WHAT IS PROFESSIONAL ETHICS?

David N. James

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ABSTRACT

After distinguishing professional ethics from legal and aesthetic norms I argue that a version of rule-utilitarianism is best able to account for professional ethics. The alleged relativism of role-specific duties is a badly posed issue, I argue, since how morality comes to one critically depends upon one's occupation. Alternative theories of the foundations of professional ethics are criticized, both consent theories and the views of those who object to the legalism implicit in a rule-based theory. A mixed theory of virtue is defended to include the most important aspects of an ethic of virtue in the overall rule-utilitarian framework.
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PART I

MORAL THEORY AND PROFESSIONAL ETHICS
CHAPTER I

INTRODUCTION

Focusing on engineering and medicine as paradigms, this study is an attempt to describe and dissect the nature of professional ethics. I argue that a version of rule-utilitarianism is most fruitful in answering the question, "What is professional ethics?" Both the traditions of moral philosophy and the writings of professionals themselves are employed, with the aim of furthering an interdisciplinary dialogue.

I begin in Chapter II by describing and clarifying two extreme views of professional conduct, the internal point of view held by many practicing professionals, and the external point of view defended by Ivan Illich.

Chapter III focuses on giving a clear definition of both the notion of "profession" and the notion of "ethics."

In Chapter IV I introduce rule-utilitarianism as a plausible overall moral theory with particular strengths in accounting for the duties attaching to professional roles.

In the second part of this study I return to the existing codes of professional ethics in engineering and medicine, and provide a more detailed and concrete application and defense of utilitarianism in contrast to alternative moral views.
CHAPTER II
INTERNAL AND EXTERNAL POINTS OF VIEW

Reflective professionals who consider the meaning and purpose of their work often speak about its aesthetic delights. This would come as no surprise to Thorstein Veblen, who saw the "instinct of workmanship" as a fundamental human tendency towards craftsmanship as an end in itself. Veblen argued that the tendency to do well the job at hand enters into all human activities, guiding both ends and means and leading to a blurring between them.1

While many aspects of Veblen's view are open to question, surely something like his view of human nature is correct. From Aristotle to Rawls, philosophers have pointed out that human beings tend to find increased pleasure and enjoyment in the active exercise of their capacities. This enjoyment tends to be greater as the capacities are unfolded to a greater degree, and as the activities increase in complexity. There seems to be a natural delight taken in the broadening and deepening of competency in activity, across a broad range of human abilities. Perhaps something like this, which Rawls calls "The Aristotelian Principle," would be found as the defensible core of Veblen's The Instinct of Workmanship.2


My present concern, however, is to illustrate how two contemporary professionals, a physician and an engineer, have come to hold that the appropriate normative structure of their practical activity consists most fundamentally of the aesthetic delights of craftsmanship, of doing well the work which is to be done. Not surprisingly, these views are most common in the professions based on technology.3 Those who apply science to practical problems, and who learn their work by emulating older practitioners, rather naturally tend to see and explain their activity in the manner of craftsmen when engaged in reflection on the meaning and purpose of their acts. After discussing Samuel Florman's *The Existential Pleasures of Engineering* and Richard Selzer's *Mortal Lessons: Notes on the Art of Surgery* at some length, I shall consider William May’s arguments against the legitimacy of the aesthetic view of professional conduct and Ivan Illich’s external critique of the professions. This will set the stage for, and motivate, the topic of the next chapter, namely, how are moral action-guides to be distinguished from non-moral action-guides? Let us begin with Florman.4

The Aesthetics of Engineering

He cast on the fire bronze which is weariless, and tin with it


3That medicine is a species of technology is affirmed by both ancient and contemporary writers. See below, esp. pp. 12-18.

and valuable gold, and silver, and thereafter set forth
upon its standard the great anvil, and gripped in one hand
the ponderous hammer, while in the other he grasped the
pincers.5

Thus does Homer describe how Hephaestos made the shield of
Achilles; thus does Florman try to show us, by quoting it, the an-
cient fascination with making things. The Greeks did speak joyfully
and even sensually about manufacturing, and honored craftsmen for
their skills and for the beauty of what they made. The third part of
The Existential Pleasures of Engineering deals with the often over-
looked emotional component of engineering activity, its pleasurable,
joyous aesthetic structure. His discussion has many merits, not least
of which is to force philosophers, those "footnotes to Plato," to con-
front the even more ancient Greek fascination with doing and making.
Florman brings engineering and literary writers together fruitfully,
using sources as diverse as Robert Lewis Stevenson and Rousseau to
delineate engineering as an aesthetic activity.

Engineering is divided into a number of specialties and sub-
specialties, as a layperson can discover by inspecting the "Help
Wanted" section of a newspaper. The particular sort of aesthetic en-
joyment latent in engineering of course depends upon the sort of engi-
neering in question. Accordingly, Florman considers three different
activities engaged in by engineers, each of which contains the capac-
ity for the intrinsic delights of good workmanship. He argues cor-
rectly that the enjoyment engineers experience is not a result of pas-
sively looking at the results of their efforts. The delight is found

5Quoted by Florman, p. 105.
in the exercise of capacities intrinsic to the activity itself, in agreement with what we have called "The Aristotelian Principle."

The first type of aesthetic experience found in engineering concerns the aesthetics of machines. Florman states that

At least half of America's million or so engineers are mechanical, electrical, or aerospace specialists who are intimately engaged with machines. 6

The engineer who deals with machines, he continues, may have a definite, structured sort of aesthetic experience:

Every engineer has experienced the comfort that comes with total absorption in a mechanical environment. The world becomes reduced and manageable, controlled and unchaotic. For a period of time, personal concerns, particularly petty concerns, are forgotten, as the mind becomes enchanted with the patterns of an orderly and circumscribed scene. This state of mind is scorned by many humanists, but in a way it is similar to the comfortable seclusion one feels when listening to a carefully constructed musical composition. 7

Not all humanists have scorned this state of mind. John Dewey is among those philosophers who agree that an aesthetic experience is possible whenever we encounter a structured artifact, whether or not it is designed to be used. Dewey remarks that:

It is customary, and from some points of view necessary, to make a distinction between fine art and useful or technological art. But the point of view from which it is necessary is one that is extrinsic to the work of art itself . . . . Whether the thing made is put to use, as are bowls, rugs, garments, weapons, is intrinsically speaking a matter of indifference. 8

6 Florman, p. 127.
7 Ibid., p. 137.
Perhaps it would be better to speak of being absorbed by or into technological activity, rather than saying that one is absorbed into "a mechanical environment." Outsiders looking in on the activity of mechanical engineering may value it purely as a means or as an instrumental activity towards the end of making products which are useful directly in satisfying human needs. But from the point of view of the engineer, the activity may come to be seen and valued as an end in itself, with the same sort of intrinsic satisfactions as an art. When this attitude of absorption in the process of engineering is carried out to its fullest, "pure art" is seen as identical with "pure technology." In addition, the complexity of the task correlates with the zest with which the practitioner engages in it; a challenge to one's well-developed capacities is a greater source of delight than are simpler, routine tasks. Both the exercise of capacities, and their complexity, contribute to the intrinsic satisfactions of engineering.

A second sort of aesthetic experience within engineering is a consequence of the size and scale of large engineering projects. Florman points out that one quarter of the engineers in the U. S. are civil engineers, who often work on mammoth undertakings:

When man considers his place in the natural world, his first reaction is one of awe. He is so small, while the mountains, valleys and oceans are so immense. He is intimidated. But at the same instant he is inspired. The grand scale of the world invites him to conceive colossal works . . . . -\Skyscrapers, bridges, dams,

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9See the manuscript "Pure Technology" by an anonymous author, which was called to my attention by Michael Hodges.
aqueducts, tunnels—these mammoth undertakings appeal to a human passion that appears to be inextinguishable.\textsuperscript{10}

It is important to understand that this attitude is completely independent of the view encapsuled in the slogan "bigger is better."

Florman is correct to point out the purely aesthetic aspect of the human encounter with bigness, and with big things. Kant discusses this experience of formless magnitude in some detail in the \textit{Critique of Judgement}, under the heading of "the sublime." While Kant associates the feeling of the sublime with large natural phenomena such as mountains and thunderstorms, it is not at all far-fetched to extend this notion to man-made phenomena. At the same time, the sort of experience intrinsic to civil engineering is open to non-engineers at least in part. The clearest example I can think of will be familiar to anyone who has seen a Saturn rocket on the pad at Cape Kennedy. Space-ships, as extreme cases, offer an occasion for aesthetic absorption found in many other immense engineering projects.\textsuperscript{11}

The third form of engineering aesthetics is found in various degrees throughout the specialties of engineering. All engineers use science and mathematics, applying these theories to practical problems. Engineering know-how is based upon a rigorous study of scientific and mathematical theories. So it is clear why Florman claims that:

\begin{quote}
From a consideration of the machine, we have arrived inevitably at the doorstep of science. The work and objectives of the engineer are quite different from those of the scientist. But on occasion the engineer shares in the scientist's satisfactions . . . . Beyond the world
\end{quote}

\textsuperscript{10}Florman, p. 122.

\textsuperscript{11}I owe this example to John Lachs.
of science, the engineer encounters the pristine realm of pure mathematics. Although for the engineer mathematics is a tool rather than an end in itself, he has the opportunity to partake of its serene gratifications.\(^\text{12}\)

The aesthetic pleasures of scientific and mathematical theories are widely acknowledged and discussed. The contemporary philosopher Nelson Goodman, for example, has said that:

> No single, simple significant feature neatly marks off all arts from all sciences and technologies, or all aesthetic from all scientific and practical experience . . . .

> Aesthetic and scientific activity alike, I have suggested, consist to a large extent of symbol processing: of inventing, applying, interpreting, transforming, manipulating, symbols and symbol systems . . . .

> Classification of a totality as aesthetic or non-aesthetic counts for less than identification of its aesthetic and non-aesthetic aspects.\(^\text{13}\)

In this instance too, the activity of learning and using a complex theory, applying and manipulating symbols and symbol systems, is an activity with intrinsic aesthetic rewards. In fact the very oscillation or movement between theory and its employment in many sorts of engineering, is a distinctive source of enjoyable variety.\(^\text{14}\)

By considering engineering wholly within the perspective of internal, intrinsic rewards, we have shown reason to agree with Florman that engineering need not be seen or experienced as a dry and dull profession. At least three distinctive types of aesthetic enjoyment are open to the engineer. In the above I have agreed with the final third of *The Existential Pleasures of Engineering*, shown that Florman's

\(^{12}\)Florman, p. 141.


\(^{14}\)Michael Hodges made this clear in conversation.
views are a concrete application of the Aristotelian Principle to engineering, and suggested briefly some additional philosophic perspectives on the aesthetics of engineering. I next shall consider a medical practitioner's aesthetic approach to professional activity found in Richard Selzer's Mortal Lessons: Notes on the Art of Surgery.

The Aesthetics of Medicine

Selzer's book does not so much argue for the aesthetic view of professional conduct, as exemplify it. He is a gifted writer who sees poetry as a form of healing and medicine as an art. Much of Mortal Lessons consists of well-crafted essays on the human body, thinking man's versions of "I Am Joe's Spleen." Selzer sees that artistic standards apply within the process of surgery itself, not merely to the outcome. Of course, in most sorts of surgery the surgeon attempts to minimize visible scars, the tell-tale remnants of the intrusion of his knife. In plastic surgery, the physician may even be regarded as a sculptor working within an organic medium, with clear aesthetic criteria of success or failure. But Selzer reflects on how the activity of surgery has aesthetic delights which do not simply depend upon the quality of the results.

This comes through most explicitly in the chapter entitled "The Knife," which begins with the words:

One holds the knife as one holds the bow of a cello or a tulip—by the stem.15

He describes the surgeon's sensibility in terms of a heightened tactile sense:

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Eyes and ears are shattered from the land you left behind; mind empties itself of all other thought. You are the root of groping fingers. It is a fine hour for the fingers, their sense of touch so enhanced. The blind must know this feeling.  

The same stress on the importance of feeling comes to the foreground early in this volume when Selzer relates his encounter with the Dalai Lama's private physician, Yeshi Dhondon. This man was able to successfully diagnose a congenital heart defect by feeling the patient's pulse for several minutes. Selzer realizes that while he has palpated a hundred thousand wrists in his career, he has never really felt a pulse in the same way as the Yeshi Dhondon. Selzer still hears the music of the Tibetan voice, a musical memory, sounding in remembrance like the chants of the holy, touching him, for a moment, with the divine.

The tactile skills of the surgeon are perfected through a long and difficult period of training, which is intended to be an apprenticeship period. Students assimilate the elder's tacit standards to discriminate various levels of surgical performance; teachers, for their part, test and demand the student's full mastery of technique. Those without the necessary dexterity and endurance are shunted off into other specialities. Selzer remarks, significantly, that surgery takes place in a "theater." The role of surgeon is played out in an

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16Selzer, p. 94.
17Ibid., pp. 33-36.
18For more details see Charles Bosk, Forgive and Remember: Managing Medical Failure (Chicago: University of Chicago Press, 1979). For further discussion of "tacit knowing" in medicine, see Michael Polanyi, Personal Knowledge (Chicago: University of Chicago Press, 1958), pp. 38-59, 102, and passim.
arena, often before a public of associates and students. The achievements of a skilled surgeon, whatever else they might be, partake of the theatricality of all public performances.  

Surgery is just one example of a medical specialty where a complex competency in tactile technique is central to see and explain norms of professional aesthetics. To be sure, much of medicine shades off into pure science, as C. P. Snow remarks:

The scientific process has two motives: one is to understand the natural world, the other is to control it. Either of these motives may be dominant in any individual scientist; fields of science may draw their original impulses from one or the other . . . . Yet, however the work originated, one motive becomes implicit in the other. From medicine, which is a classic technology, men have worked back to 'pure' scientific problems—such as, say, the structure of the haemoglobin molecule.

As in engineering, different aesthetic experiences are open to different practitioners. For medical researchers, dexterity at laboratory technique, as opposed to the dexterity of the knife, comes into view, creating unique aesthetic possibilities as well.

In primary care medicine aesthetic enjoyment is most plausibly seen in the element of medical judgment or intuition practitioners frequently mention as the main component of artistry in their practice. The idea expressed by these physicians is that beyond the sound scientific training required, one comes to realize eventually that every case is singular, unique, and different, both at the levels of diagnosis and treatment. The craftsmanship of the best practitioners

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19 Selzer, p. 98.

of a craft must be learned by piling up the hours of experience; so with the intuitive decisions of successful family practitioners, internists, and pediatricians. Both the skill to judge wisely and the satisfactions attending wise decision are gained through a broadening and deepening of experience, just as the Aristotelian Principle suggests.

As mentioned in connection with engineering, in most areas of technology, including medicine, the oscillation between more pure scientific theory and more applied practical activity is in itself a source of aesthetic pleasure, at least in part simply due to the fact that variety is a main feature of delightful experience. Activity, in even the busiest and most "practical" professions, is enriched and refreshed by periods of meditative withdrawal and relatively disengaged reflection. But an important contrast within the aesthetic view of professional practice lurks here. An aesthetic fascination with pure form and structure tends to lead towards poetry, Plato, and mysticism, in as much as the experience is understood as passive, timeless communion with ultimate truth or reality. The aesthetic structure I have been discussing, summed up in the Aristotelian Principle, rather suggests an historical view of the development of competencies, as the gradual broadening and deepening of skills over a life history, becomes the focus of concern.

Selzer occasionally discusses aesthetic experience in this former, more mystical sense. The passage which reveals this most clearly is near the beginning of Mortal Lessons:

The truly great writing about doctors has not been done. I think it must be done by a doctor, one who is through
with the love affair with his technique, who recognizes that he has played Narcissus, raining kisses on a mirror, and who now, out of the impacted masses of his guilt, has expanded into self-doubt, and finally into the high state of wonderment. 21

Such a person, he continues, may be a "non-believer" who realizes in the evening of life that he has done at least as much harm as good; yet the experience of "wonderment" is there, lying beyond the joys of active employment of skill. "Wonderment" involves detaching, objectifying one's entire professional life, and finding it an aesthetic object leading to a transcendant experience. This differs from enjoyment of the aesthetic joys found within such a life. As we shall see, May discusses yet a third sort of professional aesthetics which is ahistorical in a different sense. This sense combines technical proficiency as an ideal with a private, individualist picture of the aesthetic performer, seen as a person without lasting commitments in a fashion typical in a Hemingway novel. I shall return to May in a few pages.

First I want to briefly examine the Greek conception of medicine in order to show that, as Ludwig Edelstein has cogently argued, medicine was founded as a craft. While no doubt the birth of the clinic in recent centuries has focused and accelerated the notion that medicine is primarily a technological enterprise, the continuity of this view with the classical view of the matter is worthy of note. I will have more to say about the moral aspects of the continuity of the Hippocratic tradition in medicine; for now let us focus on the aesthetic aspects. As Edelstein remarks:

21 Selzer, p. 18.
It is the sole purpose of the good physician to achieve the objective of his art [according to the Greeks], to save his patient from the threat of death, if possible; to help him, or at least not to harm him, as the famous saying has it. His ethic consists in doing his task well, in perfecting his skill; it is an ethic of outward achievement rather than of inner intention.22

In this view, medicine is seen as an art or craft, with criteria of skill uppermost in judging competence and regulating conduct. The particular excellence of the physician, and his motives, are at bottom those of a craftsman. As I shall show in Chapter III, the notion that one's occupation is a "vocation" or "calling" or "profession" is a different and modern notion, deriving from traditions such as Christian monasticism. In the classical view, work was seen as necessary in order to live, and while its structuring ends provided aesthetic joys for practitioners, the highest and most noble activities and purposes were to be attained as a citizen in the politics of the polis, not as an economic actor, whether consumer or producer, of goods and services.23

The most significant piece of evidence in favor of Edelstein's view is a discussion found in Book I. of Plato's Republic. The issue being discussed is whether self-interest is ultimately the source of all human activity and motivation. The issue is decided by considering various crafts, most particularly medicine:

Socrates: Then, isn't it the case that the doctor, insofar as he is a doctor, considers or commands not the


23Hannah Arendt, The Human Condition (Chicago: University of Chicago Press, 1958), is a forceful statement of this view.
doctor's advantage, but that of the sick man? For the doctor in the precise sense was agreed to be a ruler of bodies and not a money-maker.\textsuperscript{24}

All arts, it is argued, have as their purpose the intrinsic ends of the arts themselves, performing a service or making a useful object. Like every art, medicine looks out for the good of its object, the sick person, and does not consider the good of the practitioner or the good of medicine as a whole. The physician in the precise sense is a healer of the sick, and nothing more.

Thus Socrates claims that the art of medicine is distinct from the art of making money. To this claim, Thrasymachus asks, rather scornfully, whether the aim of the shepherd is the good of his flock, rather than wool and the income from it? Socrates is quite prepared to insist that \textit{qua} shepherd, the good of the flock is uppermost. It belongs to a distinct art, the art of money-making, to provide income for the physician or shepherd. The activity of healing the sick and producing health is the only goal or purpose of the physician \textit{qua} physician, notwithstanding that the man who is a physician may be proficient in other arts as well.

While insisting on this distinction, Socrates nonetheless grants that the distinct art of money-making will generally be found along with the art of producing health in the sick. Work is necessary to live, and in Socrates's opinion, nobody would be willing to learn and practice the crafts unless pay were added to them. The craftsman's self interest is satisfied by receiving pay from those who benefit

\textsuperscript{24}Plato, \textit{Republic}, 340C and ff.
from his services. Activities are to be pursued for their own sake, but from a practical point of view, the activity of money-making must be added to the practice of the useful arts to attract practitioners. But the aim of the activity of medicine, considered in itself, is to restore health to the body, and the excellence or satisfaction of doing this job well is the main aesthetic component of the craft in the classical view. Edelstein's conclusion bears repetition:

All the interlocutors in the dialogue agree on this conclusion—and I [Edelstein] think none of their contemporaries would have gainsaid their admission: the artisan has fulfilled his duty if he is intent primarily upon the aim of his art—that is, in the case of medicine, upon restoring health to the body—and thinks of his income afterwards. No other obligations are incumbent upon him, no other personal qualities are demanded of him. It is also clear that in the society of the fifth and fourth centuries, medicine is a craft like all the others and in no way differentiated from them . . . . The classical age judged all manual labor only by the standard of expertness and performance.

Using Mortal Lessons as a springboard, I have plunged into an historical account of the aesthetic view of professional conduct. While engineering and medicine differ in the ways mentioned, both combine a theoretical body of knowledge and the practical application of it in similar ways. I have stressed the aesthetics of practical activity, while drawing attention to other ways in which the aesthetics of pure theory and the transcendent aesthetic state of "wonderment" are alternatives to the view of Aristotle and Rawls with which I began. We often find a mixture of aesthetic joys, and a movement in an individual's life to and from between a more practical, active engagement

25 Ibid., 346E-347A.
26 Edelstein, p. 41.
and a withdrawal to a more passive, theoretical pole. Two more tasks remain in this section. After May and Illich's objections to the aesthetic approach to professional conduct are next considered, the stage will be set for the definitional matters which will be discussed in Chapter III.

May's Objection to Professional Aesthetics

One of the most influential recent essays on professional ethics is William May's "Code and Covenant or Philanthropy and Contract?"27 A part of this essay will concern me in Chapter VI of this study. I want to examine a section here where May characterizes an aesthetic approach to professional conduct, before he goes on to present his own objections and alternative models.

According to him, technical proficiency is the ideal passed on most typically through the informal patterns of behavior learned during clinical training in medicine. These informal codes or norms are pre-occupied with matters of "good form." The norms of conduct thus move "in the direction of the aesthetic," reducing the practitioner's horizon to matters of style and decorum. May is worried about the danger of detaching codes of action from their "ontological root:"

Style functions to protect the stylist from the assaults of life (and death) and to preserve him also from any alteration in his own being.28

27 William F. May, "Code and Covenant or Philanthropy and Contract?", in Ethics in Medicine, pp. 65-76.

28 May, p. 69.
A "paradigm for the professional" of this aesthetic legitimation
of conduct, May continues, is presented by the ritual killing of a bull
in Ernest Hemingway's novels and short stories. Hemingway's heroes
live by a code that eschews involvement and personal commitments.
Robert Jordan of For Whom the Bell Tolls cannot even remember the cause
or power or profession behind his decision to fight in Spain. The meas­
sure of a man is his conduct from moment to moment. Hemingway rarely
writes about marriage or families, but about lovers, briefly joined.
One must above all live beautifully, stylishly, fittingly. Without
long-term personal involvements, the bullfighter, warrior, and doctor
must live by the discipline of technical proficiency, wholly purged
of disruptive personal preoccupations or moral considerations.

Beyond spurring students to master medical techniques, May points
out an additional reason why this paradigm might seem attractive to the
medical profession. The physician who is compassionate in the fullest
sense, who "suffers with" the patient, is open to self-destruction.
Sanity in clinical work demands a degree of emotional freedom, so that
one's self can be withdrawn when the last card in the doctor's repertoire
has been played. The work goes on, and there are obvious benefits to the closure or compartmentalization of feeling, so that the
physician can say, with the Hemingway hero, "it is over."29

May's illustrative use of Hemingway shows that his worry is with
the lack of permanent commitments, the ahistorical, moment-to-moment
drift of the aesthetic performer. Without going into the difficulties

29"The bull charged and Villalta charged and just for a moment they became one. Villalta became one with the bull and then it was over." Quoted by May, p. 41, from Hemingway's In Our Time.
May sees in the Hemingway paradigm or his alternative models of professional conduct, it is clear that May does not mean by "aesthetics" what I have used the term to imply. I have stressed the active engagement of the professional, his delight in attaining and exercising complex capacities, as fundamental to my view of professional aesthetics. May, however, sees aesthetics as a technological, private, as well as a-historical, phenomenon, as his references to Hemingway make clear. In reply, I can see nothing to preclude a person whose norms are in accordance with the Aristotelian principle from forming lasting commitments. Indeed, the Aristotelian Principle suggests that a broadening and deepening of skills over time is a central feature of professional aesthetics. For these reasons, among others, I believe that a persuasive version of the aesthetic approach to professional conduct has a serious claim to our attention. When we refuse to identify aesthetic concerns with impersonal, timeless detachment from the world, and instead see the aesthetic possibilities of professional practice arising from within the activities of engineers, doctors, and other professionals, we are confronted with a much more powerful and interesting view. I would venture to say that the analysis of professional aesthetics I have offered in this section comes close to capturing the self-understanding of many professionals, certainly of Florman and Selzer.

