’ plight. And in so far as we are beneficiaries, we share responsibility for their harms.

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A Compromise Solution to the Immigration Problem: A Response to Michael Boylan

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1. Introduction

In *Morality and Global Justice*, Michael Boylan presents us with a set of solutions to some of the world's most pressing moral issues. Boylan claims that his solutions are not utopian; instead, they are practical, workable policy recommendations that governments and other organizations should adopt. For the most part, Boylan is correct; there are no obviously insurmountable obstacles to implementing many of his recommendations. But, as he himself admits, his position on immigrants and refugees borders on the utopian (Boylan 2011, 204). In what follows, I will discuss two concerns that I have about his position. The first concern (1) is consequentialist: I fear that implementing a policy of open borders may lead to economic, environmental, and political consequences that are on balance undesirable. The second (2) is practical: even if American citizens have moral reasons for supporting a policy of open borders, they may have reasons of self-interest for rejecting it. If this is correct, then Boylan may have a difficult time garnering the support necessary to make the policy a reality.

2. Boylan's Solution to the Immigration Problem

Before we can understand Boylan's position on immigration, we need to take a look at the theory of ethics that he defends in *Morality and Global Justice* (and throughout his other published works). Boylan claims that we each take our human agency to be a fundamental value. Boylan defines human agency as the ability to act in the world "to achieve our vision of the good" (Boylan 2011, 35). The exercise of human agency minimally requires that we have certain biological necessities—"food, clean water, sanitation, clothing, shelter, and protection from unwarranted bodily harm" (Boylan 2011, 35). Boylan classifies these biological necessities as 'level-one basic goods of agency' (Boylan 2011, 35). Level-one basic goods of agency are the most deeply embedded goods of agency; obviously, we cannot act or pursue our vision of the good if we are dead or non-existent (Boylan 2011, 42). There are, however, other

goods of agency that we must possess to act as agents in the world. Boylan's Table of Embeddedness provides us with a neat hierarchical ordering of these goods based upon their significance for human action. It also presents us with a method of weighing and evaluating the claims for goods that individuals and groups make. Whenever conflicts between two or more claims arise, we should prioritize more embedded claims over less embedded claims (Boylan 2011, 44).

How might the Table of Embeddedness help us understand the moral obligation that we have to immigrants and refugees? As Boylan explains, refugees often flee situations of dire need and desperate poverty. They lack the "biological necessities of life," or the "level-one basic goods of agency" (Boylan 2011, 35). For this reason, refugees make a significant moral claim upon the rest of the world. If we share Boylan's commitment to cosmopolitanism, then we must respond to their situation immediately by adopting a policy of open borders. As Boylan puts it,

[E]very country should actively work through the United Nations and exert international pressure (including economic sanctions) to permit the free and safe migration of peoples both intranationally and internationally. Further, the wealthiest countries of the world (G-8 to G-20) should commit to accepting immigrants according to the priority of their claims measured according to the Table of Embeddedness" (Boylan 2011, 203).

Boylan is right to emphasize the severity of this humanitarian crisis and the moral claim that refugees make upon the rest of the world. Indeed, most ethical theories (and theorists) would find this situation appalling and worthy of some response. But must we respond by adopting a policy of open borders?

3. Some Consequentialist Concerns about Open Borders

A. In answering this question, it would be helpful to consider the probable consequences of such a policy. We can make some predictions about the economic

consequences of open borders by considering the economic consequences of immigration in the United States over the last sixty years or so. Since 1965, as a result of legislative changes, we have experienced a marked increase in immigration to the United States of America (Borjas 2004, 1-4). We have also experienced changes involving the composition of the immigrant population itself. One noteworthy change is that we are now admitting immigrants of greater ethnic diversity than ever before. A second important change involves the level of education of new immigrants. In comparison with earlier immigrants, new immigrants have a lower level of education relative to the native population. As a result of this educational difference between immigrants and natives, it is predicted that immigrants will earn 20% less than natives throughout their working lives. They are also more likely to make use of social welfare programs than were earlier immigrants (Borjas 2004, 4-5).

These changes in immigration have given rise to certain positive consequences. Perhaps the most noteworthy consequence has been a modest increase in per capita income among natives. Economist George Borjas estimates that the per capita increase in income amounts to no more than \$30 per year. Unfortunately, this increase in per capita income has not affected all natives equally. It is well known that those at the low-end of the earning scale tend to be hit the hardest by an influx of immigrants. This is because an increase in the number of unskilled immigrant workers floods the market with excess laborers that, in turn, drive down wages. An increase in a country's wealth is not always accompanied by a fair or just distribution of wealth among the country's people (Borjas 2004, 6-7). We have witnessed this first hand in the United States. Indeed, Borjas argues that increasing immigration in the United States disproportionately harms native-born black and Hispanic workers "because a much larger share of minorities are in direct competition with immigrants" (Borjas 2004, 1). If Borjas is right, then an increase in immigration would result in further economic setbacks for minorities and other economically disadvantaged Americans.

Cosmopolitans are typically concerned but unconvinced by economic worries of this kind. After all, many potential immigrants and refugees are considerably worse off than the unskilled American laborers whom they risk harming. According to Boylan, arguments against open borders that appeal to the economic harm done to Americans are 'specious' because they fail to prioritize the rights of potential immigrants and refugees. In his view, we are morally obligated to adopt a policy of open borders so long as it does not bring Americans down to the economic level of would-be immigrants and refugees (Boylan 2011, 203-204). As we have seen, we must respect the Table of Embeddedness and secure more embedded goods before less embedded goods

wherever they may occur. In this case, securing the more embedded good involves supporting a policy of open borders that may help potential refugees and immigrants.

B. When evaluating an immigration policy, we should also consider the effect that it would have upon the environment and quality of life in a country. How might a policy of open borders affect the environment and quality of life in the United States? A recent Gallup poll indicates that the United States is the most desired destination country in the world. About 165 million people report that they would rather live in the United States than in their present home country. If the United States implemented a policy of open borders, we have reason to expect that many of these individuals would migrate to the United States. How would a massive influx of immigrants affect the quality of our air, soil, and drinking water—especially in large urban centers? A policy of open borders might lead to overcrowding in our cities and the destruction or depletion of our natural resources. From an environmental perspective, it would make sense to stagger the world's population throughout the world instead of funneling it into dense and overpopulated cities.

C. This brings us to a third and final consequentialist concern about a policy of open borders. From a moral point-of-view, we have reason to support and preserve liberal democracies and other morally decent nations¹. The United States should not adopt a policy that would be so destructive to its economy that its position in the global moral order would be compromised. If the United States were to suffer a tremendous economic blow—assuming that it has not done so already—who would stand in its place? A shift in the global moral order might have profoundly negative and far-reaching consequences for us all. In the long-run, it is possible that a policy of open borders would lead to a greater lack in basic human goods than what the world is currently experiencing. Admittedly, worries about shifts in the global moral order are highly speculative. However, they are serious nonetheless and provide us with some grounds for proceeding with caution when developing and implementing an immigration policy.

4. Towards a Practical Answer to the Immigration Question

Thus far I have presented a number of consequentialist concerns about Boylan's defense of open borders. Now I would like to comment upon its practicality. My suspicion is that most Americans would not support

¹ I am borrowing this terminology from John Rawls, 1999.

an immigration policy that they take to be personally threatening. Given the highly politicized and scattered nature of the evidence available to us, it is unclear whether or not a policy of open borders really would harm Americans economically. If Borjas is right, the economic consequences of increasing immigration might be somewhat mixed. But, regardless of whether or not this is true, many Americans are under the impression that an increase in immigration would cause them some harm. This economic fear, coupled with worries about national security, make it unlikely that the United States will adopt a policy of open borders any time soon. Until then, Boylan may have to settle for a policy that seeks to strike a balance between the moral and practical concerns that arise in the immigration debate. Let me gesture in the direction of such a policy.

5. Towards a Compromise Solution to the Immigration Problem

The compromise position that I would like to put forward attempts to balance the moral and practical concerns that arise in the immigration debate. In agreement with Boylan, I support increasing immigration in the United States. I also support a policy of giving considerable weight to potential immigrants whose most basic needs are not being satisfied in their current country of residence. Following this recommendation would involve reversing our current policy of giving preference to those who already have family members living in United States. However, the United States must weigh other factors as well. We may want to give some weight to applicants whose education or background can strengthen our economy and diversify the effects of immigration across the socioeconomic spectrum. Indeed, if we hope to remain a destination for immigrants and refugees, we must ensure that our economy is strong and able to provide them with decent employment opportunities.