But the question many readers no doubt have been asking about all this may no longer be ignored: What about moral as opposed to aesthetic values? Are not aesthetic considerations secondary to the duties and rights which are the proper guides to legitimate action?
In one way or another, the remainder of this study attempts to answer this question. In Chapter III I will take up some crucial matters of definition, for we must have acceptable, shared notions of the meaning of "professional ethics" before we can fruitfully pose a challenge to it on behalf of professional aesthetics. The next chapter will provide these definitions.

But before taking up this project, I want to consider a very different sort of moral stance one might take towards professions in general and professional morality in particular. So far I have considered how the values of professional activity emerge internally, that is, how they seem to be experienced by the individual. Before we move much further into the internal perspective, some attention should be given to a representative cultural critic of the professions who starts from a very different perspective. I have in mind Ivan Illich.

Illich's External Critique of the Professions

It is surprising to discover that Illich has been virtually ignored by philosophers working in professional ethics. Over the last decade Illich has attacked the modern professions in a series of publications. Tools for Conviviality takes engineering to task; Deschooling Society blasts education; and Medical Nemesis, perhaps Illich's best-argued work, dethrones the medical profession. These critiques are widely read and discussed, but not, it seems by professional philosophers. A search of The Philosophers Index reveals only six articles devoted to Illich during the '70s, most of them on Deschooling Society.  

30 The Philosopher's Index from 1970 through 1979 contains the
Illich is at least partly to blame for this neglect. As a self-professed outsider, Illich's scholarship is extensive but often eclectic. His style is polemical, chock full of flashy bombast and scornful invective. A number of his conclusions have been argued elsewhere by more mainstream writers. For example, Medical Nemesis owes much—as Illich readily admits—to Dubos's earlier and more moderate The Mirage of Health.\(^{31}\) In addition it is also difficult to find substantial argument underneath the rhetorical polemics. Important presuppositions pervade these writings but are seldom brought together and supported with reasons in a straightforward, linear argument.

Despite these flaws and difficulties, Illich is worth a sustained look. An iconoclast, he deftly and persistently calls into question basic assumptions underlying professional practice in modern society. This form of questioning is philosophical in the Socratic sense. Illich's is a radical critique, a radical calling into question; yet we should consider his arguments with the care and respect due to any Socratic questioning of the everyday verities we accept without examination.


books. "Disabling Professions" and "Useful Unemployment and Its Professional Enemies" contain his most general and accessible arguments against the professions as such. It is fair to say that these essays contain the central arguments and conceptions which lie underneath the more detailed treatments of the individual professions. I will first present Illich's argument as fairly and succinctly as possible and then point out the problems and difficulties of his view.32

According to Illich, developed societies share a number of characteristics. The most significant effect of industrialization is the dependence of citizens on commodities. Illich refers here to both goods and services as "commodities" or "packaged staples" coming from standardized production processes.

Development has had the same effect in all societies: everyone has been enmeshed in a new web of dependence on commodities that flow out of the same kind of machines, factories, clinics, television studios, think tanks. To satisfy this dependence, more of the same must be produced .... These products, be they tangible goods or intangible services, constitute the industrial staple.33

The division of labor, the multiplication of commodities, and the resulting dependence on them have forcibly substituted standardized packages for almost everything people formerly did or made on their own. This substitution of staples or commodities for autonomous use-values which people once made directly and personally has led to a virtual identification of needs and commodities, a situation Illich deplores. It is "obvious," he says, that:


33Useful Unemployment, p. 6.
The generation of non-marketable use-values must inevitably occupy the center of any culture that provides a program for satisfactory life to a majority of its members. Cultures are programs for activities, not for firms . . . .

Beyond a certain threshold, the multiplication of commodities induces impotence, the incapacity to grow food, to sing, or to build.34

Usefulness of commodities is limited by two different boundaries: congestion and paralysis. We must attend carefully to this distinction for it is crucial to his view of contemporary consumer societies. "Congestion" is manifested in queues, and refers to the phenomenon of commodities getting in their own way as during a Chicago rush hour. "Paralysis," however, means a loss in human potential or ability. Why is there a loss? Because commodities can only replace activities people do for themselves within limits.

Needs satisfied rather than merely fed must be determined to a significant degree by the pleasure that is derived from the remembrance of personal autonomous action. There are boundaries beyond which commodities cannot be multiplied without disabling their consumer for this self-affirmation in action.35

Illich holds that use-values and commodities work together to produce a result neither could produce alone. Commodity production can only enhance the "autonomous" production of "personal purpose" up to a point, at which point:

The synergy between the two modes of production paradoxically turns against the purpose for which both use-value and commodity were intended.36

Illich refers to the transcending of this limit in a variety of ways:

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34Useful Unemployment, p. 9.
36Ibid.
it is "specific counterproductivity," the "disabling" of people, or the revenge of "nemesis."

Professions, and a professionalized culture, induce paralysis, he argues. The professions become dominant by attaining the power to impute human needs. In the process they transformed language. "Need" once was used as a verb, but now is used as a noun. Poverty was modernized as the poor became needy. "Need" is only one of the words to have begun as a verb designating an activity and ending up as a noun referring to some "packaged staple." According to Illich these prescribed packages came to define welfare. People identify their own welfare with consumption or uses of standardized goods and services, becoming dependent on professionals in the process. In medicine, for example, the search for a quick fix for pain and discomfort causes people to lose their ability and will to cope with indisposition, or even with discomfort.37

Individual discrimination and sensitivity are blunted by the surplus and rapid turnover of commodities. Wants become shallow and plastic, and learning to identify wants from experience becomes a rare competence. More and more, advertising does the job instead. Moreover, the standard economic models and categories improperly take packaged and quantifiable goods and services as measures of activities. The illicit assumption here is that:

Activities . . . we designate by intransitive verbs can be indefinitely substituted with institutionally-defined staples referred to by nouns. Education replaces 'I

Why is this assumption problematic? The reification of activities in
the commodity nexus eventually will run up against the two intrinsic
limits mentioned above. First, commodities will get in their own way
and lead to congestion; worse still, they cause paralysis, a destruc-
tive loss in human nature. Illich adds some details on this crucial
point, details which contribute to understanding his conception of
human nature.

Commodities induce "paralysis" or "counterproductivity" or
"nemesis" or "frustration" when they replace too many activities which
people naturally do or make on their own. In fact, a true understand-
ing of human needs must take this limiting condition into account.

Needs satisfied rather than merely fed must be determined
to a significant degree by the pleasure that is derived
from personal autonomous action. There are boundaries be-
yond which commodities cannot be multiplied without dis-
ableng their consumer for this self affirmation in action.39

In most human cultures the needs people perceive are determined by the
tools that culture has. In traditional, pre-industrial cultures these
tools are typically labor-intensive. Individuals use them to produce
for themselves that which will satisfy their needs. But industrial
society makes this naturally human process less and less possible.

Man ceases to be one of his own kind when he can no longer
shape his own needs by the more or less competent tools
that his culture provides.40

38 Disabling Professions, p. 29.
39 Ibid., p. 31.
40 Ibid.
Mass production of commodities exercises a radical monopoly, precluding the use of such simple tools to satisfy needs, and depriving the social world of the features people need to subsist outside the market economy. This estranges man from his own nature.

It thus seems clear that Illich values activities and sees their take-over by service professionals as a destructive loss in natural or essential human nature. But what, for him, is an activity? He cites building, healing, housework, and marital sex as examples of activities. One might suppose that Illich associates activities with the sphere of privacy, with the values of the household and tribe where face-to-face relations take place in an atmosphere of directness and human warmth. But if this is all that he means by "activity," we have a vicious circularity. It will hardly do to say that activities are good because they take place in slower, traditional societies, when the only reason we have to say that such societies are good is that they are places which foster the good of human activity. We still need an independent, defensible criterion of desirability. A second approach avoids the circularity, but is ultimately no more successful in providing a firm foundation for Illich's position. Perhaps he would characterize human activities in an Aristotelian fashion. In this sense an activity is something done for its own sake rather than for the sake of some product or consequence. The process and the product collapse into one, as do means and ends, just as in seeing or walking, the doing and the deed form an essential unity. Now it seems quite correct to insist with Illich that a great number of human pleasures are connected with the enjoyment of human activities in this sense. Nor is it
difficult to accept the fundamental claim that artifacts or products cannot indefinitely replace human activities without an undesirable loss of human abilities. Hence, I readily agree that foreclosing all activities would be undesirable. This hardly implies the superiority of traditional, organic communities to present societies, however. For one thing, it is unclear how many activities people used to do themselves are really proscribed by the "radical monopoly" of the professions. More fundamentally, it remains unclear how many and which human activities are natural or desirable or good. People once had the ability to defend themselves in armed combat against neighboring groups and to capture slaves. Traditional societies taught these activities as carefully and as often as they taught housecleaning, healing, and building. Some taught torture, too. Has the loss of these activities been a destruction of natural potentials? While one would like to avoid such a conclusion, it is not clear that Illich can do so.

Professionals and other specialists may aspire to and may perhaps even attain an "excellence" in Aristotle's sense, in as far as their activity becomes deeper and more complex. Specialization of function is a channeling of one's skill and knowledge, a narrowing down the number of one's activities to a certain extent. The development of specialists may be narrow to the point of myopia, but it must be deep to be effective. Specialization is a form of self-realization, not a denial of it. Though some activities are productive of happiness and socially worthwhile in themselves, the mere fact that something is an activity traditionally valued in pre-industrial societies does
nothing to show that it is valuable or desirable in itself. Nor is it obvious that it is somehow less desirable to do one or a few things well than to do many things less well. "Purity of heart is to will one thing," Kierkegaard said.

Surely Illich is right to point out that something has been lost in the disappearance of societies in which skills and knowledge were widely shared and diffused, some cost associated with the decline of collective omni-competence and the rise of specialization. But his case is vastly overstated, and rests upon moral presuppositions which have not been effectively defended. While it is certainly possible to criticize the "professionalized society" we live in for a loss of the comprehensive activities which members of traditional societies possess, there are benefits to specialization of function as well, benefits which Illich neglects to mention. We count on specialists to perform their jobs at a level of competence which non-professionals, lacking specific skills and knowledge, cannot match.

Thus while Illich's external critique of the professions does make us aware of the value of activity, this is a value which is by no means overlooked in a balanced approach to professional ethics which proceeds from an internal point of view. If his cultural critique could be made out clearly and persuasively, the questions which I address here from an internal point of view would be unnecessary. But his perspective is far from winning the day, for all of the reasons I have given.
CHAPTER III

DEFINITIONS AND "DEFINITION"

I have just suggested how pervasive and plausible are norms of professional conduct which emphasize the aesthetic delights of good craftsmanship. But to this account, someone might say:

"No doubt many professionals do make the ideal of technical proficiency, the skilled execution of a complex task, the main or only imperative of their conduct. But what about moral considerations? If I go to a professional, what I want is a person who can help me. Surely the only reason that professionals are accorded the power and prestige they have, is because they return vital social benefits in return. Professional services are activities with moral significance, in as much as clients and patients seek out professionals to attain or retain vital personal interests and values: health, justice, safety, and so forth. Surely the norms of professional activity ought to reflect this, focusing primarily, if not exclusively, on the rules of conduct best able to maximize these benefits. Provisions in codes of professional ethics on loyalty and confidentiality, for example, surely ought to override aesthetic norms of individual practitioners. We have to bring the client into the picture, to take into account the social dimension of professional practice. In short, surely 'professional ethics' has as its subject and concern the action-guides or principles or ideals which urge and require professionals to
promote and increase the general social welfare, quite apart from whatever aesthetic enjoyments may additionally be found in professional activity."

I am inclined to agree with this objection to professional aesthetics. In fact the central thesis of this dissertation is that a utilitarian theory of professional ethics appealed to in this objection is fruitful and correct. Yet the simple statement of utilitarianism above put forth is tangled, overly brief, and open to objections. Later in this study I will consider some objections to the theory, and will reply to them. My plan for the remainder of this Part is to clarify the theory, while Part Two will expand and develop utilitarianism through an examination of plausible alternative accounts of professional morality, most notably, a deontological ethics and an ethics of virtue.

The aim of this chapter is to remove one of the chief tangles found in the above insistence that moral as well as aesthetic norms must be considered: how are these to be distinguished? Hence, our task is to come up with an acceptable definition of "professional ethics." One source of confusion may be dealt with at once, namely, the slippage between two terms of contrast to "moral."

We use "moral" as an opposite of "immoral", and also use it as an opposite of "non-moral." The present task is to distinguish moral from non-moral considerations; within the domain of the moral, the argument in Part II will be concerned with issues concerning the legitimacy of moral principles and action-guides in opposition to immoral principles and action-guides. Purely as a terminological convenience,
I shall henceforth call the opposition of immoral rules and actions, "rules of right action" and "right actions." These distinctions are important. For the question of which actions or action-guides are right or right rules of conduct, is a distinct question from the subject of our concern in the next pages, which is to delineate more clearly the difference between moral and non-moral action guides. This is a matter of definition. But saying that this is a matter of definition is itself in need of some explication, for there are many things which have been called "giving a definition." I should like to make clear, before turning to the definition of professional ethics, just what I mean by giving a definition, and why this seems a reasonable approach to the matter.

On Definitions

A fully adequate discussion of definition would require an entire dissertation in itself. So I shall merely sketch some of the things which I think definitions do, and indicate what I mean to say when I give a definition. I am well aware of the many different things which others have meant by providing definitions, but I shall have nothing to say here about these other, and no doubt important, activities and presuppositions. Here I am merely explaining what I am about, in the present context of inquiry.

I take here a contextual or pragmatic view of definition. On my view, a definition is an expression which informs someone how to use a word effectively in a particular context. Definitions do convey information, but the information they convey is how to do something, not what is the case with respect to the conventions of usage, or the cause,
or the essense of the thing defined. Not all information is descriptive information, as Ryle has pointed out.

Defining a word is a practical, normative enterprise, notwithstanding the fact that definitions convey information. The information provided by a definition is subject to evaluation as good or bad for the purposes at hand, but cannot be considered true or false. In some contexts, conformity with ordinary usage will be quite important in evaluating the definition proposed, while in other contexts this criterion of adequacy will be much less important. The purposes of the definer and his audience also affect the normative evaluation of a definition. It is crucially important to state clearly the point or purpose of the definition, whether it is intended to draw attention to a thing, to aid memorization, to explain, to evoke memories, to teach, and so forth. We want a definition to reduce indeterminacy, to refine a useful concept for some end or purpose.

Having explained my view of definition, a word more must be said about the traditional distinction between metaethics, taken to be in part the study of the definition of moral concepts, and normative ethics, taken to be the study of rules of right conduct and of intrinsic value. In the light of my view of definition, no sharp or absolute division may be discerned between these two enterprises, despite what others often seem to suppose. Some questions which arise in life are mainly practical and others are mainly theoretical. Typically, however, we find ourselves situated between the extremes of pure theory.

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1 My discussion is based on Raziel Abelson’s essay in The Encyclopedia of Philosophy s.v., “Definition.”
and practice. In this terrain lie a spectrum of intertwined questions, the resolution of which necessitates reflective questioning of both definitions and the purposes which these definitions serve. I shall propose an abstract framework for saying more about this aspect of human deliberation in Chapter VII.

But even at an everyday level, we can see this whenever we make judgments of moral character. For one relevant consideration in judging someone from a moral point of view is the content and adequacy of his scheme of moral concepts, and how he takes them to be legitimated. These supposedly "metaethical" considerations enter into practical moral judgments all the time. Something very much like the oscillation between theory and practice in professional activity is found here in the domain of moral theory, for the moral point of view is also a view of a conscious reflective creature who must act. The unity of the person is the stumbling block of all attempts to isolate a purely formal study of morality.

The Definition of Morality

In this section I shall argue in favor of a definition of morality which connects the concept of morality to human welfare. Sometimes called a "material" conception of morality, such a definition is in contrast to a "formal" conception of morality.

My primary purpose in defining morality is to bring the traditional concerns of moral philosophy to bear upon the issue of clarifying and systematizing professional ethics and the moral problems of practicing professionals. The definition, in short, must be informative and effective to two classes of readers: philosophers and
professionals. The evaluation of the definitions to be offered thus hinges upon an overall evaluation of the project as a whole, that is, the project of bridging the major existing gaps between philosophical and professional ethics.\(^2\)

In living the moral life and in reflecting upon it, there are no ultimate reasons, foundations, or givens. We undertake the study of moral philosophy already having moral beliefs and having experienced moral conflicts. So a general purpose behind any reflective turn to theory is to order and systematize our previous experiences and beliefs. We want to reduce the disorder and unclarity and indeterminacy among alternative theories and possible lines of conduct. The method of any such attempt will contain a measure of unavoidable circularity: We move from principles to experience, from experience to principle, until we are satisfied with the "fit" between them. So a basic feature of the present context of inquiry is to account for professional experience, thus imposing this criterion upon any proposed definitions. We should not be put off by the reflection that definitions involve a degree of circularity, a bootstraps operation of defining moral concepts being evaluated itself by normative considerations. Such a method is endemic to inquiry in general, as

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\(^2\)I assume a modest amount of goodwill or honorable intention on the part of the framers of codes of professional ethics, in opposition to Marxists and others who read these documents as pure "ideology". Motives are mixed, and no doubt self-serving and even self-deceptive motives lie behind some parts of some codes. Yet reform, the changing of what is towards what is better, is served better by the method of dialog pursued here, rather than by wholesale condemnation. Without denying the element of truth in Shaw's aphorism, "professions are a conspiracy against the public." I see little ground for identifying professional groups with the Costra Nostra.
recent work in the philosophy of science has shown. 3

Without further preliminaries, let us turn to the problem of defining morality. I shall begin with the considerations which, I believe, ought to disqualify proposed "formal" definitions of morality. Is the property of "overridingness" a necessary and sufficient condition of a moral rule? R. M. Hare, among others, has proposed this conception of morality. 4 I agree with Frankena's arguments at this juncture that "overridingness" is neither a necessary nor sufficient condition of morality.

In "The Concept of Morality" Frankena argues that a morality must embody some sort of social concern or consideration of human interests. According to the "overriding" conception, there is no basis to deny that an engineer, for example, has a moral principle or theory if he regards the aesthetic values of technical proficiency as "ultimate and paramount" for him. But first of all, the reason why we have a morality at all, its point or purpose, seems to be its social function of enabling people to cooperate and coordinate their activities. While morality is not identical with law, it does some of the same jobs. Much common usage of the term "moral" follows the negative utilitarian injunction not to cause suffering and the positive utilitarian goal of enabling people to cooperate on activities for their mutual benefit. An anthropologist studying the morality of some social

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group presumably would try to discover the content of rules about harm to others and about how group values and interests are fostered by beliefs and rules members of the group use to plan and guide their conduct. If anything, common use of the term "moral" and its linguistic neighbors in other languages supports a definitional connection between morality and human interests or welfare.⁵

Second, if a guide to action can be considered moral just because it is taken to be ultimately serious, we are unable to make useful distinctions between various sorts of practical principles, such as aesthetic and egoistic guides to action. It seems proper to consider Nero's fiddling while Rome burned as an act of a crazed amor­alist, not of one who decided that fiddling is morally superior to saving lives and property from a conflagration. Hare is particularly vulnerable to this objection, since he uses the distinction between aesthetics and morality without in the end being able to avoid calling "moral" views which consistently uphold the overridingness of aesthetic action-guides.

Other consequences of the "overriding" view also are bothersome and implausible. It implies, for example, that Tillich, Kierkegaard, and others who consider religion a matter of ultimate concern somehow above and beyond morality, remained unaware that they were talking literal nonsense. Imagine a daughter who is deeply attached to a demanding mother, who is advised to break away for purely prudential reasons; or imagine a man who restrains his strong charitable impulses for the

sake of prudence, after giving nearly all his wealth to charity. If the daughter breaks away and if the man stops giving, the moral action-guides thus overridden do not cease to be moral, nor do prudential rules of conduct thereby magically become moral in character.

"Overridingness" is not the only formal property which has been claimed as a defining characteristic of morality. Sometimes the condition of overridingness together with a second condition are taken to be jointly as defining morality. The second condition proposed is "universalizability." An ideal or rule or value is "universalizable" if and only if to apply it to or prescribe it for a particular person or situation is implicitly to apply or prescribe it for every person or situation which is relevantly similar. In my opinion this notion has been quite mesmerizing to many moral philosophers, with little reason. For universalizability is a necessary condition of any practical injunction or prescription, moral or not. If a composer should learn counterpoint to write good music, then everyone in the same circumstances ought to do the same. If a cook should add pepper to make a good omelet, then everyone similarly situated should do so too. If it is prudent for a single young person to save money for a rainy day, anyone in the same circumstances should do the same. In brief, all guides to action are generalizable to anyone in relevantly similar situations. While universalizability is a necessary condition for a principle to be moral, it is also a necessary condition of every rational principle of practical action.

6 Frankena, "The Concept of Morality," p. 126
Quinton mentions a third formal criterion of morality sometimes built into proposed definitions, the requirement that moral principles must be autonomously and freely chosen. But either alone or in combination with other formal features, this suggestion also will not do, for the reasons Quinton mentions:

Autonomy is an obscure requirement. If it means that a principle is not moral unless it is a creative innovation on the part of its exponent then it is not peculiar to morality, for there are technical innovations, nor is it a necessary condition of the morality of a principle of conduct, unless no docile conformist could be a moral agent. If it means the sincere endorsement of professed principles then it is just as applicable in the other, non-moral fields of conduct.  

Because formal definitions of morality suffer these defects, we are well advised to consider a material definition instead. But at this point, Quinton and Frankena provide conflicting advice. Frankena offers a rather complicated formulation, as follows:

S has a morality or moral action guide if and only if
(a) S takes it as prescriptive.
(b) S universalizes it. And,
(c) It includes or consists of judgments (rules, principles, ideals, etc.) that pronounce actions and agents to be right, wrong, good, bad, etc., simply because of the effect they have on the feelings, interests, ideals, etc. of other persons or centers of sentient experience, actual or hypothetical (or perhaps simply because of their effects on humanity, whether in his own person or in that of another). Here 'other' may mean 'some other' or 'all other.'

Conditions (a) and (b) are necessary formal conditions for a norm to be rational and effective for any practical action whatsoever.

7Anthony Quinton, Utilitarian Ethics (London: Macmillan, 19__), p. 68.
8This is Frankena's "View II." See "The Concept of Morality" pp. 125-126.
Frankena formulates condition (c) quite carefully, in response to Hare's charge that material definitions of morality build in utilitarianism or in some other way beg the question against alternative moral views. Frankena points out that all sorts of action guides would fall under this definition, from fairly implausible nationalistic and class moralities, through egoism and aestheticism, to plausible versions of deontological theories:

It might be, for instance, that the most effective way for one to serve the welfare of others is to do what is most to one's own interest.⁹

Similarly, it just might be that an aesthetic approach to professional ethics would serve other interests. I shall argue that this possibility is in fact remote, however, in discussing egoism below.