This compromise position also seeks to address the underlying issues that prompt citizens to emigrate from a given country in the first place. While a policy of open borders may provide many of the world's people with a good immediate solution, it may not provide them with the best long-term solution. There may be solutions, or partial solutions, to some of these underlying issues that do not require that we dramatically increase immigration in this country. If one of our goals is to promote global equality of opportunity, then we might heed Stephen Kershnar's advice and transfer resources to impoverished people throughout the world. We might also respond by "defending them militarily or by promoting democracy and free markets" (Kershnar 2000, 147). If our goal is to help the world's worst-off, we might do so "through

international aid programs such as international loans or grants, reduced tariffs, and aid in the form of extending the U.S. umbrella of defense" (Kershnar 2000, 149). As Boylan explains throughout his book, there is much that we can do to assist others throughout the world that does not involve immigration reform.

Some of the problems that I have mentioned in this paper can be partially addressed without immigration restrictions. For example, we could limit overcrowding and environmental harm caused by immigration by placing refugees and immigrants in under populated cities or states. But this partial solution raises worries of its own. Buffalo, NY, my hometown, has suffered from significant population declines since 1950. The influx of immigrants to the area has helped to slow down population decline (Orr, Wieler, and Pereira 2000, 1). However, it has also increased competition for jobs in a city wherein joblessness is serious problem that has itself contributed to population decline. Moreover, many immigrants make use of social services but leave the city as soon as they are able to settle down elsewhere in the United States or Canada where job prospects are better. This prevents the city from experiencing the long-term economic benefits that immigration typically brings. If we increase immigration in the United States, we should strategize about how best to help immigrants and refugees as well as current citizens and struggling cities. Buffalo is experimenting with some of these strategies locally. I am confident that similar efforts at the national level would help to alleviate some of the harms outlined in this paper.

6. Conclusion

To sum up, we must act now to help those whose basic needs are not being met throughout the world. For Boylan, our response should involve helping the world's worst-off escape their current living conditions and migrate to a safer and more prosperous country. While I am largely in agreement with Boylan, I would argue that we must increase immigration gradually, selectively, and with considerable caution. In revising our current immigration policy, we should strive to help those who lack the most basic goods. But we should also do what we can to protect and improve the environment, the global moral order, and the economy needed to sustain current citizens and future immigrants and refugees within the United States.²

² These remarks are on the occasion of a panel on Boylan's, *Morality and Global Justice: Justifications and Applications* (Boulder, CO: Westview, 2011) at the Association of Practical and Professional Ethics, March, 2012.

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International Immigration: A Reply to Gabriel Palmer-Fernandez and Julie Kirsch

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Among the various issues in Global Justice that I address in *Morality and Global Justice: Justifications and Applications* (2011-a), international immigration is one of the most important. Gabriel Palmer-Fernandez and Julie Kirsch have written sensitive queries about my position that I will address in order¹.

Gabriel Palmer-Fernandez

Palmer-Fernandez begins his essay with a survey of my recent book, *A Just Society* (2004) and the critical volume of essays that followed edited by John-Stewart Gordon, *Morality and Justice: Reading Boylan's A Just Society* (2009). At that time Palmer-Fernandez called for a more cosmopolitan version of my theory of justice since my essential formula for determining a rights claim derived not from someone's living in a particular state, but upon the nested hierarchy of goods that anyone might claim to commit purposive action in order to attain his or her vision of the good. Since the argument is based upon the species *homo sapiens*, it made little sense to demarcate national borders.

I both agree and disagree to this. I agree that the argument put forth is not dependent upon national borders. As far as the claims right to the basic goods of agency, it is irrelevant where one lives. National boundaries are superfluous.

Where I disagree (then as now) is that national perspectives are practically important because most public policy is created and executed within the confines of states. Thus, it is critical that we have one practical perspective that encapsulates the national perspective as well as one that takes the larger, theoretical perspective of cosmopolitanism that is set as an aspirational goal for all the nation states of the world to work towards.

What I like most about Palmer-Fernandez's article is his discussion of the push-pull dynamics of immigration. Palmer-Fernandez is correct that I concentrated upon the push dynamic (people moving out of a country). I agree with Palmer-Fernandez that the pull dynamic (people moving toward a particular country) is also important. I really do not address this dynamic in Boylan (2011-a). I

probably should have. Here are my thoughts now.

First, it may be the case that there is a differential pull among the G-20 nations (the wealthiest twenty countries in the world). If it is the case, as Kirsch suggests, that the United States has the greatest pull among immigrants, then something must be done to address this situation. Even though the United States is the wealthiest country in the world, it cannot assume *all* the world's immigrants. They must be proportionally divided among the G-20 according to these countries' ability to assume these individuals. Such a stance amounts to the "ought implies can" argument. One cannot demand a duty that it is impossible to fill without making the host country as poor as the country that has been left behind. There needs to be some sort of progressive sharing of the burdens based upon the same sort of principle as national progressive taxation.

It is important to think about the pull factor because one would seek to meet the wishes of as many immigrants as possible in the choice of their new homeland. I would envision some sort of lottery system in cases where there is a severe imbalance in the pull factor towards one or a few countries only. The lottery system would ensure that each receiving country would get a random number of immigrants who might, because of their education and professional accomplishments make an immediate positive contribution to the host country and a random number of immigrants who at first may be a net drain upon social programs in the host country.

Second, we should consider the push factor as the most important part of the pair. This is because the "push" factor allows people to leave where they are living because of various reasons such as war, famine, natural disaster, and political/economic oppression. Many times this push will only be to another part of the nation. This is intra-national immigration. This right to intra-nationally migrate has been often denied as the new region of the country does not want to construct camps where refugees might live for years. Though it may be uncomfortable, such migration should always be permitted. I argue that without such an opportunity to migrate intra-nationally, large numbers of individuals will suffer a loss of level-one basic goods of agency.²

¹ This interaction occurred at the Association for Practical and Professional Ethics, 2 March 2012.

² The Table of Embeddedness—From Boylan 2011

These are essential goods that everyone on earth can legitimately claim and that everyone else has a duty to provide.

Then there is the issue of international migration. Again, from the *push* perspective, everyone on earth has the right to leave his or her country. However, there may be limitations on the *pull* perspective as mentioned

BASIC GOODS

Level One: *Most Deeply Embedded* (That which is absolutely necessary for Human Action): Food, Clean Water, Sanitation, Clothing, Shelter, Protection from Unwarranted bodily harm (including basic healthcare).

Level Two: *Deeply Embedded* (That which is necessary for effective basic action within any given society)

- Literacy in the language of the country
- Basic mathematical skills
- Other fundamental skills necessary to be an effective agent in that country, e.g., in the United States some computer literacy is necessary
- Some familiarity with the culture and history of the country in which one lives.
- The assurance that those you interact with are not lying to promote their own interests.
- The assurance that those you interact with will recognize your human dignity (as per above) and not exploit you as a means only.
- Basic human rights such as those listed in the U.S. Bill of Rights and the United Nations Universal Declaration of Human Rights

SECONDARY GOODS

Level One: *Life Enhancing*, Medium to High-Medium on Embeddedness

- Basic Societal Respect
- Equal Opportunity to Compete for the Prudential Goods of Society
- Ability to pursue a life plan according to the Personal Worldview Imperative
- Ability to participate equally as an agent in the Shared Community Worldview Imperative

Level Two: *Useful*, Medium to low Medium Embeddedness

- Ability to utilize one's real and portable property in the manner she chooses
- Ability to gain from and exploit the consequences of one's labor regardless of starting point
- Ability to pursue goods that are generally owned by most citizens, e.g., in the United States today a telephone, television, and automobile would fit into this class.

Level Three: *Luxurious*, Low Embeddedness

- Ability to pursue goods that are pleasant even though they are far removed from action and from the expectations of most citizens within a given country, e.g., in the United States today a European Vacation would fit into this class
- Ability to exert one's will so that she might extract a disproportionate share of society's resources for her own use.

above. I conceive of national borders being open from the *push* perspective. Each person on earth should be allowed to walk away from their country due to *any* reason whatsoever that they consider important. It is a level-one secondary good to be able to live one's life according to an autonomously derived life plan (when understood in the context of *leaving a country*). If the reasons for leaving are due to a lack of food, clean water, sanitation, fear from violence, or lack of health care, then a level-one basic good is involved. The *pull* perspective will have to be shared in some random manner (since all people count as one in the seeking of scarce resources about which there are *prima facie* moral claims).