Quinton's approach to providing a definition is simpler and more direct, amounting to just the claim that actions are liable to moral consideration, are (presumably) moral actions, if and only if they bear, favorably or unfavorably, on the interests, happiness or welfare of the people affected by the actions in question.¹⁰ It thus appears that Quinton is not concerned with the charge that such a definition of morality "builds in" utilitarianism. At least this much can be said in favor of Quinton's view: there is an historical and conceptual asymmetry between rights-based and interest-based moral theories which supports asserting the priority of interests. The concept of rights is a late arrival, an 18th century notion which was wholly unknown to the ancients, who built their moral reflections around the notion of

¹⁰Quinton, p. 69.
well-being or eudaimonia. Secondly, the conceptual or logical "independence" of rules of right action from considerations of human welfare, is extremely dubious, as will be shown in more detail below.

Even apart from these considerations, assuming they could be filled out and justified, we may well wonder just how important it is, on the view of definition adopted here, to avoid begging the question. For definitions do embody normative considerations. It is not a virtue of a definition that it avoids commitment to any normative theory whatsoever, as Frankena supposes. Whether or not a definition is acceptable depends upon its fruitfulness and effectiveness for the purpose it is meant to serve. This is shown by looking at what follows the definition, not the definition itself. The main purpose of Part II is to examine the upshots of non-utilitarian approaches to professional ethics, which reveals some significant problems in them. As we are drawn towards a utilitarian theory to account for professional ethics, a definition which embodies utilitarian presuppositions will seem more legitimate and appropriate.

For these reasons I am inclined to favor Quinton's definition over Frankena's. But we should not overestimate the significance of this preference, for less hinges on it than may at first appear. On either definition, questions of metaethics and normative ethics, as these have been understood in the past, will be intertwined. As Dewey says, every distinction is made for some purpose, which implies that "Why should I (or we) use words in the way just proposed?" is in every definitional situation a real and legitimate question. On Frankena's definition of the concept of morality, the arguments in favor of my
position will be construed as arguments in favor of a utilitarian theory of professional ethics and against alternative moral theories. On the Quinton view, which I am inclined to prefer, these arguments will be seen as supporting and increasing the effectiveness and plausibility of the initial definition of morality, as the power of utilitarianism is shown in contrast to various competitors. In either case, the question hinges on the adequacy of the views argued for, not the definitions begun with.

Defining "Professional"

Sometimes it is effective and fruitful to define a term by "operationalizing" it, and sometimes not. If we want to talk about adulthood, in contrast to the state preceding adulthood, it is of little use to adopt an unambiguous, public criterion of adulthood, say having passed the twenty-first birthday. For then we are simply talking about the group of people who are of a certain age, rather than talking about the concept of maturity, which we set out to do. For many purposes, such a conceptual substitution is not appropriate. In any subject of investigation we can only attain the level of operational precision compatible with the context and purposes of investigation. Some philosophers, even those who are not operationalists, identify drawing distinctions with attaining philosophical insight. But such an atomistic assumption ought not to reign unchallenged. Just because a distinction can be drawn does not mean that it ought to be drawn, since some concepts, like adulthood, remain effective in use despite ambiguity. In these cases we should be content with vagueness and imprecision.
The concepts which are under consideration here, "profession," "professional," and its relatives, are instances of rather fuzzy concepts. Much effort has been expended, rather unwisely in my view, towards fixing the boundary between "professional" and non-professional occupations. The purposes behind this effort are various, but often involve the political and economic interests of organized occupational groups. Since professional groups are generally accorded high status, incomes, and power, it is in the interest of those groups who want these things to claim to be professions. Indeed, it is difficult to find any occupational group willing to deny that its members are not professionals, as the increase of terms like "sanitary engineer" in our public discourse attests.

Like most questions which involve the boundary of concepts, much depends upon the importance and legitimacy of the interests and purposes of the groups putting forth alternative definitions. I do not think that one must resolve all of the disputes just alluded to before discussing professional ethics, however. I intend to leave open the question of just what makes a profession or a professional. I will restrict the ensuing discussion to clear instances of professions, "paradigm cases," primarily medicine and engineering. Yet it still is worthwhile to attempt to narrow down the concept of a profession, if only to give readers some signposts towards extending the conclusions arrived at here to other avocations.

Given the ambiguity of the concept, the best we can hope for is a list of typical features, rather than a list of necessary and sufficient conditions. No single feature or group of features characterize
each and every professional group. Much like the members of a family, who resemble each other, so do the professions resemble each other. All belong to the same family—or come under the same concept—without holding any essential or necessary features in common. Wittgenstein points out how many terms are like this. His famous example is the notion of a "game," used in a vast variety of contexts. The search for greater specificity in the analysis of such notions is to impose a badly misleading picture of the way language works.11

Yet while the term "profession" is a family resemblance term, it is fruitful to examine some of the signposts which guide and influence its usage. For just as we may gain a richer and fuller understanding of family resemblances by looking at a family photo album, so can we learn how to use the term "professional" more effectively by looking at the history and current use of the word. Beginning with some aspects of this history, I shall then provide a few contemporary efforts at defining "professional," along with a list of some common or typical features which are often found in those occupations we call professions.

The Oxford English Dictionary informs us that "profession" at first was an active term, referring to the act of swearing or "professing" an oath. The oath was sworn to God upon entry into a Christian order. Such occupations were seen as special spiritual roles, also called "vocations" or "callings." The second term calls attention to

the belief that swearing such an oath, and entering such a discipline, was a response to God, who has called or issued a command or invitation to the person to devote his life in this role. This use of the term occurs in Chaucer:

Nay quod this Monk by god and by seint Martyn
This swere I yow on my profession.12

In this regard it should be remembered that one of the major issues in dispute during the Reformation hinged on this web of theological notions. The question concerned the very legitimacy of the distinction between special, higher spiritual callings and lower, worldly employments or vocations. Luther held that no special or preferred path to salvation exists. The ordinary person, on his view, is as acceptable to God and as open to spiritual growth and enlightenment, as those who have sworn special oaths and entered into the monastic profession. The Roman Church disagreed.

Even in places where Protestant influence was greatest the connotation of "profession" remained positive. The English, for example, recognized three learned professions in the 17th, 18th, and 19th centuries—law, medicine, and divinity. Each was regarded as an appropriate calling for the liberally educated gentleman. In this era a grounding in the classics at Oxford or Cambridge was considered the main preparation for professional practice in these disciplines. The particular skills needed for practicing the professions could be acquired by a liberally educated gentleman through apprenticeship,

private study, or literally during the course of practice.\textsuperscript{13}

We shall see that many approaches to the foundations of professional ethics have returned to the idea that professionals swear or profess to serve, and see this as the most significant feature of professional ethics. I shall discuss a few of these views thoroughly in Chapter 6. For now I shall conclude this survey of the history of the term with the reminder that the value connotation of "professional" has remained fairly consistently positive. This is in spite of the relative decline of the values of the Victorian gentleman, and a rise in the status accorded science and secular values. Currently many occupations, including one of our paradigms, engineering, dispense with extended training in the liberal arts, and instead emphasize study of science and mathematics.

Yet the attitude that "it's great to be a professional" seems to have survived these changes. Generally, to call someone a professional is to commend him or to praise him in a way that seems to pervade common discourse. Having become sensitive to these nuances, I am inclined to say that the usual connotation differs significantly from other, equally vague possible labels such as "white collar" or "middle class." At least part of the reason for this surely lies in

\textsuperscript{13}"That training of the intellect which is best for the individual himself, best enables him to discharge his duties to society . . . \textit{(A university education) gives a man a clear conscious view of his own opinions and judgments, a truth in developing them, an eloquence in expressing them, and a force in urging them . . . . It prepares him to fill any post with credit, and to master any subject with facility.}\" John Henry Cardinal Newman, \textit{The Idea of A University} (Garden City, N.Y.: Image Books, 1959: first published in 1852), Discourse 8, "Knowledge in Relation to Professional Skill," pp. 191-192.

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the religious notion of a profession as a high, spiritual calling, which has persisted to the present period.

With these historical reflections before us we shall be able to consider some contemporary attempts at characterizing the term with a fresher eye. I have already mentioned the overlapping senses of "vocation" and "profession" considered historically. So it would not be out of place to begin with Frankena’s characterization of a vocation in "The Philosophy of Vocation," one of a tiny number of philosophic attacks on these issues. A vocation (where we may read, "profession") is:

Some kind of social function, though not necessarily a 'formal' one; it involves having some kind of public and acceptable or contributary role. However, not all such roles are vocations, e.g., the role of a father or of a club president . . . . It does seem to be something one can have only one of at a time, and something that one must pursue for a long time, though perhaps not for a lifetime . . . . Usually, it is thought of as including an occupation, not just in the sense of something that occupies one’s time, but in the sense of some activity or service which fills much of one’s time and for which one is paid by someone else in such an amount as to enable one to live. This is what I shall take as the paradigm case of a vocation, [or as I (D. J.) have suggested, a profession] but it must be recognized that a person who has no need to earn a living may still have a vocation, e.g., the present members of the Rockefeller family.14

To begin our list of features typically found in professions, we find the following aspects mentioned by Frankena:

1. Professionals have a social role or function.

2. One has only one profession at a time, and has it for a long time.

3. Professionals devote most of their time to practicing as professionals and earn a living at it.

The sociologist Talcott Parsons grants that the boundary between professional and nonprofessional occupations is fluid and indistinct. But he offers three "core criteria" to distinguish the professions:

First among these criteria is the requirement of formal technical training accompanied by some institutionalized mode of validating both the adequacy of the training and the competence of trained individuals... [The training] must give primacy to the validation of cognitive rationality as applied to a particular field. The second criterion is that not only must the cultural tradition be mastered, in the sense of being understood, but skills in some form of its use must also be developed. The third and final core criterion is that a full-fledged profession must have some institutional means of making sure that such competence will be put to socially responsible uses.15

These remarks may be used to continue the list of typical features of professions as follows:

4. Professionals have a fairly long period of technical training.

5. Professionals are licensed, tested, registered, or in other ways have their competence socially validated.

6. The training of professionals includes mastering skills, not just theoretical knowledge.

7. Some formal or institutional method tries to ensure that professional training is put to legitimate social uses.

Finally, let us consider the definition offered by Burton Bledstein in a work of social criticism and history. Bledstein's definition is presented as a synthesis of definitions offered by others in the humanities and social sciences, and thus has special interest:

As commonly understood, a profession was a full-time occupation in which a person earned the principle source of an income. During a fairly difficult and time-consuming process, a person mastered an esoteric but useful body of systematic knowledge, completed theoretical training before entering a practice or apprenticeship, and received a degree or license from a recognized institution. A professional person in the role of a practitioner insisted upon technical competence, superior skill, and a high quality of performance. Moreover, a professional embraced an ethic of service which taught that dedication to a client's interest took precedence over personal profit, when the two happened to come into conflict.16

Bledstein's definition is useful in several respects. He endorses and repeats several criteria just listed, in particular, numbers 1. through 6. Unlike Parsons, who stresses the institutional features which are designed to ensure that professional competence is put to socially responsible uses, Bledstein stresses the individual commitment to an ethic of service, designed to deal with conflicts between the interests of clients and professionals. We may put this on our list:

8. Professionals embrace an ethic of service to clients over personal gain.

While we surely could add to this list, I shall stop with these eight features which typically characterize professions. The first thing to note about this list is the fact that engineering and medicine, our paradigm cases, seem to satisfy the criteria listed. The second thing to notice is that it is possible to raise normative issues relating to most of the descriptive features on the list. For example, with respect to 5. one might consider the desirability of

having increased layperson membership on licensing and review boards for the various professions. Taking 1. through 4. as a group, one might ask whether the sort of specialization professionals undergo is on balance socially and individually a good thing. In fact, this is just the sort of worry which Ivan Illich has about the professions, as I mentioned in Chapter II.

But my major purpose is to bring the traditions of moral philosophy and professional ethics into some sort of fruitful confrontation. The most effective definition of morality for this purpose has been shown to be a material conception, which defines moral actions and issues as those which bear on the interests of persons. So the features of the professions which will most concern me below are 7. and 8., particularly professional codes of ethics, which are the primary instances of "institutional means" for ensuring that professions are putting their skills to proper social uses. The traditions of moral philosophy are relevant here precisely in so far as they reveal to us an acceptable picture of what constitutes a rule of right action or a "legitimate" moral action. We also will need to look at the "ethics of service" more carefully. I shall suggest that the most plausible way to fill in and justify such an ethic is to assimilate it to the utilitarian ethic, which holds that right actions are those which maximize social well-being. I shall begin this exploration in the following chapter by stating and arguing in favor of a utilitarian moral theory. Fuller elaborations of the theory will be developed in Part II through consideration of codes of professional ethics and various non-utilitarian moral views of professional ethics.
CHAPTER IV

UTILITARIANISM, A PLAUSIBLE TWO TIER THEORY

In this chapter I shall argue that utilitarianism is a plausible moral theory in its own respect. Thus the stage will be set for showing its usefulness in dialog with medical and engineering codes of ethics in Chapter VI and VII. I shall begin by suggesting how utilitarianism is able to account for the aesthetic pleasures of professional activity which were considered above. Second, I will discuss Mill's famous proof of the principle of utility and the issue of egoism to show the relevance of classical utilitarian theory to the concerns of this study. Third, I shall argue that a rule utilitarian theory which consists of two levels or tiers of rules—the principle of utility and a lower tier of more particular moral rules—provides an answer to those concerned with the alleged "relativism" of role-specific duties.

Egoism, Aesthetic Value, and Consequences

The aesthetic approach to professional conduct leads naturally to a version of egoism. I do not mean to say that Florman, Selzer, and those who think like them are philosophical egoists in any very precise, fully discussed sense. The ethical assumptions of the professional who stresses the internal, personal delights of professional activity are no more clear and explicit than of such external critics as Illich.
But we can readily imagine one of them saying:

"I grant that morality requires that rules of right conduct must consider the interests and welfare of others beyond my personal satisfactions. But this shows only that I cannot call my decision to live a life regulated solely by the Aristotelian Principle a 'morality.' But why should this matter to me? I prefer to live a life of active enjoyment, which I find in my work and elsewhere. Naturally, I promote my own interests in everything I do, and I don't care if you call this a moral view or not. Why shouldn't I do as I please?"

Various passages suggest that Florman would be inclined to make an argument such as this. He sees engineering as a response to pre-existing desires of individuals, to begin with:

Technology did not create in people the desire to move quickly and independently from one place to another. Such a desire has existed within the human heart for a long time. Technologists, knowing of this desire, were, in a sense, 'commissioned' to invent the automobile.

He also attributes primacy to desire in the creation of culture:

The cause of the problem of mass culture is not technology, which can be restrained, but the pressure of human desire, which cannot be restrained.

The most revealing statement of all occurs in the context of Florman’s attack on recent codes and academic courses in engineering ethics:

If [this effort to increase human virtue] is not to degenerate into fatuous piety, it must include a recognition of the egoistic aggressiveness which exists in the scheme of things.¹

These claims from the early part of his book suggest that Florman is both an ethical egoist and a psychological egoist. Ethical egoism is

¹Florman, pp. 60, 80, and 84, respectively.
the view that every person ought to act so as to gratify his or her own individual desires in every case; psychological egoism is a theory concerning the nature of human motivation, namely, that every person in fact does act so as to gratify his or her own desires in every case.

A second premise just beneath the surface here motivates the claim that engineers were "commissioned" to invent the automobile. This claim requires a radical, sharp distinction between means and ends in human action. On this account engineering is only the selection and application of technical means to ends which are set by others. It follows that decisions of some group of non-engineers—Florman mentions government officials, consumers of products, and corporate executive—determine the ends of engineering activity, while engineers merely find appropriate means. For engineers, what people desire set the desirable goals of activity. As Florman says, the human desire to move quickly and independently from one place to another is the end which justifies the activities of the engineers who were only providing the means for people to gratify their desires.

When the doctrines just mentioned are combined, a remarkable picture of man and society emerges. Indeed, this seems to me the most interesting argument in Florman's book, for it amounts to nothing less than a defense of the intrinsic value of engineering activity. The only rules of conduct which engineers ought to follow are laws chosen democratically and enforced by governmental agencies. Like Thomas Hobbes, Florman argues that the selfish, egoistic desires natural to man can be controlled only by assigning ultimate normative responsibility
to technology regulators:

Laws and regulations, mutually agreed upon, are the only sound protection for society against the self-interest of each of us.

Government controls depend to some extent on morality, of course. But they stem more from common sense than they do from conscience. They are essentially a consequence of enlightened self-interest... The public interest must be protected mainly by engineers hired by the public.²

Florman insists that trying to improve or even act upon codes of engineering ethics is futile. For responsibility in the engineering professions rests not with engineers but with those who regulate and set the ends and policies for engineering. The only legitimate rules of individual conduct are aesthetic: one is and ought to be concerned only with personal satisfactions in one's work, and leave the choice of ends to others. Engineering has a positive moral value because engineers provide the tools for others to gratify their desires in accordance with law, which is on this account the best thing to do. No further considerations, moral or non-moral, are necessary or relevant. In sum, Florman's strongest and most interesting argument eliminates ethics altogether in favor of aesthetics, a matter of egoistic enjoyment; and of law, the universal rules of the state. Technologists should just do their jobs, enjoying its craftsmanship delights, and mind their own business.

This argument raises a number of issues. I shall be discussing the connection of desire with value later on in this chapter. First I want to return to psychological egoism and ethical egoism. As

²Florman, pp. 20 and 27-28.
philosophers have long recognized, psychological egoism is false. We do not in fact always act so as to gratify our desires. True enough, every desire I have, by definition, is my desire, a desire if you will, which belongs to me. But the object or end of my desires is not always my own self-interest, since sometimes the well-being of other people is really my goal or end. As Bishop Butler points out, it is the tendency to confuse the bearer of desire with its object which gives psychological egoism the superficial plausibility it possesses.3

The defects of psychological egoism have not deterred some of its advocates, who sometimes seem driven by an almost pathological desire to explain away obvious cases of altruistic behavior. Some defenders, like Bentham, proceed to make the thesis an analytic truth or tautology. Then the view amounts to a claim about meaning: to say that someone acts at all is to mean or imply that he or she acts for an egoistic goal. While one is free to stipulate meanings in this fashion, no good reason is given why anyone else should accept this definition, which is really nothing more than a dogmatic picture of human action rather than a realistic empirical fact. Psychological egoism in this form becomes an unattractive, overly simple, dogmatic insistence on a non-empirical and non-falsifiable picture of human action.

This takes a great deal of the punch out of ethical egoism. If human nature were inevitably self-interested in all actions, there would be no sense in a morality which required other-directed actions.

But at least it is possible to subordinate self-interest to the interest of others. It is not illogical or absurd to hold that morality requires the attempt to increase the welfare of others.

Yet these defects in psychological egoism still leaves us far from having shown the legitimacy of the utilitarian injunction to maximize the welfare of others. Nor can it be said that John Stuart Mill provides a solid argument, or even convincing reasons, to move from the claim that "each person's happiness is a good to that person" to the claim that therefore, the general happiness is a good to the aggregate of all persons. As many critics have pointed out, this is a fallacy of composition. From the fact that Jones's dreams are fascinating to Jones, it surely does not follow that everyone's dreams are fascinating to everyone. In the same way, it clearly does not follow deductively from the fact that each person's happiness is a good for him, that the general happiness as a whole is good for everyone.

Other moral theorists in the utilitarian tradition have given more satisfactory answers to the challenge posed by the rational egoist, and are worth some attention. Both Henry Sidgwick and Hastings Rashdall addressed this issue.

Sidgwick denies that the pursuit of individual good is ultimately subordinate to the utilitarian end of promoting general happiness. He thought that the moral life of maximizing the general good, and the egoistic life of striving for individual fulfillment, both were "ultimate and paramount" in the eyes of reason. Sidgwick holds that both principles or life plans are intuitively self-evident to a reflective rational observer. He tries to surmount this unhappy dualism by taking
a page from Kant. He "postulates" that ultimately these two different ends will coincide.  

Rashdall also considers the moral life to require the maximization of general social welfare. But he does not suppose that every contribution to social well-being is in the form of happiness or pleasure. According to this non-hedonistic or "ideal utilitarianism", well-being includes various goods or values: moral goodness, knowledge, love, and the contemplation of beauty. Each has, on this view, independent or intrinsic value, not merely value as a means to the end of pleasure or happiness. Other philosophers who have defended ideal utilitarian theories of value have provided different lists of intrinsically valuable or worthwhile ends. Moore, for example, considers friendship an intrinsic good.

But when it comes to the problem of egoism, Rashdall defends the notion that the highest or dominant element in an individual's well-being is moral virtue. So he thinks that a rational person with a complete view of his own good would choose to live according to the utilitarian rule of promoting social welfare. Thus, the supreme end of morality is also identified with the highest end of personal, rational conduct. Rashdall thus subordinates egoism to social service. In support of his view he rightly points out that if an individual's good consists simply of happiness, then in many cases the good of everyone conflicts with the individual's good. For example, if a person is

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drafted to fight in a war, his happiness is decreased so that the general happiness (supposedly) can be increased. In thinking about cases like this, Rashdall is lead to insist that moral virtue is a distinctive, intrinsic good, in fact the highest good an individual can attain. Since virtue is a necessary component of the best individual life, a rational egoist would choose to be moral.

Although Mill's argument in favor of the greatest happiness principle does not work deductively, he does suggest some reasons or what he calls "considerations capable of moving the intellect," much like Sidgwick's and Rashdall's. Mill points out that duty and inclination are not perpetually at war with one another. The rational self-interest of individuals and the good of all persons in many cases do coincide in practice. Many duties are performed willingly and cheerfully. Moreover, individual good is both causally and emotionally intertwined with social good, at least as often as not, in stable and prosperous societies such as the one in which we live. Because man is a social animal, many of the ingredients of individual happiness require the good of others. This dependence is both emotional and causal. While sympathy and empathy for the unhappiness of others is not a universal feature of human nature, it does exist in many people much of the time. The emotional conditions of individual happiness tend to show that the good of all is a component of the good of the individual. The good of all is also generally a cause of the good of each, in as much as many forms of individual satisfaction require cooperative social institutions, which only a widespread level of general happiness can safeguard.
While these arguments are not airtight, they do blunt to some degree the sting of the ethical egoist. No doubt hard cases do exist where rational prudence and morality do conflict. Yet in order to do moral philosophy of any sort, we must assume something like the coincidence of rationality and morality. For, to put it plainly, why bother to do moral philosophy, unless it is assumed that it is at least possible that these two desiderata might someday, in some way, coincide in practice? Something like Kant and Sidgwick’s postulate is an assumption which must structure any constructive ethic, whether utilitarian or not. Nor is this a particularly unreasonable ideal to hold, for it is not at all clear that acting only to increase one’s personal satisfactions is ultimately the most rational line of conduct.

Having discussed this necessary postulate, we may now ask about the plausibility of utilitarianism in particular. It seems to me that Mill’s proof of the principle of utility is far more plausible than critics have been willing to see. His proof is found in the third paragraph of Chapter IV of Utilitarianism, which I shall now quote:

The only proof capable of being given that an object is visible is that people actually see it. The only proof that a sound is audible is that people hear it; and so of the other sources of our experience. In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable is that people do actually desire it. If the end which the utilitarian doctrine proposes to itself were not, in theory and in practice, acknowledged to be an end, nothing could ever convince any person that it was so. No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to attainable, desires his own happiness. This, however, being a fact, we have not only all the proof which the case admits of, but all which it is possible to require, that happiness is a good, that each person’s happiness is a good to that person, and the general happiness, therefore, a good to the aggregate
of all persons. Happiness has made out its title as one of the ends of conduct and, consequently, one of the criteria of morality.\(^5\)

Having already discussed Mill's move from the individual good to the social good, I shall focus here on the first part of this passage, which has also been criticized as a fallacy of reasoning.

Pointing out that "desirable" means "capable of being desired" instead of "ought to be desired" will not suffice as a refutation of Mill's proof. Mill not only grants, but specifically affirms, that questions of ultimate ends are not amenable to direct proof. Because he thus rules out a deductive proof of the principle of utility, Mill's argument, I maintain, along with Norman Kretzman, is analogical, not deductive.\(^6\)

The key to this passage is to understand the nature of the analogy between being desired and being visible. Now if anything is visible, it does not follow that it is actually seen by someone. For the contrapositive of this statement is "If anything is not actually seen by someone, it is invisible," which is clearly false. For we need, in thinking about visibility, to distinguish normal and abnormal cases of seeing. A hallucination is in a way seen by the hallucinator, but is not in the fullest sense visible. These sorts of cases lead one to say that if anything is actually seen by a normal observer, it is visible.


But what is it to "actually see something?" Suppose I am looking for a pen on my desk. Even though it is in plain sight, I fail to see it, perhaps despite the fact that reflected light from the pen has entered my retina. I have not "actually seen" the pen, for I have neither experienced nor exhibited any action or response to the light rays. Such an action or response must exist for me to have actually seen the pen. The ordinary notion of actually seeing something, in short, implies at least some sort of knowledge or response or interpretation on the part of the person who sees.

After making this argument Kretzman suggest that a full statement of the criterion of visibility offered by Mill is:

If anything is seen in such a way so as to occasion some overt reaction on the part of the normal observer, and that reaction later proves to have been normal for the thing in question, then that thing is visible.\(^7\)

It seems to me that the analogy between vision and desire is close and striking. Just as there is no reasonable way to determine what is visible except by discovering what normal people actually are able to see, so there is no way of determining what is desireable or "good," in the broadest sense of good, except by consulting human desires. It just makes no sense to say that what is good or desireable would not, over the long run, be desired by normal people, any more than we would call an object "visible" which systematically eluded being seen.

To be sure, there are desireable states and objects which are not at the present moment desired by anyone, just as there are visible objects which are not now actually seen by anyone. And it may well be

\(^7\)Kretzmann, p. 237.
that there is greater imprecision and uncertainty attached to what qualifies as a "normal desirer" than to what qualifies as a "normal observer." Yet the basic analogy is sound and fruitful. Being capable of being desired by a normal person is an indicator or criterion of whether something ought to be desired. It seems passing strange that critics have wondered whether "desirable" is synonymous with "desired" in Mill's Utilitarianism. To the contrary, he is suggesting the only sort of proof to which ultimate ends are open, by means of a comparison with the notion of visibility.

Kretzmann concludes his defense of Mill's proof by suggesting a criterion of desirability parallel to the one quoted above for visibility:

If anything is desired in such a way as to occasion some overt reaction on the part of the normal desirer, and that reaction proves to have been normal for the thing in question, then that thing is desirable.8

I think that this formulation goes too far in the direction of behaviorism. There must be some sort of reaction, it is true, for a thing to be seen or desired, however this may or may not take the form of an "overt" reaction. Thus I would suggest that "experienced or exhibited response" be substituted for "overt reaction" in the above. The force of the analogy stands quite apart from this issue, though. This concludes my reply to critics who consider the proof of happiness as one end of human action in Mill to be a simple, illegitimate deduction from "is" to "ought." The considerations Mill presents are not premises in a deductive argument at all, but rather the terms of a

8Ibid, p. 240. John Lachs pointed out to me Kretzmann's overly behavioristic formulation.
rationally persuasive analogy between vision and desire.

I shall thus take it as reasonable to consider that happiness is an end of human conduct, and an important end. It is not unreasonable, as I also have argued, to affirm a moral injunction to maximize general happiness. But of course the plausibility of utilitarianism will be increased by its ability to illuminate fruitfully a wide range of phenomena, including the ones focused upon in this study, namely, professional codes of ethics. Yet even though happiness is one end of human conduct, are we justified in asserting with Mill that happiness is the only end of conduct?

Both ideal and hedonistic utilitarians affirm that the rightness and wrongness of actions are determined by their results or consequences. What differentiates these two forms of utilitarianism are the different answers given to the questions "What is worth maximizing?" or "Which results have value and why?" This issue arises in the present context because it is plausible to see some professionals, Florman and Selzer among others, as wanting to give a particular emphasis to aesthetic value as opposed to moral value. Here again we are dealing with tendencies and assumptions not very explicitly argued for. But perhaps we have here the view that aesthetic value ought to be viewed as independent of, and of greater weight than, moral value, in the conduct of professionals.

Though these two sorts of value may be seen as independent and coordinate (more on this in a minute), and while personal aesthetic pleasures surely are a main component of social as well as individual well-being, the attempt to make these essentially self-directed
activities the central fact of professional conduct must be resisted. Before going on to discuss the nature of codes of professional ethics, it is important to point out that the rules of the codes embody values which are compatible and comparable with aesthetic values.

It seems to me, in short, that something like the weighing of various options which classical hedonistic utilitarianism supposes is a necessary feature of moral deliberation, even if it cannot be given a precise quantitative or numerical analysis, such as Bentham attempted to provide. Supposing that we can compare the foreseeable results of different actions, then, how do we discover or decide which results are worthwhile? The hedonist refers us to a state of consciousness variously called happiness, pleasure, or just an agreeable state of feeling. We must be careful here to stress that happiness is not a single or simple feeling, a point somewhat obscured if "pleasure" and "happiness" are used interchangably. There is no need for the hedonist to say that happiness is qualitatively the same as the simple pleasure of a full stomach or a massage. Most happiness emerges within experience in a fairly complex way, just as the Aristotelian Principle states. Happiness is a triadic relation, involving the agent, his activity, and the agreeable feelings which emerge in the context of his activity. The hedonist, far from defending a life of crass bodily sensation as the ideal, rather holds that this state of feeling alone has intrinsic value. All other valuable states and objects are valued as means towards happiness, and are not intrinsically worthwhile.

Of course, the hedonist theory of value is only one of the many possible theories of value. An ideal theory of value, to the contrary,
insists that agreeable feelings are not the whole story: other distinct, intrinsically valuable things exist. The sort of considerations which Moore brings up here are not direct or inductive arguments for the independent value of things other than happiness, but are rather thought experiments which are to convince us that things other than happiness are worthwhile. For example: Suppose that a universe exists filled with beautiful things, natural beauty as well as aesthetically delightful paintings, sculpture, buildings, and so forth. Such an imagined universe, however, is completely devoid of sentient beings and thus of any sort of experienced happiness. Would it not be better, asks the non-hedonist, for such a universe to exist than for none at all to exist, or more extremely, for a universe filled with ugliness to exist? We are thus invited to conclude that beauty possesses intrinsic value quite independently of any actual or potential experience of beauty.

Moral intuitions differ at this point. For the record, I do not find this argument persuasive. The whole affair strikes me as indicative of a Creator with suspect motives. Indeed, it seems to me that the plausibility of this thought experiment comes from smuggling in the perspective of an appreciator of value, whom we imagine both outside and inside the hypothetical universe. Why else would we call the items here "beautiful?"

Nor am I much impressed by the example of a "pleasure machine," offered often against hedonist theories of value. We are asked to

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9The thought experiment is from G. E. Moore, Principio Ethica (Cambridge: Cambridge University Press, 1903), Ch. 3, Sec. 50.
imagine a "pleasure machine" which provides continuous, agreeable feel­nings to the person hooked up to it, perhaps by way of electrodes im­planted in the brain.10 But who would run this machine? How could such a machine avoid causing satiety? Where would the source of en­ergy come from to run it? How could sufficient variety be provided to approximate the sorts of human pleasures which involve complexity and increasing skill? For we are talking here about human, not animal ex­perience as a value, which as we have seen is a complex matter. When we reflect on such questions, it becomes apparent that a pleasure machine is little more than an analogue of Descartes' evil demon. Its operator would have to be little less than technologically omniscient. The mere logical possibility or conceivability of a pleasure machine should no more persuade one to abandon hedonism than should the pos­sibility of an evil demon convince one to give up knowledge of other minds and the external world.

Most disputes between the hedonist and the idealist are second­ary: the essential feature of utilitarianism needed for this study is consequentialism, the view that consequences determine moral value. While the hedonist may have a simpler task in trying to sort out dif­ferent relative values, since all will be compared in terms of happi­ness, something almost the same will be necessary for the ideal utili­tarian, except he will describe it differently. Whether we balance in­dependent values or values which all relate to happiness, the task is much the same.

10 Mill should have made it clearer that happiness is that which is shared by desirable experience or activity, rather than suggesting that happiness is somehow a static end-product or terminus of our actions. See Quinton, pp. 103-105.
In this chapter I have argued so far that there is a broad convergence between self-interested and other-interested actions, and that the utilitarian injunction to maximize welfare is a quite plausible moral rule. Much of Mill's proof stands once we realize that his argument is analogical, not deductive. Whether one adopts an ideal or hedonist theory of value, the pleasures of professional activity, particularly its aesthetic satisfactions, must be weighed against other values. I willingly concede, however, that the arguments offered so far in favor of consequentialism may be persuasive but are not fully satisfactory. A final judgment on the version of consequentialism adopted here, it seems to me, depends upon its fruitfulness in coherently meshing with traditions of professional ethics. This is a judgment to be made by both philosophers and professionals, and can be made only after the theory is put to this use. In the following two chapters I shall consider the rules of both medical and engineering ethics. But before doing this, I shall explain the general reasons in favor of there being such a second-order framework of moral rules which attach to particular occupational roles.

I have already discussed the weakness of too formal a definition of morality. But clearly some sort of generalized rules are needed for an individual to refer to in situations of moral choice, rules of less generality that the rule that utilitarians recommend to maximize overall happiness. Yet there are some substantive arguments in favor of the universality of moral rules which should give pause to any attempt to provide a rule framework or code of ethics attaching to particular roles or professions. W. T. Stace has argued the case for
When once the whole of humanity is abandoned as the area covered by a single moral standard, what smaller areas are to be adopted as the loci of different standards? Where are we to draw the lines of demarcation? We can split up humanity, perhaps—though the procedure will be very arbitrary—into races, races into nations, nations into tribes, tribes into families, families into individuals. Where are we going to draw the moral boundaries? Does the locus of a particular moral standard reside in a race, a nation, a tribe, a family, or an individual? Perhaps the blessed phrase "social group" will be dragged in to save the situation. Each such group, we shall be told, has its own moral code which is, for it, right. But what is a "group"? Can anyone define it or give it boundaries?11

Stace goes on to argue that if we allow any groups to have their own particular morality, we will have to admit that each person is entitled to put forth a personal standard of morality. For persons generally, and professionals perhaps especially, belong to a multitude of different social groups, with almost inevitably at least some tension or conflict between the moral requirements of these various groups. No very sound or convincing reason exists, in short, to avoid sliding all way down to subjectivism or moral nihilism, once we give up the high ground of a universal moral code, binding equally on everyone.

Furthermore, as Stace points out, even if we simply define a "social group" as any set of persons who recognize the same moral code, and thus eliminate the problem of overlapping groups, fatal difficulties still remain. For there will surely be disagreements over the interpretation given to the code in hard cases, and there will be

different judgements as to the weight each rule or principle should have in comparison to the others. In short, the disagreement will recur, and lead us once more either to affirm a universal standard of morality, or to lapse again into purely personal standards:

The ethical relativists are great empiricists. What is the actual moral standard of any group can only be discovered, they tell us, by an examination on the ground of the moral opinions and customs of that group. But will they tell us how they propose to decide, when they get to the ground, which of the many moral opinions they are sure to find there is the right one in that group? We are left therefore once more with the conclusion that, even within a particular social group, anybody's moral opinion is as good as anybody else's, and that every man is entitled to be judged by his own standards.12

A similar worry has surfaced in at least two philosophers writing on professional ethics. According to Rober Veatch in "Medical Ethics: Professional or Universal?":

Special norms or a special process of balancing norms cannot exist for a professional group without collapsing into ethical relativism and particularism.

In his view professional ethics must be thought of as a special application of the universal norms of ethical action. The decisions a professional makes must be made within a universal frame of reference, not one rooted in relativistic norms which cannot be universalized. Veatch goes so far as to label traditional and modern codes of professional ethics "dangerous diversions which lead professionals to believe that there is a special type of ethics appropriate for their own professional discipline."13

12Ibid., pp. 57-58.

A recent book-length treatment of professional ethics by Alan Goldman takes this distinction as its problem, by asking if those in professional roles require special norms and principles of conduct. According to him, this is "the most fundamental question for professional ethics." In his terminology, the question to be asked of each and every profession--he considers politics, law, medicine, and business--is whether the professional role is "strongly differentiated."

A strongly differentiated role:

Requirements unique principles . . . [and] it must be the case that the occupant of the position be permitted or required to ignore or weigh less heavily what would otherwise be morally overriding considerations in the relations into which he enters as a professional.14

While Stace is concerned with relativism and particularism from the standpoint of cultural differences, Veatch and Goldman consider the functional differences of vocation within cultures as a possible or actual challenge to the view that moral principles must be universal.

In my view, utilitarianism is able to combine a universal morality with an appropriate recognition of the particular requirements of role. The theory does so by separating moral rules into two levels or tiers: at the top is the principle of utility, which states that those actions are right which tend to produce the greatest balance of happiness over unhappiness. The general rules or statements of which sorts of actions are forbidden, permitted, or required, constitute the lower or second level of the theory. This version of utilitarianism is generally known as "rule utilitarianism," since rules, rather than actions

directly, are evaluated by their tendency to promote social welfare.

Such a theory allows the utilitarian to respond to a number of traditional criticisms leveled against making consequences the criteria of right action. A rule utilitarian must consider the beneficial consequences of whole practices or institutions rather than the narrower consequences of each act. For example, the great utility of the practice of truth-telling, a practice vital to social cooperation, blocks most appeals to the benefits of lying in particular cases, and gives the norms of truth-telling nearly absolute force. Another traditional objection to utilitarianism, the supposed necessity for utilitarians to sanction punishment of the innocent if only beneficial consequences as a whole result, has been answered by John Rawls.

Rawls clearly shows the importance of distinguishing between justifying a practice and justifying an action which occurs as a part of the practice. It is mistaken to think that if the practice of punishment is justified on utilitarian grounds, then a participant in the practice is free to appeal directly to utility to administer punishment. The mistake, he argues, has its roots in a misconception of the logical status of rules and practices. Someone making the mistake has a purely inductive view of moral rules, seeing the rules as summaries of past decisions from similar cases. The summary view of rules sees them as like the rules of a cookbook, "rules of thumb" derived from past experience and used to reduce the indeterminacy of the present.

But some rules instead constitute new practices or institutions. On the "practice conception" of rules, the activity or practice which is the subject of the rules does not exist antecedently to the rules
themselves. The rules constitutive of the practice of punishment are not rules of thumb, but laws or rules which create the practice of punishment. Judges are not free, in administering punishment, to appeal to utility in each case. Rather, the practice of punishment itself, along with possible alternatives and reforms, is the proper object of utilitarian evaluation. The institution or practice as a whole, consisting of the rules and roles according to a practice conception of rules, is justified by comparing the probable consequences of it with the probable consequences of available alternative practices.\(^{15}\)

When I examine codes of professional ethics in Part II, it will become clear that some of these rules are summary rules, some are rules constitutive of practices, and some are neither one nor the other. Of the summary and constitutive rules, some are legitimated by the principle of utility, and some are not. But assuming that I am able to make good on this promise to sort out the rules of actual codes of ethics plausibly into these conceptual bins, where does that leave Veatch and Goldman's worries about the relativism of professional ethics?

When we examine Veatch's worries carefully, we see that he has both a strong and a weak view of the nature of professional ethics. On the strong view, not only are the special codes of professional groups to be criticized for being too narrowly self-interested: it is claimed that only moral philosophers, through the course of training

they have received, are equipped with the necessary expertise to formulate them. Far from having any special competence in acting morally gained in the clinic or elsewhere during professional practice, Veatch claims that professionals are likely to suffer from moral bias or blindness, caused by their intensive socialization into the values of a group isolated from the broader moral consensus of society at large.\(^6\)

On the weak view, professional ethics is a valid practice as long as it is grounded in a more "universal source" of morality, although Veatch seems quite agnostic about the actual source to be preferred, stressing instead that we employ the contractarian moral tradition to find it.

Goldman is not even this clear, but instead manages to hover between the strong and weak view to suit the purposes of his argument. He holds that through a process of dialogue, where we compare different cases and work towards more general principles, we can discover a "common moral framework." Unfortunately, the argument of his book, far from exemplifying this reasonable procedure, employs one or another moral principle which allegedly belongs to our common moral framework to argue against any role-specific duties in the professions, excepting only the role of judge. Goldman uses "the principles of our common moral framework" as a _deus ex machina_, in order to close off discussion, rather than as a result of any sort of reflective dialogue between philosophers and professionals.

Both Veatch and Goldman have been greatly influenced by the method of Rawls's _A Theory of Justice_. But while questions of distributive

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justice certainly do pertain to the allocation of social roles, and the rewards attached to them. Rawls's method is of little use in trying to ferret out the content of role-specific duties. Indeed, behind the veil of ignorance it is assumed that the social group concerned with establishing principles of a just society have no particular professions or vocations. With this model of ethics in mind, it is little wonder that Goldman arrives as a view which washes out all disagreements and all moral pluralism into a colorless "common moral framework."

As for Veatch's general strategy, it is hard to object to his weak view; in fact, it is just such a "source" of morality lying behind the particular roles of professionals which the utilitarian theory of professional ethics defended here, attempts to provide. As for the strong view, it seems overstated, verging on a stereotype of the amoral, money-hungry professional, and is in any case given little empirical support by Veatch. One could readily provide an anecdote showing the moral sensitivity of a professional for every anecdote Veatch provides of a professional's moral bias or blindness. Lacking any careful data beyond anecdotes, the strong view seems to amount to little more than rhetorical excess.

Surely it is right to insist that some provisions of the actually existing codes of professional ethics will not survive careful moral scrutiny. To deny this is to adopt some sort of conventionalism, or a simplistic identification of is and ought. No doubt some rules need to be changed and others need to be reinterpreted or dropped entirely. Yet is would be strange indeed to deny that codes of ethics, as these have been developed in the professions, have nothing at all to do with
proper conduct. At the very least, such rules may assist professionals in planning and guiding conduct by identifying commonly recurring sorts of moral dilemmas they are likely to face in professional practice. The context of working at a particular job will tend to be reflected in the highly specific, contextual rules found in such codes. In addition, some rules do not just regulate behaviour, but actually serve to constitute normative practices. The most obvious examples are the rules which specify minimum levels of satisfactory competence or performance to practice as a licensed or certified professional of one sort or another. These rules are special and unique to the profession in question. They may or may not maximize utility; but they surely do not imply or even invite a slide into relativism or particularism.

We must recognize that moral requirements are to some extent modulated by the particular circumstances of a person's vocation. One philosopher who clearly saw the level of rules and roles intermediate between particular cases and the general, umbrella principle of utility, as Henry Sidgwick. The particular, personal relationships established between professionals and clients are among those "special relations" which connects each person with a few persons out of the sum of humanity. Sidgwick indentifies three lines of argument which show the utilitarian justification of the special claims arising out of special personal relationships.

First, morality is here in a manner protecting the normal channels and courses of natural benevolent affections: and the development of such affections seems of the highest importance to human happiness, both as a direct source of pleasure, and as an indispensable preparation for a more enlarged 'altruism.' And again, the mere fact that such affections are normal causes an expectation of the services
that are their natural expression; and the disappointment of such expectations is inevitably painful. While finally, apart from these considerations, we can show in each case strong utilitarian reasons why, generally speaking, services should be rendered to the persons commonly recognized as having such claims rather than to others.\footnote{Henry Sidgwick, \textit{Methods of Ethics}, Book 4, Ch. 3.}

More will be forthcoming on these three arguments in the next part. But briefly to restate this view in a modern idiom with relevance to the topic of our study: A professional's special loyalty or fidelity to a client is justified by utilitarian reasoning, because such relationships are sources of pleasure or happiness in themselves, as well as a condition of other sorts of social goods, including the self-development of client and professional; they are (sometimes) part of a practice which leads the participants to have legitimate expectations of those in various roles; and finally, in the case of those in need of health care, for example, it is generally beneficial for such a service to be rendered, since health is a necessary condition of most other worthwhile human activities.

Some sort of division of labor is at present, and will remain for the foreseeable future, a feature of human life. This should be reflected in moral philosophy. The social world, and the roles within it, set the context for moral philosophy. We may well disagree with Plato that necessity or \textit{ananke} determines the differences of human vocation; but we do in fact find ourselves within one occupation or another. The time and energy needed to master a profession, furthermore, are in short supply. One's own happiness, and whatever contribution to the general welfare one is likely or able to achieve, will
as a result take place mostly in the context of a vocation.

The neglect of this point should be seen for the philosophical scandal in it. Moral philosophy has persistently represented an individual faced with moral issues as a featureless, vocationless Anyone. The sterility of much academic philosophy and the cultural irrelevance of much moral philosophy is directly attributable to this source.

Professional activity is a part of a professional's happiness as well as a means to it. In an increasingly professionalized culture, this fact acquires increasing moral significance. We do not find ourselves in a world where people devote themselves directly and singlemindedly to the good. Human activity is mediated by the roles we play in the occupational world. People are in many roles, pursuing their common ends in a variety of ways.\(^\text{18}\)

Surely it is a mistake to think that the only way to pursue moral ends is within a vocation or profession. Someone unable to plan and sustain goals outside of work is rightly considered abnormal, a compulsive, addicted "workaholic." The idea that we should have no moral concern for the welfare of friends, family, and neighbors (not to mention strangers), is absurd. The Organization Man forgets this, but his position is clearly incredible, as Frankena points out.\(^\text{19}\)

F. H. Bradley comes close to this position in "My Station and Its Duties"--but even he allows that an "Ideal Morality" exists of trying

\(^{18}\)This is the main conclusion of Frankena, "The Philosophy of Vocation."

\(^{19}\)Ibid., p. 404.
to achieve excellence in morality or art or some other activity, even though most of our duty consists for him of performing the duties of our role or station. A profession is not just a setting, a stage or arena in which we follow our fate and do our deeds, but actually affects how morality comes to us and how we should respond to it.

On the utilitarian view defended here, we should promote the general good by our jobs and in other ways as well. The rules and roles which are constitutive of professional practice imply that sometimes we must do things which are not directly required by utilitarian reasoning. Although vocations are moral only if they serve the social good as a whole, moral rules of professional practice may enjoin actions which conflict with utility in particular cases.

Contrary to the anti-relativists, it may sometimes be right to plead a special rule or other feature of one's profession as a justification for doing or failing to do something. I have also argued that utilitarian theory is in itself a plausible moral view, and have suggested some of the ways it may be fruitfully applied to the problem of legitimating professional conduct. The rule utilitarian is able to combine the demand for a universal principle or source of morality with a recognition of the particular, moral problem field in the everyday context of work. The clarification of professional ethics can proceed on a utilitarian basis free of the charge of relativism, but with a firmer grasp on the moral world we actually inhabit than allowed by those theorists reluctant to leave the abstract and comfortable world of pure moral theory. Such purity is uninteresting, and in any case is impossible, as I argued in the previous chapter. I shall, in
Part II turn to the somewhat messy, empirical classical and contemporary codes of professional ethics found in medicine and engineering.
PART II

UTILITARIAN PROFESSIONAL ETHICS:
APPLICATIONS, ALTERNATIVES, AND REPLIES
CHAPTER V
INTRODUCTION

In Part I of this dissertation I introduced utilitarian theory as a response to the aesthetic approach to professional conduct. In Part II, this consequentialist theory will be strengthened and deepened by examining other theories in the context of professional ethics.