Palmer-Fernandez's second principal point is on the double harm that immigrants face in the United States (for example). Not only is there the harm of being moved away from their culture and community but in the host country there is an additional harm of being the victims of discrimination. I certainly agree with Palmer-Fernandez on this point. I did not address these harms in my immigration chapter, but I did mention some of these harms in my chapters on poverty, globalization, and on race, gender, and sexual orientation.

The only way around the "double harm" problem is to eliminate the "two-minds" attitude towards immigrants. When the country decides to allow immigrants into the country they should get over a feeling of resentment against these immigrants. It is this feeling of resentment that is behind the second-level of discrimination once they reach the borders of their destination country. When there is a political will that has been expressed, then it is unpatriotic for citizens of a nation to further marginalize immigrants, but sadly in the United States this has been the tradition even when we had legally open borders.³

My last reflection on Palmer-Fernandez's essay concerns his point about investment in foreign countries increasing the *pull* effect in immigration. I have not studied this issue in detail, but when I was a fellow at The Center for American Progress in Washington, D.C. (a public policy think tank), most of us on the economics team accepted Amartya Sen's notion that first-world money that developed third-world nations in a comprehensive way was a positive move toward autonomy and capability within the recipient nation (Sen 2000). It could be the case that both positions are correct: development resources help the recipient nation but they may also breed a *pull effect* upon the citizens of that nation.

In the end, I am happy for the comments of Gabriel Palmer-Fernandez on immigration. They have helped me

3 For different takes on discrimination on immigration in America even when we had open borders (and shortly thereafter) see: (Laskin 2010),(Molina 2006), (Chang 2004), and (Brodtkon 1998).

to further clarify my position—especially regarding the push-pull dynamics of the migration of peoples in the world.

Julie Kirsch

Julie Kirsch offers a practical response that looks to the consequences of the quasi-open borders approach that I advocate. The thrust of this response concerns the consequences of large scale migration to a particular country (in this case the general stand-in is The United States). What would the native citizenry think of new large scale migration?

First, I need to say again that my quasi-open borders approach features two elements: (a) the right to leave an area within one's country to go to another area within one's country or to another country, and (b) the right to enter one's top choice country. These are separate issues. As I have said above, I believe that the right to (a) is absolute. It can flow from a lack of a basic good of agency according to the Table of Embeddedness. The rights claim of (b) is leading the sort of life that one wishes to lead according to an autonomous life plan that is a first-level secondary good. Since secondary goods are trumped by basic goods, the resulting public policy would be an *absolute right* for people to leave the location where they live for whatever reason to another location within their own country or to another country. However, the second rights claim, to go to the country of one's choice, is not an absolute right but is a *prima facie* right that can be overridden by others' equal claim and by the host country having the resources to accommodate the new influx of people. Since this second claims right is *prima facie*, in cases of there being too many people who choose the *same country*—for example The United States—then the only mechanism that could fairly adjudicate equal rights claims would be a random distribution system such as a lottery. This system would take into account second, third, fourth choices, etc. These would act as nested alternate choices, respectively. Thus, for example, if Country A was getting 65% of the 1st choice requests and could only accommodate 30% of this applicant pool, then for the remainder in the applicant pool (35%), they would be set into their second and third choices respectively. This sort of nested lottery is often administered in U.S. colleges for dormitory rooms and for course selections. By employing a nested lottery, the burden of taking in low-skilled immigrants who will need public welfare assistance and job training education would be carried proportionally by the ability to sustain a flow of immigration without significantly reducing the standard of living in the host country. Under this progressive framework, the wealthiest nations of the world would take in most of the immigrants according to their ability to take in immigrants who will need

substantial public financial investment in order to make it.

But there is always another class of immigrants: those of high education and professional accomplishments. This creates a different dynamic. For example, what if India sends 10,000 nursing students to the United States to go through four years study to become masters-level nurses with highly developed skills? What if after they have completed their education they wished to stay in the United States and enjoy a higher standard of living than they did in India? This is a real problem that I have confronted first-hand in the annual Faculty Ethics Seminar that I have delivered to college faculty since 1996.⁴ In 2002 I had a member of the seminar who was on the National Council of State Boards of Nursing. She brought this particular problem to my attention. Many countries who pay for the education of their professionals in and out of the medical field feel that they have paid for a resource. These countries feel cheated if that individual immediately turns around and goes elsewhere. So how are we to think of this?