In Chapter VI I will discuss the view that consent, swearing or professing an oath, or some other such solemn promise ought to be considered a foundational notion in a philosophically adequate theory of professional medical ethics. I begin with some historical topics, the traditional Hippocratic Oath and a brief discussion of the more recent development of codes of medical ethics. I then examine critically two consent theories, and argue that consent is an unacceptable foundation for medical ethics. Far more helpful is the practice conception of rules employed in utilitarian theory.

The different, more recent attempts by the engineering profession to construct codes of professional ethics form the subject of Chapter VII. While it is impossible to discuss the more numerous, particularistic rules contained in over 150 different professional engineering organizations, I suggest an abstract sorting scheme which is useful in this regard. Discussing both the quantity and quality of rules which confront the individual in the problem field of moral decision, I opt for a middle ground between a single, categorical rule and
an impractical overkill of rules. My sorting scheme emphasizes the function of moral rules as field elements which enable the agent to reduce indeterminacy. The framework is applied to some current issues, and proves helpful in making headway on three different sorts of worries often voiced in connection with current engineering codes: the difficulties of enforcement, the inapplicability of the codes to salaried engineers, and the attempt to frame a single, uniform code of engineering ethics. Finally, I discuss the appeal to "ought-rules" as moral foundations, and argue for the assimilation of "ought-rules" and "always-rules."

In Chapter VIII I consider both pure and mixed versions of a morality of virtue in the context of professional ethics. After arguing in favor of a mixed ethic of virtue, which combines elements of an agent ethic with a utilitarian act ethic, I discuss benevolence as the generic moral virtue of central concern for a utilitarian. I discuss "caring" and "responsibility" to illuminate some of the variety found in the genus of other-directed virtues.
CHAPTER VI

NOTES ON PROMISING AS THE FOUNDATION OF MEDICAL ETHICS

What are the duties of a physician, qua physician? Many who reject the purely aesthetic approach to professional conduct refer instead to the promises physicians make, particularly the Hippocratic Oath. Can this oath, or any other such promise, ground or establish the specific moral duties of the physician? A recent issue of The Journal of Medicine and Philosophy is devoted to these issues, which join and expand upon William May's earlier essay entitled "Code and Covenant or Philanthropy and Contract?" After discussing the historical background of traditional medical codes, I shall discuss in detail the consent theories of May and Pellegrino.¹

Modern discussions of medical professionalism almost always begin with a nod or bow towards traditional medical oaths and codes. The reason, as Pellegrino states, is that:

The most pervasive and influential conception of patient-physician relationships is the Hippocratic ethic. Under this rubric are subsumed a congeries of rules and practices successively elaborated over the centuries and forming a more or less generally accepted blueprint of medical morality. An examination of this ethic will

expose the need for, and the requirements of, a recon-
struction of professional morality.2

The Hippocratic works include, Law, Decorum, Precepts, and The
Physician as well as the Oath. The tone of these works is moralistic.
Physicians are exhorted to follow the norms and rules but are given
little or no moral reasons for doing so. The duties mentioned in-
clude a variety of prohibitions, expressed in absolute and unqualified
terms. Prohibited are, for example, abortions, breaches in confiden-
tiality, sexual misconduct, and administering a lethal dose of medi-
cine, even if asked to do so by a patient. On the positive side, the
physician is instructed to do no harm and to follow the positive duty
of acting to produce health.

The most knowledgeable student of the Hippocratic corpus is
Ludwig Edelstein, whose conclusions are accepted by both deontological
writers to be considered. Edelstein has established that the Hippo-
cratic works are greatly indebted to Greek philosophy and cosmology.
Different works in the corpus were influenced by different Greek
schools. Although the tradition of ascribing the authorship of these
various texts to "Hippocrates" was firmly established by the time of
Galen in the first century A.D., they actually were written by differ-
tent people over several hundred years. The rather austere rules of
the Hippocratic Oath, Edelstein argues, are of Pythagorean origin. By
no means did all Greek physicians subscribe to these precepts. Many
of them gave abortions and assisted in active euthanasia. The context
of Greek medicine was morally pluralistic to an extent seldom realized
today.

2Pellegrino, p. 35.
In the Hippocratic vision of medicine the Oath is central. Most medical school graduates repeat it, and legion are the number of doctors who swear by it as well as to it. As May points out, the Hippocratic Oath consists of three elements:

First, codal duties to patients; second, covenantal obligations to colleagues; and, third, the setting of both within the context of an oath to the gods, specifically, the gods of healing.3

Let us consider each part in turn.

Patients are not seen as partners in decision-making in the Hippocratic tradition. Rather, the patient is someone to be protected from guilt and anxiety, as these provisions make clear:

Perform all this calmly and adroitly, concealing most things from the patient while you are attending him. Sometimes reprove sharply and emphatically and sometimes comfort with solicitude and attention, revealing nothing of the patient's future or present condition. For many patients through this cause have taken a turn for the worse.4

These norms presuppose the power and agency of the physician, without any mention of the patient as an active agent in his own healing. Told to do what he considers best, the Hippocratic physician assumes agency for the patient. The Code has nothing to say about moral conflicts, disagreement, or the obligation to obtain consent from patients before and during treatment.

The second set of provisions included in the Hippocratic Oath relate to duties owed to colleagues, in particular to the physician's teacher. A physician is to regard his teacher as like his own father.

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3May, p. 67.

Besides looking out for the teacher's welfare in a general way, the quasi-fillial duty extends to the next generation. The Oath requires the student-physician to transmit without fee whatever he has learned to his teacher's children. The third and final component of the Oath is its setting within the context of an oath to Aesclepius and the other gods of healing. I shall return to this component of the Oath more fully below.

Islam, Judaism, and Christianity took up the Hippocratic Oath and adopted its major provisions. With this powerful and sustained religious backing the Oath functioned as the central normative bond or unifying force among physicians who otherwise differed greatly in ultimate belief. During the 18th and 19th centuries the religious sources of medical ethics remained quite influential, only waning in the present century.

Percival's influential *Medical Ethics* at the close of the 18th Century in England was closely modeled on the Hippocratic Oath. Percival distinguished four components in medical ethics: duties to self, to patients, to colleagues or "brethren" and to the community. With the substitution of the community for the gods of healing, the last three components parallel the Oath precisely. Duties to self were discussed under the presupposition that medicine was a proper calling for Gentlemen, as I mentioned briefly in Part I. Percival insisted that physicians be courteous and kind, but also objective and inspiring of confidence. Yet as in the Oath, one's comportment towards patients was seen more as a gratuitous act of philanthropy, as *noblesse oblige*, than as a basic professional duty owed to patients.
This notion of gratuitous philanthropy towards patients was continued in the American development of codes of medical ethics. First adopted in 1847 at the founding of the American Medical Association, the AMA Code of Ethics rests its conception of the moral relationship obtaining between physician and patient on what patients receive from physicians, without any notice of what physicians receive from patients. As the code has it:

> The members of the medical profession, upon whom is enjoined the performance of so many important and arduous duties toward the community, and who are required to make so many sacrifices of comfort, ease, and health, for the welfare of those who avail themselves of their services, certainly have a right to expect and require that their patients should entertain a just sense of the duties which they owe to their medical attendants.5

Clearly, this code continues the main conceptions of the Hippocratic and Percivalian precepts towards patients.

Yet the first AMA Code, Pellegrino points out, "did evince a spirit of lofty ideals even if they were unilaterally defined." In the latest suggestions for revision of the AMA Code of Ethics this moral tone is absent. The ethic of technical competence and aesthetic performance is emphasized, while the relationship between patients and physicians is put in legal, contractual terms. Dropped specifically by these 1978 proposals are phrases such as: "service to humanity," "meriting the confidence of the patient," "rendering a full measure of service and devotion." Neither the old nor the proposed AMA Code discusses patient consent or conflicts of value. Like the Oath of

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5 American Medical Association, "Code of Medical Ethics," (May, 1847), Article II., Section 1. Cited by May, p. 70.
Hippocrates, the AMA Code is a craft ethic rather than a code derived from a consistent, defensible moral theory.

I have mentioned that May and Pellegrino both give or seem to presuppose something like these historical facts and judgments about the Hippocratic tradition. Each proposed a reconstruction of medical ethics based on promising or consent, which they consider sounder than the traditional codes. I will now examine and criticize their views, beginning with May. By calling the attitude of the codes towards patients "gratuitious philanthropy," I have been using May's helpful phrase. He argues, in fact, that:

The ideal of service, in [his] judgment, succumbs to what might be called the conceit of philanthropy when it is assumed that the professional's commitment is a gratuitious rather than a responsive or reciprocal, act flowing from his altered state of being.6

I also have cited and agreed with May's rejection of the aesthetic approach to professional conduct, although I stressed a more active account of professional aesthetics in Part I than his allusions to Hemingway and the "ideal of technical competence" seems to imply. But we are agreed that professional ethics cannot be identified with a craft aesthetic or the merely stylish performance. May is particularly concerned to point out that:

Insofar as a code becomes more exclusively concerned with style, image, and decorum, it runs the danger of detaching itself from its ontological root.7

In explaining what he means by this "ontological root," May distinguishes between a code and a covenant. Edelstein was the first to

6May, p. 70.
7Ibid., p. 69.
distinguish the code of duties owed to patients in the Hippocratic Oath from the covenant which binds the young physician to his teacher and his teacher’s sons. May employs this distinction in a somewhat different way. He suggests that a covenant, unlike a code, is rooted in specific historical acts or events. Paradigmatically or classically, a covenant involves an "experience of gift" between the two persons to be joined in the covenant; secondly, a covenant promise based on this gift exchange; and finally, an ontological change or change of being in the persons bonded in the covenant. May compares this threefold analysis of covenant to the Biblical experience, as follows:

The covenant between God and Israel includes the aforementioned elements: (1) a gift (the deliverance of the people from Egypt); (2) an exchange of promises (at Mt. Sinai); and (3) the shaping of all subsequent life by the promissory event.\(^8\)

May’s religious commitments become clear when he suggests, somewhat tentatively and gingerly, that all covenants should finally be understood as occurring within the framework of the religious covenant between God and mankind.

May contends that the major tradition of medical ethics, by stressing a model based on code rather than covenant, has unjustifiably neglected the element of gift between patients and the public, on the one hand, and physicians, on the other. This argument does not depend on any theological assumptions, and seems to be substantially correct. Physicians are permitted to pose in the guise of altruistic service only because the deeper dynamic of covenant is ignored. The

\(^8\)Ibid., p. 70.
gratuitious philanthropy in the classical and modern codes in an inadequa
t foundation for professional medical ethics because it leaves out of account altogether the many gifts physicians receive from the community and from patients.

The medical profession for the most part does not think itself beholden to anyone else for those duties to patients which it supposedly lays upon itself. Yet physicians are in a considerable debt to the community as May points out. The physician is beholden to others for many gifts: for an education, for the social and financial rewards of practice, and not least of all for those patients who have offered themselves as teaching material and experimental subjects in medical education, and who continue to be needed by physicians if they are to practice their profession. It seems to me, however, that a utilitarian ethic, as much as a covenant ethic, can take account of the mutuality lacking in the code model. The fact that people need, and are beholden to, one another is the crucial fact, and one must recognize that professional conduct takes place in a social context of interdependence and mutual indebtedness to others. Rather than an omnipotent agent isolated from all others, doing battle with death, we need to see the physician as one person engaged in reciprocal relations with others.

May next goes on to distinguish covenant from contract, and to opt for the former. It is at this point that his argument, in my view, weakens considerably. When we purge medical ethics of the ideal of gratuitous philanthropy, are we left with anything more than a "legalist" conception of the relationship between doctors and patients? As May asks:
Is covenant simply another name for a contract in which two parties calculate their own best interests and agree upon some joint project in which both derive roughly equivalent benefits for good contributed by each?\footnote{Ibid., p. 71.}

Just as he rejects the attempt to assimilate medical ethics to aesthetics, at this point May argues against assimilating or reducing medical ethics to law. I shall consider his arguments now in some detail, although I do not think that they are persuasive. I shall return to the topic of legalism as well later on when discussing the Aristotelian approach to professional ethics defended by John Ladd.

May admits that there are advantages to moving towards a contractual model of medical ethics. It is a deliberate break with more authoritarian roles, such as priest or parent, for interpreting the norms of the physician. Such a model provides for informed consent in the treatment of the ill, and offers both parties legal protections and recourse. According to May, the presupposition of a contractarian model is that people are ruled by self-interest and enter into contracts because each sees it to be in his own advantage. This seems to me to ignore the convergence of self-directed and other-directed motives I remarked upon above in discussing egoism. But to conclude May’s account of the advantages of extending the notion of contract into the medical profession: Employing the contract model would beneficially lead to:

Laicizing authority, legalizing relationships, activating self-interest, and encouraging collaboration.

In May’s judgment, some of these aims of the contractualists are desirable, but it would be unfortunate
if professional ethics were reduced to a commercial contract.\textsuperscript{10}

May provides nine reasons for opposing the contractarian view. First, the contractual model, like the codes, suppresses the element of gift in human relationships by removing spontaneity.

Second, the helping professions serve those whose needs are unpredictable, needs which cannot be exhaustively specified in advance. This requires not a contractual but a "fiduciary relationship that the patient or client can really trust."\textsuperscript{11}

Third, the contractual model reduces everything to an explicit "tit for tat" which minimalizes the element of care or concern in response to the needs and expectations which arise unpredictably.

Fourth, besides the minimization of the relationship, there is also an opposing maximization, namely, the over-treatment given in practice of "defensive medicine" which is encouraged by the contractual model founded on self interest.

Fifth, the asymmetry between physician and patient regarding the skills and knowledge relevant to treatment implies that the patient's ability to learn and know the facts is not an adequate check or constraint on the physician. Rather, one must depend in part at least, "upon some internal fiduciary checks which the professional (and his guild) accept."\textsuperscript{12}

\textsuperscript{10}Ibid., p. 72.
\textsuperscript{11}Ibid.
\textsuperscript{12}Ibid., p. 73.
Sixth, the contractual model is based on the assumption that the parties to it freely consent and that they are free to take their business elsewhere. But medical services are often provided in crisis circumstances where the consumer of care has not time or leisure or presence of mind to shop around. An emergency room is no marketplace.

Seventh, if we suppose that moral duties and rights are only created by contracts or agreements, then rights would at least in principle be alienable or waivable. But even if a person is persuaded to sign a contract waiving his rights, we ought nevertheless to consider these rights inalienable.

Eighth, the term covenant is not so restrictively personal a term as parent or friend, but suggests that institutions and organizations as a whole may be accountable; the contractual model in this respect seems excessively individualistic.

Ninth, unlike the isolation of a particular contractual agreement, the covenant understanding makes it possible to place one profession's responsibility for the good of health within the larger set of covenant obligations and priorities within the society at large.

By raising these issues, I freely admit, May has performed a welcome and necessary task. But many problems lurk in the arguments just cited. He rightly criticizes the posture of gratuitous altruism in the AMA and Hippocratic Codes, but it is not so clear just how a covenant model differs from a contract model, and why we ought to reject the more explicit legal model in favor of the rather fuzzy model of covenant. Sometimes fuzziness is a good thing, and an important practical lubricant in getting things done. It is merely a philosophical
conceit to imagine that we ought to try to be perfectly clear about everything all of the time. Yet medicine deals with important, vital interests of persons. Surely we can agree that health would be included on any reasonable list of primary needs or goods. So when such an interest is threatened, the unhealthy person has a vital interest in understanding as clearly as possible what is going on and just what the physician proposes to do. In general then, explicitness is a virtue in the relationship between physician and patient, and explicitness and clarity should be required as well in an adequate model of that relationship.

Both gifts and contractual relationships involve voluntary exchange of things of value and the creation of legitimate expectations that a response will be forthcoming. The distinction between them is not much more than a minor difference of emphasis. It is just not true that gifts are given with "no strings attached," particularly in the context of medicine. Admission to medical school, for example, at a minimum creates the legitimate expectation that the student will perform in accordance with the evidence his prior work reveals about his abilities. It's no free ride.

The existence of a covenantal bond is an historical fact, something which either does or does not exist. How May proposes to emphasize the covenant between physician and public rather than the Hippocratic covenant between the physician and his "brethren" is unclear, and against the grain of contemporary experience. The practice of medicine creates and sustains a collegial in-group. Exchanges of knowledge, favors, and referrals cement the social bonds of the group. As a matter
of fact, why does May think that these "gifts" establish a weaker or less compelling covenant than the gifts exchanged between physicians and the public? The experience of medical school is in itself a "change of being." Medicine today is thought of less in terms of a magical, mysterious initiation into esoteric knowledge than it once was, of course. Our contemporary temptation is to reduce or move towards the craft ethic of aesthetic technique, not to Pythagorean spiritual transcendence. But the holy, priestly undertone is there, emerging sometimes into view, as we have seen in Selzer. Yet overall, the element of gift in the Hippocratic tradition—if we must give it a modern correlate at all—seems to refer more to the contemporary reality of collegial bonding, rather than to the rather diffuse and non-specific gifts which the physician receives from the public at large.

Look at it this way. We all owe certain obligations to other persons. As citizens in a peaceful and well-ordered society we have duties to pay taxes, obey the law, and so forth, on utilitarianism or any other plausible moral theory. In a weak sense of gift, I suppose we might "ground" this obligation in the fact that we are all the beneficiaries of gifts from past and present persons who established and who maintain the structure of law, the marketplace, the material infrastructure of society, and all of the other practices and goods which contribute to our welfare. The question is, how does the situation of the physician differ relevantly from that of the citizen in general? May seems to be saying little more than that the gifts physicians have gotten is so great as to give rise to special or additional social obligations. But this is just a version of noblesse oblige, itself
nothing more than a contractual or quasi-contractual exchange of status for service.

The notion that a covenantal promise gives rise to a change of being or an ontological change in the person who makes it, moreover, is quite obscure apart from a web of theological assumptions. We should, as Pellegrino argues, steer clear of a foundation for medical ethics which is too sectarian, but should rather appeal to reason, striving to provide a theory which appeals to reasonable professionals and philosophers regardless of their religious views, if any. Perhaps, however, we can give this notion a naturalistic reading, more acceptable and less obscure. Consider the analogy of marriage. Oaths or vows are exchanged, and so are gifts of rings. Afterwards, the two are united as a couple till death (or divorce) do them part. A legal, emotional, and cultural change of being takes place here, if anywhere.

Yet the analogy is imprecise, and proves a clue to the most serious deficiency in May's theory. Swearing the Hippocratic Oath is itself a gratuitous act. Only a degree in medicine from a certified medical school is required to practice medicine, and the swearing of any oaths is purely optional. One is married only if one says "I do;" one may be a physician whether or not one swears an oath or makes a promise to actual or future patients or the public as a whole. Because May insists that a covenant is a fact, rooted in actual, historical events, the fact that the practice of medicine requires only an M.D. is fatal to the covenant model. Covenant is irrelevant to those cases where such avowals or promises have not occurred.
This defect is like the major difficulty in Rousseau and other early social contract theories. If it is said that actual historical contracts or promises or oaths must serve as moral foundations, then evidence that such an event has not occurred makes the theory irrelevant. This led social contract theorists such as Locke to insist that the promise given need only be a "tacit" promise. This line of argument is definitely an improved version of contract theory. In fact, Pellegrino's approach to medical ethics is analogous to this. His views will be discussed in a moment. First I want to reply to the specific reasons May offers for preferring covenant to contract, reasons which are less than wholly convincing, even apart from the general theoretical defect in any theory of actual consent.

First of all, the fact that the structure of medical relationships are dynamic, and that unpredictable needs may often spring up, is no argument against a contractual model. Contractual agreements can take account of such events by including or excluding such contingencies with such general phrases as "will provide services indefinitely as necessary," or "will only be obliged to provide services for problems A, B, C, etc." Drawing up such agreements has not seemed to be a noteworthy problem in setting up health maintenance organizations, for example. The contingent character of medical care is no different in kind from the analogous complexity and unpredictability found in commercial contracts.

May mentions several times, as noted above, that a preferable alternative to a contractual relationship is a fiduciary relationship. He does not define this term, but it ordinarily does not imply a sharp
contrast between contract and covenant. In a broad sense a "fiduciary relationship" is an informal relationship between persons characterized by a high level of mutual trust. In its narrower, technical sense such a relationship involves tangible property and can be created by legally binding contracts. The mere fact that two persons are in a relatively formalized legal relationship—again, the example of marriage comes to mind—does not preclude trust and spontaneity and human warmth.¹³

May is very concerned with authority and the differences of freedom, power, and knowledge between physicians and patients. This asymmetry poses some perplexing dilemmas, to be sure. Should we, to any degree, accept paternalism, by modeling the physician role on the parent role so that the physician is justified in rationing information to patients about their treatment and prognosis? Or should we instead try to affirm the contractual model which seems to presuppose an antecedent equality between the persons involved? Some of these issues will be treated further below. But here at least we can point out that apart from cases of emergency care, most adults most of the time ought to be considered capable of making responsible decisions about their own care, and ought to be given the chance to do so. On the utilitarian

¹³"Both technical fiduciary relations and those informal relations . . . exist whenever one man trusts and relies upon another. It exists where there is special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to interests of one reposing the confidence." In a narrower, legal sense, tangible property is involved: "Fiduciary relations subsist between two persons in regard to a business contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith." Black's Law Dictionary, s.v. Fiduciary Relation" (St. Paul, 1968, 4th ed.).
view, personal freedom or autonomy of decision is seen as the most effective way of maximizing welfare, since we generally make the assumption that each person is best able to assess his own welfare and interests. In addition, a major component of individual well-being is the exercise of autonomy itself, which thus acquires an almost deontological force in a rule-utilitarian moral framework.

Without going into this large issue any further at this point, it is clear that May's arguments against free contract actually cut equally deep against his own alternative of covenant. To the degree that the physician and patient are in such a lopsided authority relationship, the responsiveness and reciprocity essential to a covenant will be just as problematic as the freedom to shop around and knowledge of relevant alternatives are, allegedly, in the contractually modeled relationship. May has raised the level of discussion in this area considerably, and much that he has said is acceptable as it stands. But his proposed substitution of a covenant ethic, while legitimately moving away from the gratuitous altruism of the Hippocratic tradition, cannot really remain distinct from a contractual model. When we try to interpret the notion of covenant naturalistically, we have seen that its reliance on actual events or acts of promising and exchange of gifts cannot ground medical morality, since the promises and gifts may not have been given.

I shall now continue the task of examining contract and consent theories of the foundations of medical morality by considering Edmund Pellegrino's "Toward a Reconstruction of Medical Morality: The Primacy
of the Act of Profession and the Fact of Illness." He intends this essay:

To reconstruct a professional morality more suited to contemporary requirements than the Hippocratic ethic. \(^{14}\)

The erosion of traditional medical morality along with the rise of secular pluralism makes it desirable to seek a foundation which is, he maintains, compatible with a fairly wide range of value systems. I certainly accept the need for this reconstruction. How does he propose to carry it out? Pellegrino bases his theory on the threefold relationship between the act of profession, the act of medicine, and the fact of illness. I shall begin with illness.

According to him, the crucial element of illness is:

The perception of an altered state of existence, one in which the patient interprets some symptom or sign as an indication that he/she is no longer 'healthy,' according to the patient's own definition of that fluid and multi-interpretable word. \(^{15}\)

In this fairly subjective sense of illness, there may or may not be a demonstrable lesion or pathology, but there is an experience of disability or deficiency. This injury is radically different from other kinds of personal assaults:

The person who becomes a patient suffers what is nothing less than an ontological assault. In our usual state we see ourselves identified with our bodies, facing the world and acting on it in essential unity. In illness the body is interposed between us and reality—it impedes our choices and actions and is no longer fully responsive. The body stands opposite to the self. Instead of serving us, we must serve it . . . . This ontological assault is aggravated by

\(^{14}\)Pellegrino, p. 48.

\(^{15}\)Ibid., p. 44.
the loss of most of the freedoms we identify as peculiarly human.\textsuperscript{16}

Illness thus imposes an extreme vulnerability, which compromises nearly all of the normal activities of human life. There is a "special dimension of anguish" which is why Pellegrino claims that:

Healing cannot be classified as a commodity, or as a service on a par with going to a mechanic to have one's car fixed, or to a lawyer for repair of one's legal fences, or even to a teacher for repair of one's defects in knowledge.\textsuperscript{17}

I must confess to being somewhat mystified by this reluctance to consider health care a service, albeit a service of a particular, important kind. Whether healing is classified as a commodity or service, of course, depends as much on the meanings of these terms as on the meanings of health and illness. Just what makes a transaction or relationship a service or economic transaction would take a good bit of analysis, which I shall not offer here. I think that the effort to distinguish non-economic from economic transactions falls prey to the same sorts of arguments I gave against May's misleading contrast between a fiduciary and contractual relationship. The mere fact that a service may be purchased seems to me to imply nothing against its being given in a warm, trusting, and friendly atmosphere of genuine mutual concern.

Pellegrino does, however, remind us that illness involves great pain and distress. Health is a necessity for most other worthwhile activities of human life. For the utilitarian, therefore, health

\textsuperscript{16}Ibid.

\textsuperscript{17}Pellegrino, p. 45.
attains a high status among the ends of action. The existential consequences of major illness are indeed severe, forcing a fundamental change in prospects and current living—a deep change, or an "ontological" change, if you will.

Yet the anguish and stress produced by illness are not altogether unique, but are commensurable with other forms of disutility. The pain of a common cold or minor case of flu has a trivial weight in comparison to the pain of going through a long, messy divorce. For all that he has said, medicine may simply be one sort of service, though one which quite often touches vital personal interests. But so do many of the criminal and civil difficulties about which one consults a lawyer, to take merely one example.

Furthermore, as we consider the value structure of medicine we should be clear about distinguishing the negative injunction to minimize illness and its pain from the positive injunction to promote health. While modern medicine emphasizes the treatment of acute distress, a recent trend towards the upgrading of public health and the whole "wellness" or holistic health movements instead are focused on the increase of utility rather than the decrease of disutility. If little pain and suffering was to be found in the world, no doubt we should all be positive utilitarians, committed to the positive tasks of promoting happiness. But the negative utilitarian, who holds that the major rules of right action concern the removal or mitigation of harm and disutility, seems to have the more realistic view. To a degree, this difference in emphasis stems from the fact that those actually within a practice or profession must be utilitarians from a "regional," rather
than a "global" perspective. Mortality comes to us within our vocations. For most physicians, and those others who are confronted with pain and suffering as a daily reality, the negative injunction to minimize these disutilities as much as possible, attains supremacy.

Despite some of his strong utilitarian tendencies, I have considered Pellegrino under the heading of a deontological theory. Promising is central to his account of professional ethics, and promising is not viewed as a practice within a rule-utilitarian perspective but as a primary condition, or even the meaning of entering a profession:

This is what entering a profession means— not simply becoming a member of a defined group with a common education, standards of performance, and a common ethic. These are all secondary conditions of the central act of profession, which is an active, conscious declaration, voluntarily entered into and signifying willingness to assume the obligations necessary to make the declaration authentic.

All health professionals make this act of profession publicly when they accept a degree at graduation, when they take the oath of their profession, and, most important, every time they present themselves to a patient in need who seeks their assistance in healing. They make the act of profession implicitly, but nonetheless undeniably.\(^\text{18}\)

He does not put much weight on the different persons to whom physicians address promises. He thus breaks with the traditional and modern codes which are addressed to three distinct groups: other physicians, the Gods (or the community), and patients.

Instead, his theory focuses on the implicit act of profession. Although physicians profess by accepting a medical degree and by swearing an oath, the "most important" profession occurs every time a physician presents himself to a patient. According to Pellegrino, as

\(^{18}\text{Ibid., p. 46.}\)
just quoted, this profession occurs "implicitly, but nonetheless undeniably." This tacit or implicit promise is the ground of the patient's legitimate expectation:

That the declaration will be true and authentic, that the professional's knowledge and skill are genuine, and that the professional's concern for the patient's interests will be truly exercised.\(^{19}\)

What I shall now argue is that even though these expectations are indeed legitimate, the reason they are is not the one proposed by Pellegrino.

The admission of implicit or tacit acts of profession or promising is a cause for concern. Either a declaration is made through language or some other symbols, or it is not. Just what a doctor "proffesses" when he confronts a patient is the point at issue. If the declaration is implicit or tacit, how can we ever know its content? It seems to me that this talk about an implicit act of profession just opens the floodgates to misunderstanding and confusion. In view of the rather loose criteria for using the term "profession" discussed in Chapter III, it just is not very persuasive to try to reduce "being a professional" to "makes an act of profession." At least the contractual model puts these matters on the table, instead of allowing presuppositions about tacit or implicit acts to rule.

Pellegrino's theory, as mentioned briefly already, parallels John Locke's account of tacit consent which is at the center of his version of contract theory. Yet this theory falls into disarray since Locke seems forced to admit that an act of tacit consent must consist of at

\(^{19}\)Ibid.
least a mental act of (silent) consent for the obligations grounded in the act of consent to be valid. But there is no guarantee that such an act of consent to the laws of the state has occurred, any more than there is any certainty that physicians have entered into a silent contract as Pellegrino maintains.

Pellegrino insists that the act of profession is made implicitly by each person practicing medicine, just as Locke insists that each person has given his tacit consent to the laws of the state. The act of profession is a particular kind of promise which generates special obligations for the person who professes. While Pellegrino denies— with May— that medical care ought to be considered a service open to commercial negotiation and contract, he thus clearly belongs in the camp of philosophical consent theorists. Consent theories in general are deontological, seeing moral obligations as grounded in acts of agreement, promising, contracting or consent, rather than basing all of these acquired obligations on the non-acquired duty to maximize social well-being.

Any such theory which appeals to actual acts of promising or professing is obviously defective, as I have argued in connection with May. But Pellegrino's reformation of consent theory is little better. Surely many patients have legitimate expectations of their physicians, and legitimately expect up-to-date and compassionate care, continuing care without abandonment. But many patients want a second Marcus Welby, an illegitimate expectation. To sort out these expectations we need to look at the whole practice of medicine, its social and institutional structure and its unambiguous symbols. A man appears
before a patient in an ER wearing a white coat and the title "doctor." These symbols surely do imply the legitimate expectation that quality medical care will be forthcoming. The licensing of physicians by the state, as well as the informal rules of practice and the formal, quasi-legal rules of the hospitals and the AMA, universally support this expectation. But on Pellegrino's account, these matters are irrelevant. They are, however, just the sort of rules which constitute the practice of medicine, considered from a utilitarian point of view.

It is a feature of the utilitarian perspective that the moral duty to maximize welfare is logically prior to commitments and duties of role. Acquired obligations derive from practices which themselves are legitimated only as far as they contribute to the maximization of welfare. Some of the rules of medical practice are constitutive, while others are summaries of past practices, or "rules of thumb." Constitutive rules which define a practice possess, as I have shown, very great force, and an appeal to them has priority over a direct appeal to utility in contexts such as medicine where a highly structured role carries acquired obligations to mitigate suffering.

The final element of Pellegrino's theory, the claim that the formal end of medicine is a right and good healing action taken in the interests of a patient, remains to be briefly considered. He states:

The end of medicine, formally considered, is . . . a right and good healing action taken in the interests of a particular patient.20

According to this rather Aristotelian expression, the telos of the medical enterprise is single and unique. Medicine culminates in a healing

20 Ibid., p. 47.
act which affirms the primacy of the individual patient and his ills.

But surely there are many ends, not one, relevant to the practice of medicine. A public health physician who proposes a sanitation or immunization program is better seen as aiming at the improved (or continued) health of a large population, rather than aiming to relieve the specific ills of a single person. Secondly, just why is a healing action on the patient's behalf a "right and good" action? Chronic illnesses often cannot be healed; the goal is often to manage pain. Indeed, a healing action may not always be in the patient's interest, once we recognize that organic functioning is less valuable for human beings, than life of a certain quality. Further, if I need health care costing a million dollars each day to stay alive, and if I cannot pay for it, surely the medical profession, my doctor, and society at large have no duty to provide it. This is because one of the ends structuring the medical enterprise (though of course not an absolute or sole end) is the economic end of cost efficiency.

A whole range of difficult tradeoffs between proximate and long-term ends are ignored by the simple Aristotelian conception of medicine as having a single end. Found in medical research is the trade-off between risk to present patients and benefits for future patients in terms of increased knowledge and improved techniques. Are we in every case to prefer the interests of present patients, so that a slight increase in risk to their health never would justify a potentially enormous benefit to future patients? As far as I can see, on Pellegrino's account this must be so, though it is a dubious claim at best. By not indicating the multiple ends of the practice of medicine, Pellegrino's
I have pointed out the weaknesses in Pellegrino's attempted reconstruction based on illness, profession, and healing, and additionally I indicated the fruitfulness and strength of the alternative, utilitarian account. First, I argued that illness does not involve a special dimension of anguish, if this is taken to mean that illness is never preferable to other forms of disutility. Second, I suggested that an "implicit" act of professing is a rather vague and uncertain foundation for medical ethics, and seems ultimately to avoid merely metaphorical force by standing in for a silent mental act of consent, as in Locke's theory of social contract. In any case, legitimate expectations of patients are better grounded by examining the entire practice of medicine and its constitutive rules. Finally, I suggested that the conception of medicine as having a single end or _telos_, ignores the multiplicity of motives and consequences involved in the medical enterprise.

Both May and Pellegrino stress the importance of moving away from a purely self-generated ethic in the medical profession. But surely one need not be a deontologist to recognize the need for this. The legitimacy of moral rules does not depend upon their source at all, but upon their conformity to the principle of utility. It thus is necessary to insist that the public, or at least the public's point of view, rather than self-interest, become the fundamental perspective behind codes of medical ethics. While not one of the existing codes in every respect meets this criterion, we should not doubt the commitment of most physicians to ameliorating suffering and pain, whatever
actual or implicit oaths they may or may not have sworn. The obligations to maximize welfare and to minimize suffering are borne by everyone, without regard to role. In the special circumstances of medical practice, the skills and knowledge of the physician ought to serve these ends within the context of the legitimate rules of medical practice.

Since I shall not be discussing the profession of medicine much more specifically in this study, I should like to close this chapter with a brief reminder that promises, while they do allow us to create obligations, are themselves open to moral evaluation, and thus are ill suited to serve as moral foundations. A solemn promise to do evil is morally illegitimate, and is rightly overridden by a consideration of the impending consequences, when these are serious and extreme. Both promising and the duties of role are acquired obligations which depend upon, and are grounded in, the utilitarian duty to maximize welfare.
Contrasts between the codes of ethics in medicine and engineering are striking and vast. The history of codal ethics in medicine, examined in the previous chapter, differs from the fairly recent attempts of engineers to formulate codes of ethics. A single, large national organization in the medical profession, the AMA, contrasts with more than 150 professional organizations of engineers. As a result, the traditional Hippocratic Oath and its near relatives retain much force for practitioners, while in engineering, many different codes have vied for acceptance. Only recently has the movement towards a single, uniform code had much success. I shall begin this chapter with a brief, more detailed discussion of these features of the engineering profession. The second and larger share of this chapter will then consider at a more theoretical level the character and role of rules in moral conduct, with special emphasis on rules and types of rules found in engineering codes of ethics. Finally, I shall consider some additional deontological objections to the rational reconstruction of professional ethics here proposed under the banner of rule-utilitarianism.

As Albert Flores remarks:

The desirability of enacting a single all-encompassing code of engineering ethics must be measured against the loss of specificity that individual codes can have for a
'profession' which probably is more accurately understood as a network of allied professions. For example, the work of a consulting engineer is inherently different from that of a design engineer who is employed in a R&D department of a governmental agency or private manufacturing concern.1

The first professional organization of engineers in the United States was the American Society of Civil Engineers, formed in 1852. Despite some 19th century attempts to enact a code of ethics, the ASCE formally adopted a code only in 1914 by a 20-1 majority vote of the membership.

The historically first engineering code, the "Principles of Professional Conduct," was adopted in 1912 by the American Institute of Electrical Engineers (AIEE), while the American Institute of Chemical Engineers was founded in 1908 and adopted yet another code of ethics later in 1912. The first move towards a single, unified code of engineering ethics was made by the American Society of Mechanical Engineers, who adopted the AIEE "Principles," with a few minor modifications, in 1914.

In recent decades, two large "umbrella" engineering groups have attempted to formulate codes of ethics acceptable to the many different state, regional, and national societies, which also are divided by engineering specialty. The first of these umbrella groups is the Engineers Council for Professional Development (ECPD), and the second is the National Society of Professional Engineers (NSPE). In 1947 all

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eight of the member societies of the ECPD accepted a uniform "Canons of Ethics," which itself was based largely on the 1912 AIEE code. By 1955 this umbrella code of ethics had been adopted to some degree or other by 82 different engineering organizations. As William H. Wisely notes:

This is probably the greatest progress to be made ever before or since toward the realization of a single set of ethical standards for all engineers.2

The second group working toward a more standardized, universal code of ethics is NSPE, which is composed of state societies which are charged with actual enforcement of the provisions of the NSPE Code of Ethics. The NSPE is somewhat similar to the ABA and the AMA, in this and other respects. A committee known as the Board of Ethical Review issues rulings on the interpretation of its code, although it lacks the power of enforcement. This board is composed entirely of engineers, and retains much of the "fraternal" tone of similar national organizations of professionals. Recently, some of the provisions of this code dealing with advertising and competition among engineers have been challenged in the U. S. courts by the Department of Justice. In accordance with the decision of the U. S. Supreme Court in the National Society of Professional Engineers vs. the United States, decided April 25, 1978, the NSPE has agreed to amend some of these provisions of the code judged to be anti-competitive and contrary to the public interest. Similar judgments were also rendered in cases involving the ABA and the AMA in the 1970's.

These legal developments certainly seem to be consistent with the aims recommended by a utilitarian moral theory. Practices which structure the relationship of the professions and the public ought to maximize the total social welfare, not the special interests of special groups of professionals. If the public interest is better served through open and competitive practices, then there is no reason to accept the fraternal rules of "etiquette" generated by professional organizations. Legal challenge to the established, self-generated rules of professional societies certainly is a blunt instrument for forcing change. But it is unlikely that moral persuasion is sufficient to accomplish these aims without the mechanism of legal proceedings.

Many engineers share these concerns, and indeed, it is widely recognized that "enforcement" is one of the areas which make codes of engineering ethics substantially weaker than the codes of other professional groups, quite apart from the specific rules of business etiquette struck down by the courts. As William G. Rothstein points out, in medicine and law several formal and informal means of enforcement exist, ranging from disbarment and loss of a physician's license, through removal from access to patients and clients. At least these possibilities exist, however seldom enforcement actually occurs. In engineering, however, the only sanction open to members of a professional society is suspension or expulsion from the society, which is not made public and is likely to have little effect on the offender. "The consequence of such weak enforcement mechanisms," Rothstein concludes, "is the alleged existence of repeated violations of the code in such
areas as competitive bidding among engineering firms, kickbacks, and other violations of the code provisions."³

Another problem which engineers often freely acknowledge within the existing codes of ethics is their preoccupation with the moral dynamics of engineers in private practice. In fact, however, more than ninety percent of engineers work for business enterprises as salaried employees, where many of the code provisions do not obviously apply. This limits as well the individual's sense of his own autonomy and discretion, since the "organizational" goals, and the committment of employees to them, often limit, or at least seem to limit, the scope of personal moral decision.

Finally, we should return to the questions posed at the start of this chapter, concerning the effort to attain a single, uniform code of engineering ethics for the entire profession. As noted, this effort reached something of a high-water mark in 1955, and has receded since then. The Institute of Electrical and Electronic Engineers (IEEE) in 1974 adopted a code completely independent of the uniform ECPD model. In 1962 the ethics committee of ECPD concluded:

Experience has demonstrated that no code or set of rules can be framed which will particularize all the duties of engineers in the broad spectrum of engineering activities and in all relations of professional life. In order to be universally acceptable, the Canons must be confined to fundamental, durable principles.⁴

The ECPD Code, nevertheless, is the most widely accepted ethical document in engineering. It consists of four "Fundamental Principles,"


⁴Quoted by Rothstein, p. 19.
seven "Fundamental Canons," and fifty-six "Suggested Guidelines." I shall now reproduce the Principles and the Canons for use in the following discussion:

The Fundamental Principles--

Engineers uphold and advance the integrity, honor and dignity of the engineering profession by:

I. using their knowledge and skill for the enhancement of human welfare;

II. being honest and impartial, and serving with fidelity the public, their employers and clients;

III. striving to increase the competence and prestige of the engineering profession; and

IV. supporting the professional and technical societies of their disciplines.

The Fundamental Canons--

1. Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

2. Engineers shall perform services only in the areas of their competence.

3. Engineers shall issue public statements only in an objective and truthful manner.

4. Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.

5. Engineers shall build their professional reputation on the merit of their services and shall not compete unfairly with others.

6. Engineers shall associate only with reputable persons or organizations.

7. Engineers shall continue their professional development throughout their careers and shall provide opportunities for the professional development of those engineers under their supervision.
In the initial pages of this chapter I have briefly traced the history of codes of engineering ethics and have indicated three different issues these codes raise: the tension between a universal code and the specific differences among various engineering specialties, the problem of weak enforcement, and the particular difficulties facing salaried engineers who work for large-scale enterprises. I also mentioned the reasons why a purely gratuitous or fraternal ethic ought to be subject to public review and modification, an argument which parallels the attack on "gratuitous altruism" in the medical profession discussed in Chapter VI.

I shall now begin a more theoretical discussion. First, I want to discuss some of the general features of individual moral decision, in order to delineate the particular contributions moral theory can bring to bear on the three issues just mentioned; secondly, I will discuss these issues more fully by sorting out some of the types of moral rules and issues which arise when they conflict. The utilitarian theory I propose will be extremely helpful in this regard, and I will isolate some of the ways in which different moral views seem less acceptable when dealing with these matters. With these results in hand, we will be equipped, thirdly, to deal more effectively with the issues of enforcement and of moral action within an organizational role.

Imagine that you are a welding engineer, assigned to work on the construction of a nuclear power plant. You discover defects in the welding of steel pipes, some of which would carry water to and from the nuclear reactor. If cooling water were lost through broken pipes, the eventual reactor might overheat, melt down, and possibly rupture
the containment vessel surrounding it, releasing large amounts of high-
temperature radioactive material into the atmosphere. You notify your
superiors, but they refuse to correct the defects. What should you do?

A dramatic situation, which was in fact dramatized in the film
"The China Syndrome." But in fact it is precisely the situation faced
by Carl Houston in 1970 while working on a nuclear plant in Virginia.5
Perhaps other engineers who participated in the construction of the
Three Mile Island power plant in Pennsylvania found themselves facing
similar choices. How can we begin to isolate and deal with the morally
relevant features of these, and similar, less dramatic moments
of decision?

One function of moral rules in the situation of individual choice
is to reduce indeterminacy. To a certain extent, just realizing that
a decision is called for, and casting about for the morally relevant
features of one's situation, is already to begin to reduce the indeter-
minacy facing the moral actor. But I want to stress forcefully, at the
very beginning of this analysis, that indeterminacy cannot be totally
eliminated. Or, to put this another way, moral judgment will always
be necessary in applying moral rules, for a complete, algorithmic de-
cision procedure cannot empirically exist in morality, nor indeed, in
any interesting practical context. This is a pervasive feature of hu-
man life, lacking only in the unambiguous clarity of formal deductive
systems. In general, whether one wants to prescribe the best medicine,

5See the case study on Carl Houston in Ethical Problems in
Engineering. Robert J. Baum and Albert Flores eds. (Troy, N.Y.: The
Center for the Study of the Human Dimensions of Technology, 1973),
pp. 262-268.
design the best engine, or buy the best suit, indeterminancy calling for judgment remains.

An individual finds himself in a problematic situation, which may be discussed from within an abstract framework recommended by Dewey, Edel, and others. We may speak of a problem-field, containing certain generalized contents: the relationships of persons, aims, and context. Within this field, the degree of determinateness of moral action depends to a large extent on how structured the problems themselves are within the field. If the field lacks structure, if, for example, people's aims are in constant flux, or other relations shift within the field, the problematic situation itself will approach utter chaos. So one source of indeterminacy in problematic situations is field instability.

A second source of moral indeterminacy is field complexity, that is, a plurality of structures within the field such as a conflict of purposes or aims; or a conflict of roles or rules. In a sense, field instability and field complexity are "objective," for they may not represent a lack of knowledge or clarity on the subject's part, but may simply constitute messy, empirical features of the field which the best intentions and fullest knowledge cannot remove. Thus, for example, rapid changes in medical and engineering technology introduce field instability in the problem field, while the multiplicity of second tier moral rules implies an unavoidable element of field complexity.

Beyond these purely objective contributions to ethical indeterminacy, there lie the more familiar constraints and uncertainties introduced by human fallibility. There are two main subjective sources of the indeterminacy of the ethical problem field, lack of knowledge and lack of good concepts. A large share of indeterminacy stems from lack of knowledge as to the outcomes of different courses of action. For this reason, utilitarians like Lewis distinguish the subjectively right action in a problem situation from the absolutely right action. The absolutely right action is the action which will, in fact, lead to the best outcome, while the subjectively right action is the action which it is reasonable to expect, given the knowledge available at the time, will lead to the best outcome. Since human knowledge of results is limited, the most we can demand of the moral agent is the subjectively right action.\(^7\)

The second subjective source of moral indeterminacy in the problem situation is a shortcoming in the subject's concepts, which then are used to form equally inadequate moral rules. Concepts, like tools, may be too sharp or too dull for particular tasks. Some conceptual tools may not connect well with the materials of the situation at hand. Others may leave important components of the problem field too far out of focus. Much of the contribution of moral theory to reducing indeterminacy lies in the goal of theory to sort through these conceptual tools and to provide a structure of concepts and rules which reduces to some extent this subjective source of indeterminacy.

Before turning to this task, however, it must be noted that the subjective and objective sources of indeterminacy in the individual problem situation are not ultimately distinct. Our lack of good moral rules and our ignorance of results often stem from the objective field structure, which may be so complex and ambiguous as to yield a complex and ambiguous conceptual scheme. Second, these sources of indetermi-
nacy are connected precisely because the individual in a problem sit-
tuation must deal with them both at once, employing something like the method of reflective equilibrium I mentioned in Part I. We must re-
sist at all costs the suggestion that only moral philosophers or "ethicists" are qualified to reduce the indeterminacy stemming from conceptual structures. Nevertheless, I want to focus mainly on the particular indeterminacy resulting from a multiplicity of moral rules, for this worry is at the root of the difficulties raised in the intro-
duction to this chapter concerning the existing codes of engineering ethics.

I have already stressed that rules of objectively right action exist in order to reduce indeterminacy in the problem field con-
fronted by the individual moral agent. Indeed, it seems to me that Quinton is right to insist that "something like" rule-utilitarianism follows from the mere fact that we must use general rules and concepts in discussing the upshots of our actions, and that these generalities apply to all relevantly similar situations. But we must face squarely the fact that moral rules are also sources of indeterminacy. Although it is impossible to isolate conceptual indeterminacy totally from the

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8Quinton, Utilitarian Ethics, pp. 49-51.
problem field, I intend to discuss the potential (and actual) sources of indeterminacy contributed by moral rules under the headings of the quantity of moral rules and the quality of moral rules. Though this method is a bit abstract and artificial, we must, after all, start somewhere.