I believe that the model that the U.S. military uses for training professionals offers a good template for these foreign-trained workers. If the U.S. military pays for an individual's law school (three years) or medical school (four years plus residency), then said individual has a requirement to serve in the military for the same number of years (three or four years, respectively). Such a covenant would have to be multi-national (either through the U.N. or through a multi-national treaty) for it to work. But such a treaty could go a long way towards eliminating the brain drain from developing world to developed world—at least for a time.

Another important point that Kirsch raises is whether the new influx of immigrants into the United States (that would surely result from the policies that I advocate) would hurt our 'native born' low income workers. This is a significant problem. It has often been the case throughout world history (post-Industrial Revolution) that a great influx of workers at the lower end of the economic spectrum creates a bulge in labor supply. Assuming constant labor demand, this would seem to insure that wages, benefits, and working conditions would decrease. Under such a scenario, it might seem like the perfect storm where the native born are worse off and the immigrants become the object of possible violence.

There are several sorts of responses that can be made to this possible outcome. First, it is not necessarily clear that labor demand under such a scenario *would* be flat. This is because, of the opportunity investment that manufacturing might have under such a scenario. It is

4 Some details of the seminar can be found in my co-authored book: (Boylan and Donahue 2003).

my conjecture that it can be the case that a rising labor population with certain marketable skills attracts new investment (particularly in developed nations, Peri 2010). If this held true in the United States or other such *rich magnet countries* (the pull factor), then the cosmopolitan perspective would correctly shift manufacturing from the recipient nations to the richer nations. This would give an incentive to businesses operating within the poorer countries to raise wages at home and improve working conditions in order to stop the flow of immigrants to developed target countries. This, in turn, would put a damper upon immigration.

Such a scenario described above can be termed “business follows labor model.” As the labor force around the world becomes more educated I believe that this dynamic will become stronger rather than weaker. It is one of the positive senses of globalization (which must occur within the constraints that I set out in Chapter 11).

A second constraint upon the perfect storm described above would be labor unions. If governments among the developed world would work to insure that labor laws remain intact and that it is not too difficult to obtain signatures for new unions to be certified, then the force of collective bargaining can begin operating to stop employers from exploiting what would seem to be a decrease in labor’s power to negotiate given the influx of new labor in the market. Together with the dynamics of the *business follows labor model* described above labor unions will modify the harsh consequences that Kirsch fears.

These two constraints against labor exploitation also work save the environment. Kirsch predicts that if business gets the upper hand in its negotiation with labor and with society in general, that they might be able to roll back environmental protection laws and act as they please for the highest possible profit. However if my conjecture about the force of the business follows labor model and the active public support of unions is correct, then environmental degradation would fit into the same category as wages and working conditions and be protected by the dynamic I describe.

If what I have argued for here is correct, then my proposals will be free from the possible deleterious consequential downsides and the “self-interest” objection. Kirsch has challenged me to add some more detail on my immigration policies. First they will retain

their strength: autonomy for individuals and groups of individuals absolutely to be able to move from place-to-place within one country and to leave their country all together if situations warrant. Second, the ability to move into the country of their choice will be conditional upon host countries being able to accept as many immigrants as possible subject to “ought implies can.” In situations in which immigrants overwhelmingly want to go to a few countries *only*, then some sharing must go on among the G-20 with a lottery system to determine the fate of individual applicants.

I believe that my proposals on immigration offer an advantage over the status quo. This advantage stems from the lens of analysis changing from the single nationalist perspective to a cosmopolitan perspective that seeks to protect as many moral claims as possible as we implement distributive justice throughout the world.

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Notes to Contributors

1. All submitted papers are subject to anonymous peer-review, and will be evaluated on the basis of their originality, quality of scholarship and contribution to advancing the understanding of applied ethics.
2. Papers should not exceed 8,000 words including references.
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Cohen, G.A. (1989), 'On the Currency of Egalitarian Justice', *Ethics*, 99 (4): 906-44.
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