In speaking of the quantity of moral rules, the question to be discussed is how many rules should there be? The context of this question will be limited to the problem situation of a single engineer, such as the welding engineer in the above example, who is faced with a moral problem. A typical feature of such situations is that time is of the essence. So a proposed rule-framework, even a well-indexed one, consisting of a million rules, say, would be too many, purely from the standpoint of the time required to sort them through. Another defect of a rule structure with many rules is the increased possibility of a conflict between them. For if two or more rules clearly apply to the problem at hand, they may prescribe different courses of conduct, and thereby increase, rather than decrease moral indeterminacy. Such a potential conflict can occur between two or more different rules of professional ethics, increasing in likelihood as the number of different and competing codes of engineering ethics are consulted. Even if the guidance of the codes is relatively clear, a second sort of conflict among different rules may occur when the rule of the code conflicts with applicable laws or other legitimate moral principles.

But at the same time, just one or perhaps two rules are not adequate, since they lack specificity. Some rules constitute practices
and thus make some sorts of moral actions possible in the first place. Moreover, if only one rule such as "Do no harm" or "Maximize welfare" or "Treat others as ends-in-themselves" is proposed as covering the entire field of moral action, the agent is left without guidance and without information on how the rule applies to his problem. What such brief and general rules mean is open to almost limitless interpretation. Jonsen points out, for example, that "Do no harm," considered as the only rule of medical ethics might be interpreted to mean at least five very different things, ranging from an injunction to have certain motives, to the injunction to employ a felicific calculus of risks and benefits. In a rule utilitarian framework, however, rules of a less general kind on the second tier of morality are necessary. The agent may appeal directly to the principle of utility in extreme and unusual cases only. Clearly then, what we want in a framework of moral rules is enough specificity to be of help to the moral agent in his particular situation, without such a high degree of specificity as to create rule-conflicts which increase indeterminacy or which are simply so multiple as to slide the field complexity over the line into sheer chaos.

With these considerations in mind, I think it is possible to say that the quest for a single, short and uniform code of engineering ethics is up against some formidable obstacles. The degree of overlap between the types of moral problems faced by different engineers in

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different specialties and conditions of work makes a single uniform code seem rather unworkable. The general principles and canons of the ECPD code constitute, in my view, something close to the maximum number of workable principles, which different organizations ought to fill out and interpret in different ways, depending upon the circumstances of their practice. While I do not think that this code is acceptable altogether in terms of its quality or content (see below), as far as the number of rules are concerned, it is not far from the optimum. It is also heartening to see at least some engineers resist the passion for reductionism, which is not merely an occupational hazard of philosophers, by admitting these intrinsic limits of the codes, as the ECPD ethics committee did in 1964.10

While I mentioned that different rules may conflict, and that the more rules there are, the more likely this is, the problem may most fruitfully be pursued under the heading of the quality of moral rules. The discussion will also be helpful in getting clear about the enforcability issue. If we put aside all of the other features of the problem field and focus simply on moral rules themselves as they appear to the individual agent, we discover that rather than a single type of rule, a whole family of rules is evident. We may, that is to say, consider the nature and function of moral rules as they appear in the conscious reflections of an individual, rather than as they appear from the point of view of the legislator or reformer who is concerned to create or modify whole social institutions. One key aspect, though not the only aspect, of how moral rules appear in this phenomenological

10See above, note 4.
or descriptive approach is the linguistic form of the rules.\textsuperscript{11}

Following Edel and L. B. Cebik's discussion here, it is possible to distinguish five different sorts of rules. The first type of rule, both agree, is categorical, carrying with it the experienced quality of "mustness." An early engineering code, adopted in 1918 by the American Association of Engineers, contains the following example of a "must" rule:

The engineer owes his client allegiance demanding his most conscientious service. But conscientious service to the client must never entail a surrender of personal convictions of truth and right.\textsuperscript{12}

Cebik goes on to claim that rules with the imperatives "shall" and "will" also have the categorical quality of mustness. I shall indicate below my reasons for being dissatisfied with this claim. Presumably Cebik holds that rules like the following are examples of "must" rules:

- Engineers shall perform services only in the areas of their competence.
- The Engineer will use his knowledge and skill for the advancement of human welfare.\textsuperscript{13}

As Cebik and Edel point out, when rules are expressed in this categorical manner, the acceptance of extenuating circumstances to excuse violations is not required. On the face of it, sufficient evidence that the rule has been violated justifies imposition of an appropriate sanction. Thus enforcement always seems required.


\textsuperscript{12}Reprinted in Baum and Flores, p. 33.

\textsuperscript{13}Canon 2, my emphasis. See Cebik, p. 6.
Rules of the second type are also found through an examination and reflection upon linguistic form, also expressed in the imperative mood, but carrying with them the experienced quality of "alwaysness." They make an implicit reference to the presumed relative stability of the problem field, to some fairly stable goals or context. Being relative to an assumed background of field stability, these rules are reliably used as universal rules. Edel's characterization of this type of rule is particularly relevant to the current study:

Their prevailing quality will be more that of appropriateness to a standardized situation than of must-ness. Perhaps the clearest examples are to be found in relatively separable duties intrinsic to certain enterprises, as in the ethics of professions or occupations. Firemen must be on the alert, workmen in public transportation exercise constant caution, doctors in practice keep up with newly-developed cures, and so on. All such general rules derive their moral quality from the importance of the enterprise and the values they support, or the seriousness of the dangers they avoid.14

According to Cebik, these sorts of rules are expressed in the imperative form of "should." He quotes the (possible) rule:

All members should hold in complete confidence all material placed in their care by duly contracted clients.15

He goes on to add that this statement contains "an implicit reservation which inhibits universal and prima facie application. Investigation of a violation must always, as a matter of course, go beyond the fact of violation. Liability to penalties occurs for violation without sufficient reason."

Cebik's characterization of the enforcibility of an always rule

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14 Edel, p. 46.
15 Cebik, pp. 6-7.
seems to me accurate enough. But I am less happy with his assertion that an imperative containing "shall" or "will" must be classified as a must rule. One reason for my worry is the simple fact that not one rule containing "should" can be discovered in the engineering codes of ethics reprinted in the Baum and Flores volume! But these always rules, as Edel points out, surely should be regarded as central to codes of engineering ethics. Hence, I am quite ready to insist that, whatever their linguistic form, some rules of the ECPD and NSPE codes carry the phenomenological quality of "always," not "must." I shall return to this important point later.

The third type of moral rule, to return to the main analysis, is the break-only-with-regret rule. The quality of such a rule is its possession of some moral weight, a weight which continues to be felt even if it is necessary to override the rule for some other, more compelling reason. The fundamental linguistic feature of such rules is the presence of some indication that there are grounds which legitimate an exception to the rule. Cebik and Edel are in accord on this, and it does indeed seem to correspond to an actual moral phenomenon frequently encountered. In a somewhat different terminology, these rules may be said to isolate prima facie obligations or, again, right-making features of a course of action. Edel's central example of a break-only-with-regret rule is:

Killing as such is wrong, but it may be your duty to kill on a specific occasion.\textsuperscript{16}

Cebik's example, again just a possible rule, is:

\textsuperscript{16}Edel, p. 46; Cebik, p. 7.
Where possible and not counterindicated by other factors, members will hold in complete confidence all materials placed in their care by duly contracted clients.

He goes on to note that this rule contains a very broad excusing clause; a break-only-with-regret rule is thus even a weaker rule from the standpoint of enforcability.

While no actual rules of the engineering codes, to my knowledge, fall into this type explicitly, it may be that we should view all or many summary rules, rules of thumb derived from past experience, as break-only-with-regret rules containing implicit excusing conditions. It is worth noting that one engineer (at least), interested in reforming existing engineering codes, has proposed that rules of this type be explicitly adopted, proposing rules such as:

\[\text{Every member of the American Society of Civil Engineers}\] will act for his client or employer as a faithful agent or trustee, provided the consequences of this work are consistent with the goals of this code.  \(^{17}\)

In other words, the duty to act as a faithful agent or trustee certainly exists, and it may be broken only with regret; but in the circumstances indicated, acting other than as a faithful agent or trustee is morally required.

The fourth type of moral rule is simply a probability statement indicating that for-the-most-part an action falling under the rule will turn out to be a moral duty, or it will indicate a feature of the

\(^{17}\)Mario Salvadori, Panel Discussion. In Baum and Flores, p. 61. Interestingly, Salvadori prefaces his proposed reforms with the disclaimer: "I'm not a moral philosopher, so when I became interested in the Code I took the bull by the horns." The value of these sorts of rules in reducing indeterminacy is clear. They indicate an order or priority within the rule framework, and thus are quite plausible and straightforward tools for reducing the indeterminacy introduced by a multiplicity of rules.
situation which is likely to be a right-making feature. Such a rule is basically informational rather than prescriptive. Unlike a break-only-with-regret rule, a for-the-most-part rule does not carry the quality of moral weight itself. Rules such as "Be punctual" and "Don't get angry" are examples. For the most part, one should be on time and avoid getting angry; but there are occasions when one should not, and the violation of the rule may be perfectly right. At least some of the ECPD guidelines, particularly those dealing with collegial relationships, fall into this category. An example is guideline 7c:

Engineers should encourage engineering employees to attend and present papers at professional and technical society meetings.18

Generally speaking, we can agree that it is worthwhile to do this, but for any number of reasons an engineer might not do it: he may have no employees, the meetings may be too far away, or the employees may not be interested or may not have anything new to say. If these sorts of considerations obtain, not acting on this rule is perfectly legitimate, and is no occasion for regret.

The fifth type of rule, paradoxically enough, is really not a rule of right action at all, though it may have the outward form of one. It may be the case that moral rules of the above four types are not sufficient to cover all moral features of the problem field. Some moral considerations, amply represented in the engineering codes, function to identify desirable character traits or virtues which one is to endeavor or aspire to have and exhibit. Such rules do not refer to what one is to do; rather, they indicate what sort of person one ought

18In Baum and Flores, p. 40.
to be, or ought to aspire to be, or the particular motive or attitude with which one should act. As Cebik points out, these rules fall below the level at which enforcement is realistically possible. "At best, these statements represent ideals requiring personal interpretation." Edel explains that:

Problems of personal affectionate relations seem so intricate that the most one may demand may be an emphasis on some general virtues such as sincerity and insight . . . . Philosophers who lay most stress on complex particular situations are prone to look down on rules as static abstractions, and to underscore the uniquely creative character of man in moral decision.19

Examples abound in the engineering codes of what I shall call "aspirational rules." Here are two:

Engineers shall endeavor to extend public knowledge, and to prevent misunderstandings of the achievements of engineering.

Engineers uphold and advance the integrity, honor and dignity of the engineering profession by being impartial, and serving with fidelity the public, their employers and clients.20

Having distinguished these five types of moral rules, it is now possible to see more clearly the points at issue among the three main types of moral theories. Deontological theories, consequential theories, and theories of virtue each have distinctive approaches to relating and setting priorities among the five types of rules just discussed. Since each theory thus has a different way of conceiving these rules, each theory offers different guidance for using moral rules to reduce ethical indeterminacy in the individual's problem field. I shall now explain the major points of disagreement.

19Cebik, p. 7; Edel, p. 49.

20ECPD Code, Guideline 3a and Canon 2. See above and Baum and Flores, pp. 37-38.
Theories of virtue take aspirational rules to be the central, fundamental moral phenomena. The moral problem is shifted from a consideration of actions and the rules governing actions to the ideals or virtues which one ought to cultivate. Thus for these theories, all of the first four types of rules are subordinated to the last type. The aim of Chapter VIII of the dissertation is to explain and criticize some of these sorts of theories at length, and to demonstrate the superiority of the utilitarian view; hence I shall not discuss this option any further at this moment.

Deontological theories consider must-rules as the fundamental type, all of which, in Kantian terms, are described as categorical or condition-less imperatives. The best sort of man, who has the highest virtue, is the man who acts out of duty, which is to say, acts according to the commands of the absolute "ought" or must of the categorical imperative. Following always-rules, break-with-regret rules or for-the-most-part rules is morally worthwhile only if these lessor, secondary rules are themselves discovered to be categorically binding. The only properly, fully moral rules, thus are rules followed under the compulsion of strict, categorical duty.

Utilitarian theories assimilate must-rules and always-rules, seeing the deontological force of these nearly exceptionless rules as deriving from the overall consequences of adherence to always-rules. In other words, always-rules are seen as defining beneficial practices. Break-with-regret rules and for-the-most-part rules are two distinct sorts of rules which may be overridden by direct appeal to the principle
of utility. They correspond with the "summary rules" which were discussed in Part I, since rules of those types presuppose the fairly stable background conditions or "common moral experience" which are summed up in utilitarian rules which do not constitute practices.

The actual codes of engineering ethics do not settle the issue between these theories, nor do they embody any clear position on this issue. But surely many conflicts between rules, and much of the confusion an individual engineer may experience in trying to reduce moral indeterminacy in the situation of choice, can only be resolved by settling the question of what sorts of rules these are and how disputes between rules may be adjudicated. Consequential, deontological, and aspirational moralities are not just complementary aspects, but rival paradigms, for organizing the whole field of morality. Among them we must choose.

The moral experience we are concerned to illuminate, namely, arriving at a decision in a problematic situation, already tends to support the utilitarian solution over the deontological solution to this issue. For the deontologist seems to presuppose that the experience of choice is capable of a definitive, certain resolution, indicated in the experience of a "must" rule. But I must confess at this point that I, for one, have never had such an experience in sorting out the content and structure of a moral problem field.

By this I mean to report that my experience of alleged "must" rules seems to be a highly ambiguous and problematic affair. There are several reasons for this: (1) It is not possible to divorce experienced moral rules entirely from the background conditions of a concrete moral
problem field. One's prior beliefs, attitudes, and purposes always enter into one's experience of a moral rule in a variety of complicated ways. Any linguistic expression, as Wittgenstein teaches, has its full significance only within the context of a form of life. Whatever this may mean for Wittgenstein, the experience of a moral rule refers at least to a presumed stable background or field of experience and expectation. For example, the rule "Torture is absolutely forbidden in all circumstances," has its significance only given certain features of the world, features such as the empirical possibility for people to feel pain and for people to cause others to feel pain. (2) Secondly, it is notorious that fundamental disagreements exist about exactly which rules are categorically required. One man's unshakable moral intuition is another man's dogmatism. Here, as elsewhere in building theories, we are better advised to seek an overall fit between first principles and experience, than to attempt to deduce moral rules abstractly from a supposedly indubitable set of axioms. (3) Finally, the results of psychology and other social sciences, when taken to heart, ought to undermine confidence in direct appeals to alleged "must" rules as moral absolutes. In fact, the experience of a feeling of absolute obligation is generally separable from the content of the rule to which it attaches. Where it is found depends on childhood training and experience. The connection between mustness and absolute, categorical rules is not necessarily rigid. To examine the causes of such associations is a task for psychology. In general, it seems that we acquire our feelings of obligation by internalizing commands. Often the subject in childhood believes the command to issue from an omnipotent
source. But once the adult subject is made aware of the source of experienced mustness, rational deliberation of the contents of the moral problem field becomes possible without any dogmatic insistence on the absolute foundational priority of "The Ought."^21

Utilitarian theories assimilate must rules and always rules. This means that the imperative quality of rules characterizes any important decision arrived at where the structuring of the contents of the problem field cut off various options and leave open only one as the line of duty or objectively right action. It is quite often the case that a purely singular, particularistic statement of obligation is experienced with the quality of mustness. But of course, as I just indicated, the relative detachability of the must quality of duty or obligation means that individuals must be taught and encouraged to feel it. Saying which rules ought to be the ones we should regard, and teach others to regard, with mustness, is not difficult in light of the previous argument. For we have seen that rules which constitute practices which lead to the greatest balance of happiness over unhappiness are rules which we should regard ourselves, and encourage others to regard, as nearly exception-less duties possessing nearly deontological force.

As a practical matter, it is generally most advantageous to encourage that the strongest feelings of duty be attached to prohibitions

^21 The literature on this theme is vast, including both philosophers and social scientists. For a provocative elaboration of Freud, see Jürgen Habermas, Knowledge and Human Interests, Jeremy J. Shapiro, trans. (Boston: Beacon Press, 1971), Ch. 10. For a Kantian view of the emancipatory character of social knowledge, see Lewis White Beck, The Actor and the Spectator (New Haven: Yale University Press, 1975).
on causing harm, rather than requiring one to create positive good. No
doubt we all could do more to promote the good than we actually do.
More than just a token effort is surely possible for most people, and
it should be encouraged. But we require of a moral framework, as well,
its applicability to the moral situations which people face, taking
account of the various sources of field complexity and field ambiguity
already mentioned. It is a much less problematic matter to identify
harms, and the actions which lead to harms, than to identify overall
benefits and the contribution of the individual's actions to them. In
general, then, we should encourage the strongest sense of obligation
be attached to rules which are derived from the negative utilitarian
injunction to minimize suffering and pain.

When an engineer is in a situation where his actions will have
the foreseeable result of exposing the public to extreme and severe
risk of harm, surely his duty lies in stopping this result from occur-
ing if he can. In the case of a welding engineer who has reason to be-
lieve that a nuclear reactor is unsafe, the duty to protect the public
from the occurrence of a meltdown overrides rules enjoining loyalty and
fidelity to his employer. The consequences of a nuclear meltdown, as
far as we can reasonably foresee, would be almost unimaginably cata-
strophic. Carl Houston's reasonable suspicion that such an event could
occur in the reactor he was building surely justified blowing the whis-
tle on his employer, once it became clear that the employer would not
remedy the defects on its own. This is a relatively straightforward
case to resolve; I will consider a tougher one later on in this
chapter.
An ambiguity which is worth some attention is raised by this case, however much clarity we may have as to the objectively right action required in the end. Is this a case where: (A) Two or more rules of an actual code of engineering ethics clearly apply, so that a direct appeal to the negative utilitarian principle comes into play in arriving at the moral decision? (B) a single rule of some actual code of engineering ethics applies and legitimates the moral decision? If we look at the ECPD code reproduced above on page 114, we see that as the code presently exists, we have a case of conflict between Canon 1 and Canon 4, which enjoin the engineer both to "hold paramount the safety, health and welfare of the public in the performance of their professional duties," and to "act in professional matters for each employer or client as faithful agent or trustee." As the code stands, this appears to be a decision of sort (A). But if Canon 4 were to be revised in the way Salvadori has suggested, so that Canon 4 would become a break-only-with-regret rule with the additional clause "provided the consequences of this work are consistent with the goals of this code," we would be dealing with a decision of sort (B), since the rider implies that Canon 1 is to have priority over Canon 4.

I think it would be preferable for the code to be revised in this way. Such a change makes it clear that public welfare is the general principle behind each of the rules in the code. It should be made clearer in the existing codes that when a conflict occurs between rules on the second or lower-tier, an appeal to the principle of utility, negatively conceived, is morally appropriate.
Some evidence exists that engineers do tend to see the codes in this rule utilitarian fashion, although again there are naturally differences among different engineering specialties in this respect. According to George Rawlins:

In the fulfillment of these obligations there may well be greater emphasis on one or more by each individual professional, depending upon his situation. For instance, an engineer designing a structure or a nuclear power plant has a paramount obligation to the public safety. An engineer designing a machine has an obligation to see that it is safe for its operator and does the best job possible for his employer. What about consumer products? There’s a stopper.22

Wisely seems to recognize the position of a utilitarian principle at the summit of engineering ethics.

Simply stated, the engineering ethic is:

'Service of the public interest with integrity and honor.'

Clothed in inspirational language and set forth in an effective format, this ethic should be brought by every resource available into the heart and mind of every engineer, regardless of his technical specialty or mode of practice.23

Finally, Mason Lockwood has said:

Our Code is founded on the proposition that the first consideration in all its principles must be the public welfare. No feature of any such professional code can contravene the general welfare and survive, however great the professional benefits might appear to be.24

An indirect piece of evidence also suggests the priority of the principle of utility in the ECPD Code. Though they could be made


clearer, both the first Principle and the first Canon are recognizable versions of the principle of utility. Perhaps this means that these rules were meant to function as umbrella rules, defining the general moral outlook which is further specified by the always rules, break-only-with-regret rules and for-the-most-part-rules occurring later in the Code.

But as I suggested above in distinguishing the attitudes of the three main types of moral theory to different kinds of rules, the evidence of the actual codes must be seen as indecisive. For in behalf of the deontological approach, it can be pointed out that on the face of it, imperatives containing "will" and "shall" seem to be categorical, leaving no room for the weighing and estimation of different outcomes essential to the utilitarian conception. This is Cebik's interpretation of these rules, as I pointed out. But in response, we may certainly wonder if this view really captures the intent and actual usage of the codes. It seems almost inevitable that the individual engineer in a situation of moral decision will be forced to compare and balance the different values recommended by the Canons and Principles below the first ones. This picture seems to fit better what it is to arrive at a moral decision, than does the deontological insistence on the primacy of an experience of absolute obligation.

A more plausible challenge to the utilitarian theory can be mounted in this respect by the proponent of a morality of virtue or aspiration. For aspirational rules make up a majority of the rules in the ECPD Code, particularly if we include any rule which states how or with what trait of character an engineer should act, to be an
aspirational rule. I shall discuss in detail some of the main sorts of aspirational theories in the next chapter.

For now I want to return to the comments by Rawlins and Wisley just quoted, in order to set the stage for considering the worry of salaried engineers about the applicability of moral rules to their situation. Rawlins wants to isolate consumer products, and the risks they may pose to the public who buy and use them, from the obligation of engineers to protect public safety. Wisely, on the other hand, makes no such disclaimer. The distinction is particularly acute in the case of a salaried engineer working on product design in a large corporation, who discovers a dangerous defect.

One reason why this case poses special problems stems from the consideration that some element of risk seems inevitable in using most products. A safer car, for example, could no doubt be designed: it might look something like an Army tank. But safety is only one factor here, and the public seems willing to tolerate a level of unsafety for the sake of cars designed to emphasize convenience, economy, and style. So in discussing the risks of consumer products, we have a complex problem field with a number of competing values at issue, each of which appears to have some utilitarian benefits attached. This is a far more difficult case to dispose of than the case of the whistle-blowing nuclear engineer.

Many of the moral issues in these sorts of cases can be made more determinate by improving knowledge of foreseeable results which different designs have. But a very great degree of indeterminacy, calling for judgment, no doubt will remain after even the most thorough
analysis of risks and benefits. In the present context we can at least attempt to make some headway on the conceptual materials which enter into this problem field as it confronts the individual salaried engineer. In particular, we can ask about the moral status of rules of conduct which are pervasive in large corporations, the imperatives or restraints which are peculiarly organizational in character. I shall concentrate on the norm of profit maximization.

I contend that the rule "maximize profits" ought to be regarded as a for-the-most-part rule by the corporation employee, rather than a rule which constitutes a practice and which, therefore, has a high degree of imperative force. The salaried employee certainly should weigh profitability in his decisions, but profitability is not a feature of organizations which is directly enjoined by the principle of utility, as I shall next argue.

There are many reasons why the norm of profit maximization is believed to have nearly imperative force by many people. It is often claimed that pursuit of profit in a competitive economy best promotes aggregate social good. Profits measure the surplus of value to society of goods produced over the value of resources used. If the primary social function of business is to achieve the most efficient allocation and use of resources for satisfying the wants of the public, then profit is a measure of the fulfillment of social responsibility. When competition reduces costs, reduces prices, and attracts resources to satisfy demand, the market gives the public what it wants most efficiently. Created wealth or utility is maximized and distributed to those with greatest dollar demand. Moreover, if engineers and managers...
attempt to pursue any other moral ends in their corporate roles, this vital economic enterprise will be compromised. Any constraint on the end of maximum corporate income may be self-destructive if it is isolated, since the inefficient enterprise will be edged out of the market. If there is widespread defection from the norm of profit maximization, this will lead to higher costs or fewer goods to the public, thus reducing overall satisfaction. In sum, it is argued, salaried employers of corporations should be wary of the attempt to see profit maximization as anything less than a rule having nearly absolute force.25

This defense of a purely competitive market cannot satisfy the utilitarian. There are many reasons for this, which I shall briefly provide:

(1) Profit maximization is perfectly efficient to the public only when conditions are purely competitive, that is, when each corporation is too small to influence prices, when consumers have perfect knowledge of product features and defects and alternative products, and so on. In an economy dominated by large, oligopolistic firms, these conditions do not obtain. In a less than perfectly competitive market, it is possible for a firm to decrease quality or supply while raising prices, thus reducing aggregate utility. As products become technologically complex, adequate knowledge of their features, and their risks to consumers will be lacking. A free market maximizes utility only if full information necessary for rational choice is available.

(2) Another deficiency in the above argument concerns economic externalities. Pollution and disposal of industrial waste are examples of externalities which are often under the control of salaried engineers. An externality is a hidden cost, imposed upon those who derive no benefit from the products made. The social harm to health, not to mention the aesthetic harm, of such externalities does not always figure in the costs corporations must pay. Some restraint on profit maximization in the way of refraining from pollution will actually be more efficient to the public.

(3) It is to be doubted that consumer preferences, as expressed under current conditions, are actually to be identified with true interests and needs. As Galbraith has cogently argued, expressed preferences are suspect from the utilitarian point of view when honoring them does not seem to lead to long-term satisfaction or happiness, particularly when these preferences are created by those very firms who benefit from satisfying them. As the Stoics said, it may be easier to achieve contentment by eliminating superfluous desires than by creating and attempting to satisfy desires.

(4) The strongest argument of all, however, is a consequence of the fact that the dollar demand for products is not a function of the kind and intensity of consumer wants and needs at all, but rather is a function of the existing distribution of wealth and income. A distribution of goods to those who are most willing to pay for them is not the same as distributing goods to those who are able to derive the most benefit from them. Unequal distribution affects not only willingness, but ability to pay. Distributing housing via a free market, for
example, will not maximize the satisfaction of needs or wants if there is not enough decent housing to go around, unless wealth is distributed equally or the effect of inequalities is negligible. But the effect surely is not negligible currently. Those willing to pay the most are not those with the greatest needs.

In short, maximization of profit is incompatible with maximizing utility to the consuming public, and we should see the norm of profit maximization as limited by other considerations.

Theories of organizational behavior and management provide a very misleading picture of the way organizations function. The image central to these accounts is that a corporation is like a machine, which exists solely for the end of efficient production and the maximization of profit. But this picture needs to be challenged. The actions of those in corporate roles is not just the mindless pursuit of an antecedent end. This static model must be replaced by a more dynamic one, where as Goodpaster argues:

> Action is seen as a mutual accommodation between organism (organization) and environment in which the organism monitors both means and ends. And the monitoring process involves feedback between the agent and the results of his pursuit. Sometimes this feedback will dictate alternation of means; sometimes it will dictate alternation of ends.\(^{26}\)

The rules of a game like chess are static, and relatively insulated from moral consideration. But the "corporate game" is different, since the ends of corporate activity are subject to constant stress and

\(^{26}\)Kenneth E. Goodpaster, "Morality and Organizations," reprinted in Ethical Issues in Business, Thomas Donaldson and Patricia H. Werhane, eds. (Englewood Cliffs, NJ: Prentice Hall, 1979) p. 120. Goodpaster also contrasts chess and organizational rules, p. 117. In addition to this important article, see the essays in this anthology by Ladd, Carr, and Blodgett.
evolution from a variety of influences both within and without the organization itself. Over time, corporate premises change. Corporate actors should not abdicate responsibility for the change and development of corporate ends, and valid principles of morality ought to enter into this development.

Of course, many of these very concerns have prompted an increase in regulation of corporations. But the regulations are not always obeyed, and little protection is legally offered to the corporate "whistle-blower." Carl Houston, for example, was unable to find subsequent employment after his report on safety violations was made public. Of the various appeals to the government body charged with protecting whistle-blowers from arbitrary firing, cases numbering over 900 by 1980, exactly two cases were settled in the employee's favor. As Gene James remarks, this is not exactly an encouragement for whistle-blowing!\textsuperscript{27} As he suggests, much greater legal protection needs to be given the whistle-blower in the corporate setting, since corporations, after all, are chartered and permitted to exist only under the restraint that they serve the public interest, at least minimally by obeying the applicable laws and regulations.

So we may at least conclude that there are a variety of moral restraints needed to curb the pursuit of profit at any cost. Corporations, and the agents who work within them, ought not to pursue profit by any means whatsoever. It is the responsibility of the individual employee to disobey grossly immoral corporate commands, as much as it

is the individual citizen's responsibility to disobey grossly immoral commands of the state.

While much more could be said about the individual's moral situation within corporations, this would require a treatment far beyond the scope of the present chapter. Having said this much about the context of organization decision from a utilitarian point of view, the discussion will be left here. I want now to move on to the third worry I promised to discuss, namely, the issue of enforcement of engineering codes of ethics.

Critics of professional codes of ethics are often suspicious of codes which contain aspirational rules. While one should not be persuaded to abandon all aspirational rules, a profession which is serious about self-policing ought to reduce their prominence. For it is apparent that aspirational rules are unenforcable. They require no acts at all, in particular, but just name ideals which are impossible to operationalize successfully in concrete problem situations. There are no limits to allowable excuses, either. A given case of lying, for example, need not be condemned if the only rule relevant to it is one saying that engineers should "endeavor to live honestly." For the lyer can always claim that he is trying to live honestly, notwithstanding his present departure from the ideal.

Engineering societies could surely improve upon enforcement, without going all the way to an overly rigid, bureaucratic system of sanctions. One effective means to improve enforcement is publicity. The American Society of Mechanical Engineers has begun to do this: ASME cannot keep the unethical individual from practicing engineering. Our actions do not have the force of law.
However, we can and will warn the public of the problem. If the engineer is registered, and when the case involves criminal wrongdoing, we can bring the matter before the relevant State Board of Registration and provide them with the facts.28

As the Mechanics have begun to do, publicity of the names and offenses of those who have seriously breached ethical norms is a minimum step to increase the degree of isolation from the profession of flagrant or repeat offenders. A serious commitment to assisting legal authorities in bringing those engineers to justice who have broken the law, is also quite effective, and it should be a task assumed by engineering organizations at all levels.

Codes of professional ethics share many features with legal rules. This is not surprising when we reflect that the boundary between ethics and law is fluid and indistinct. In my view, it would be improper and misleading to try to assimilate codes of professional ethics altogether to either law or morality, for they share features of each. It is sometimes said that the distinguishing feature of a legal rule is the liability of violators to the imposition of a punishment or sanction. But to some degree already professional review boards and other such bodies do impose sanctions on the violators of rules found in their codes. There is much benefit in being more explicit about what sorts of behavior will be punished, and in toughening current enforcement procedures.

Yet we would be ill advised to leave all matters of professional conduct to legal or quasi-legal rules, backed up with sanctions. For

28Fenton Bagley, "Unethical Engineers and ASME," in Baum and Flores, p. 56.
one thing, it is impossible to effectively regulate and enforce human
conduct in all of the many situations calling for moral deliberation
and choice, even if we should wish to do so. Far better to educate
and persuade engineers to act morally than to punish them if they do
not. The law is a blunt tool, in any case. There are costs attached
to trying to reduce all professional norms to legally enforcable cat-
egories, costs of personal freedom and moral character, as well as the
costs of adjudication and bureaucracy. As there are intrinsic limits
on the endeavor to attain a uniform code of ethics binding on all en-
gineers, due to the myriad circumstances of engineering practice, so
too are there limits on the level of enforcement of these codes.

In this chapter I have tried to bring into fruitful dialogue
utilitarian moral theory and actually existing codes of engineering
ethics. While the mixture has at times been lumpy, some headway has
been made in clarifying both conceptual and practical issues. By pro-
posing an abstract model of the problem situation, I have tried to
forge some conceptual tools which will serve to reduce moral indeter-
minacy in some of the quite different areas of concern to engineers.
The goals of this chapter have been only achieved in part, due to the
need to focus primarily on the element of indeterminacy introduced by
the rules and concepts themselves, at the neglect of all other, inter-
connected elements in any modestly realistic situation of moral choice.
But a beginning has been made.
CHAPTER VIII

VIRTUE AND THE MORALITY OF ASPIRATION

In Chapters VI and VII I discussed recent and traditional codes of professional ethics, stressing the fruitfulness of a consequential theory of rules over the views of deontological theories. But it was pointed out that a challenge to any ethic focusing on acts and rules may be mounted by a theory of virtue, which focuses on the agent and what and who he should be. Indeed, many aspirational rules may be found in existing ethical codes. According to such theories of morality, we ought not be concerned primarily or solely with problematic situations, nor with doing and justifying actions in such situations. Instead, the theorist of virtue or aspiration tells us to cultivate various traits, desirable dispositions and attitudes, which are generally called "virtues," an old-fashioned but still useful term.

I will next consider both pure and mixed versions of a morality of virtue in the context of professional ethics. After arguing in favor of a mixed ethic of virtue, which combines elements of an agent ethic with the act ethic defended in Part II, I consider John Ladd's analysis of the virtue of "responsibility." I show that responsibility is a form of the generic trait which is seen as fundamental for a utilitarian: benevolence. I contrast responsibility with other virtues such as generosity to show some of the variety found in this genus, and then conclude with a discussion based on Urmson's attempt
to combine aspects of an ethic of virtue with a utilitarian theory in his "Saints and Heros."

Following this discussion of professional ethics from the standpoint of a morality of virtue, I bring together some of the themes of this study in a concluding review.

Most philosophers in the pre-modern period were not concerned with giving rules or grounds for making difficult moral decisions. Aristotle, for example, considered ethics a branch of politics, both being concerned with the best ordering of human life so that it might be lived well. His main concern in the Ethics is to discuss the best kind of individual life and qualities of character possessed by the man who lives it. The notion of ethics as concerned with problematic situations, was quite foreign to him and to the Stoics, Aquinas, Augustine, Shaftesbury, Hume, and Hegel as well. The question for these eminent men was not deliberation and action in a hard case, but how one ought to live and what traits of character one should cultivate.

Edmund Pincoffs, in an incisive recent essay, has trenchantly criticized the modern, nearly exclusive focus on "Quandary Ethics." He points out that even if we do assume that morality consists mainly of following moral rules, considerations of character will be necessary. For:

Since we are already moral beings with characters formed, the way in which I will abide by an order-rule is not the same as the way in which you will. In fact, I have to decide not just what the rule is which governs the case, but how to go about honoring it. In deciding this, it is inevitable that I will not approach the problem in a vacuum, as any anonymous agent would, but in the light of my conception of what is and is not worthy of me . . . .
Personal considerations, then, in moral decisions, as opposed to legal decisions, need not be merely personal. It is often not irrelevant to the correctness of my moral decision that I take into account what I am: the conception that I have of myself as a moral being.¹

In the context of professional ethics, this certainly seems accurate, as I argued in Chapter IV. The argument there, it will be recalled, stressed that one's vocation or profession surely does affect how morality comes to one and how one responds to it. Finding aspirational rules which name desirable traits of character in existing codes of professional ethics gives this consideration even greater force. Even an ethic focused primarily on the morality of acts, such as rule-utilitarianism, is required to consider agent morality and to go at least some distance towards such considerations if it is to be at all adequate.

Seeing this, we may begin to distinguish among some of the many versions of an ethic of virtue. At one end of the spectrum, existing as at least a possible view, is a pure ethic of virtue. Such a view is radically anti-nomian, radically against any appeal to rules at all. An analysis of such a view is provided by Frankena in his essay "Prichard and the Ethics of Virtue."² Frankena states that a pure ethics of virtue would tell--or perhaps advise or command--us to "Be virtuous, e.g., be courageous, generous, etc., and then do as you please." Such a theory would inform us that certain character traits or dispositions or habits are desirable, and that certain actions are

instrumental in achieving, maintaining, or manifesting of virtue, or are such as the virtuous man would do. The non-virtuous man is urged to be virtuous, and afterwards do his own (virtuous) thing. The theory would tell us this without any categorical or "ought" rules, although it might express its precepts in a deontic terminology, using words like "shall" and "should." But its concepts would be aretaic, not deontic.

Naturally, different pure ethics of virtue would differ in their enumeration of the traits which are virtues. As Frankena says:

Much, in fact everything depends for them on what virtue is, how it is defined or described, for only if we know this can we take "Be Virtuous!" as a guide to judgment and action.3

The Greeks give a different list from Christians, who give yet a different list from Hume, of which traits are desirable. The aspirational rules mentioned in codes of professional ethics exhibit a similar variety. An individual appealing to these codes for moral instruction might naturally ask, in a problematic situation, "What is the good or virtuous thing to do?" rather than "What ought I to do?" and thus use aspirational rules to plan and guide his conduct, viewing them as exhortations, commands, etc., rather than as prescriptions.

To the degree that a code of ethics consists of aspirational rules which name and describe virtues and exhort the individual to cultivate them, to that degree the code is unenforceable. A code of professional ethics which embodied a pure ethic of virtue, correspondingly, would be completely unenforceable, since no acts at all would definitely

3Ibid., p. 155.
be required or forbidden. Of course, an advocate of such a code might be quite willing to concede this, seeing no more merit in the enforceability of a code than in seeing ethics as concerned with appeals to rules.

But when we examine the nature of moral deliberation, it seems inevitable that the structure provided by moral rules is needed. Such reasoning is analogical in form, consisting of a comparison of various situations and an extraction of concepts and principles. For this reason, the fact that generalizations are implicit in any sort of practical reasoning, we must reject the notion that a pure ethic of virtue provides an accurate picture of moral choice. As a matter of fact, no code of professional ethics does embody a pure ethic of virtue. For there are always rules of right action found along with more or less prominent aspirational rules.

So let us now consider mixed theories of virtue. There are two general types of mixed theories of virtue: The first sort of mixed theory combines a pure theory of virtue for one part of morality or life with an act-ethic for another area, while the second sort of mixed theory of virtue admits the role of rules throughout morality, but also allows some degree of independent status for ideals or virtues. I shall now consider two examples of the first sort fairly briskly, and then move on to a longer consideration of Ladd's understanding of virtue, which appears to be a theory of the second sort. All three theories are concerned with morality in the context of medical practice.4

4See Ibid., pp. 152-159, where Frankena distinguishes pure and
Jonsen and Hellegers adopt a mixed theory of virtue in their "Conceptual Foundations for an Ethics of Medical Care." They argue that:

Traditionally, medical ethics has dwelt mostly within . . . theories of virtue and of duty. Both of these theories, while in need of refurbishing and modernization, remain indispensable to medical ethics.\(^5\)

They point out that the most recent AMA code recommends the virtues of propriety, benevolence, patience, and delicacy. The Preamble notes that "The physician who is capable, honest, decent, courteous, vigilant, and an observer of the Golden Rule, and who conducts his affairs in the light of his own conscientious interpretation these principle will find no difficulty in the discharge of his professional obligations." They note that these exhortations to virtue have tended to dwindle in more recent codes over the last century.

Jonsen and Hellegers suggest, however that these aspirational rules make up "the heart of code ethics." They focus their discussion on trust and trustworthiness, for they claim that:

A theory of virtue in medical ethics must explore that disposition most proper to the relationship between physician and patient—trust.\(^6\)

The bond of trust between physician and patient is a safeguard for the vulnerable patient, and it can only be nourished by the trustworthiness of the physician. The confidence to be elicited in patients, they conclude:

mixed theories of virtue.

\(^5\)Albert R. Jonsen and Andre E. Hellegers. "Conceptual Foundations for an Ethics of Medical Care," in Ethics in Medicine, p. 130.

\(^6\)Jonsen and Hellegers, p. 131.
Is fulfilled and confirmed only in the personal relation­ship that Pedro Lain Entraig calls 'the medical friend­ship,' a delicate alliance that must simultaneously en­courage confidence and discourage dependency.7

Surely there is something to be said for this view. But indeed, much, in fact everything, depends on clarifying the virtue of "trustworthiness," a job which Jonsen and Hellegers do not carry out. Thus I am inclined to agree with the criticisms of Beauchamp and Childress:

Jonsen and Hellegers' position needs clarification, for trustworthiness is itself a summary term that depends on several general and specific virtues. A person is worthy of trust only if he or she has certain other virtues, i.e., habits and dispositions to perform certain acts. It is thus inappropriate to talk about a 'virtue of trustworthi­ness,' parallel to the soldier's courage or the judge's fairness. We consider physicians and others worthy of trust if we can rely upon them to act in multiple ways re­quired by moral principles and rules.8

A rather more plausible view can be constructed around a mixed theory of virtue which is focused on the virtues of care and compas­sion in the medical context. This approach has been given extended development in Mayeroff's On Caring, and is discussed more briefly in Hauerwas's "Care."9 The former intends to build a great deal into his account of caring as a virtue; but while it is for him clearly a card­inal virtue, he allows that much that is important cannot be elucidated in this way, although much can:

Caring can give comprehensive meaning and order to one's life.10

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7Ibid., p. 131.
10Mayeroff, p. 2.
While I can give little more than a flavor of Mayeroff's rich discussion here, I am inclined to agree with most of what he says. Indeed, for a utilitarian, the virtue of caring is regarded as a fundamental virtue, along with generosity, compassion, and all other-directed forms of benevolence and empathy. Mayeroff states that:

To care for another person, I must be able to understand him and his world as if I were inside it. I must be able to see, as it were with his eyes what his world is like to him and how he sees himself. Instead of merely looking at him in a detached way from outside, as if he were a specimen, I must be able to be with him in his world, 'going' into his world in order to sense from 'inside' what life is like for him, what he is striving to be, and what he requires to grow.\(^{11}\)

With this whiff of Mayeroff's edifying discussion before us, we may consider some of the perplexities and ambiguities which arise in trying to exemplify the virtue of caring in a medical context.

We normally consider that care is an appropriate response to a person in need. Typically in medicine a limited set of bodily needs are relevant, such as the need for bodily integrity and health and the need to be free of pain. But the notion of "medical care" carries several meanings, which must be sorted out. Sometimes "care" is used to a technological sense, when we say that "She is getting the best (i.e., most technically advanced) care." Sometimes care is more tied to moral attitudes and dispositions, so that it is seen as an expression of an attitude or disposition on the part of the care-giver. There is much slippage between these senses, and they raise some thorny issues.

First of all, it is clear that sometimes a relatively impersonal, detached attitude is morally appropriate for the physician. Many

\(^{11}\)Ibid., p. 30.
patients do not want a friend, but just a competently delivered service. In crisis situations, involving fast action to preserve life, a cool head is similarly essential. In other cases, such as a pelvic exam administered by a male physician, a business-like and impersonal manner is stressed, for good reason, in clinical training. For many women find too personal an attitude in the gynecologist alarming, embarrassing or disrespectful. In many other sorts of situations, however, empathy is both clinically effective and morally appropriate. We may think here of more ordinary consultations between physicians and patients, where a cold and brisk manner is morally inappropriate. But these contexts vary, and a simple condemnation of impersonal attitudes is off the mark. As Hauerwas remarks:

It is not clear that care of the 'whole person' simply means to treat patients with empathy or compassion. Indeed, it may well be that to treat someone impersonally is a way of caring especially if we remember that respect is an important aspect of all care.\textsuperscript{12}

Secondly, while care is indeed an appropriate response to people in need, it often is the case that medical treatment is not the sort of care a patient needs most. In much of medical practice the need for a cure is the primary personal interest of the patient. To care in that context means to apply technical skills with appropriate caring attitudes to attempt to cure the sick person. But in the context of a terminally ill person, care in the sense of applying technical skill and treatment is much less important. The main need of this sort for a dying person is to manage the pain which frequently attends terminal illness. The needs of the dying which demand a

\textsuperscript{12}Hauerwas, p. 147.
response, are not technological in character. They need comfort, assurance, and human contact. While such needs may be met in hospitals, hospitals are mainly oriented to curing as a form of caring. When a cure is no longer possible the need for exotic technological medicine is no longer present. Even if physicians do not shun or abandon incurable patients, there is a real question concerning the appropriateness of the hospital as a place to die. The alternative of hospice care may well be preferable in these sorts of situations.¹³

With a reminder of these complexities, we can nevertheless conclude that a benevolent attitude which expresses the virtue of caring, is very often a desirable trait for medical practitioners. Caring is a generally significant and morally appropriate virtue in medicine, because medicine is one of the ways we can assist others in maintaining health and minimizing pain. But it is also important that a structure of explicit rules be present to make clear to patients and physicians alike those specific acts which are forbidden and required. A morality of acts remains indispensable for an adequate account of medical morality.

It is appropriate to explain more fully in what sense and for what reasons I have claimed that benevolence and its various species, such as caring, generosity, kindness, and so forth, are regarded as cardinal or primary virtues for the utilitarian. I am appealing here to what may be called a correspondence theory of virtue, namely, the view that different virtues correspond with various moral rules and

principles. In a rule utilitarian scheme, the primary virtues are those which correspond to the principle of utility by advocating acts which lead to increasing the well-being of others. This correspondence view of virtues is a mixed theory, therefore, since it combines elements of an act ethic and an agent ethic. It recognizes the fundamental importance of moral rules in general, while allowing for the fact that how moral rules are applied in concrete cases depends upon good character. But the way in which virtues "correspond" to moral rules needs additional clarification. Frankena concisely describes the correspondence view, in an extreme form, in his Ethics:

> For every principle there will be a morally good trait, often going by the same name, consisting of a disposition or tendency to act according to it; and for every morally good trait there will be a principle defining the kind of action in which it is to express itself.¹⁴

The correspondence view of virtue in this form seems to me overly reductionistic. It amounts to assimilating an ethic of virtue to an ethic of acts, and thus does not qualify as a mixed ethic of virtue. Beauchamp and Childress also adopt this extreme correspondence view, referring explicitly to Frankena's remarks just quoted.¹⁵ But as Frankena admits later on in "Prichard and the Ethics of Virtue," the correspondence view is too simple. He mentions his "doubts about the simple position [he] once took," and stresses the need to provide a full-scale analysis of an ethic of virtue as an independent aspect of morality.¹⁶

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¹⁵ Beauchamp and Childress, Principles of Biomedical Ethics, pp. 233–236.

Even in his Ethics, Frankena grants that some virtues cannot be mapped directly onto corresponding moral principles. He says that integrity, conscientiousness and courage are "second-order" virtues covering the whole of the moral life, while other virtues, such as the disposition to think clearly, apply to all areas of the practical life of man. Indeed, it seems to me that if one adopts an extreme correspondence view, all other virtues turn out to be forms of conscientiousness, forms of the disposition to obey moral rules and principles.

But surely a merely conscientious man, lacking in any sort of direct concern for the welfare of others, is not a wholly moral or good man. Benevolence, in short, is a cardinal virtue. Wallace notes that benevolence is not a single virtue, but a genus or family of virtues. Caring, compassion, generosity, and kindness are similar and in many respects, overlapping traits of character.

It is often very difficult to distinguish forms of benevolence from conscientiousness. For we are often morally required by moral rules to help others in certain ways, and we also would be kind or caring in doing so. In many actual cases of rendering aid, a person may be motivated by duty, and thus may exhibit the virtue of conscientiousness; or he may be motivated by a form of benevolence instead. Often, one is doubly motivated. In some sorts of cases, however, meritorious actions which are fully characteristic of benevolence are not required by moral rules, but are supererogatory.

What we require of a theory of virtue is not some sort of formal correspondence with moral principles, but an overall fit or coherence.
between our account of virtue and our moral theory of right action. While for the utilitarian the virtues of benevolence will occupy a central position, other forms of character will also be values. The virtue of conscientiousness, in particular, also will be seen as primary once we see the necessity for moral rules for an individual in the situation of moral choice. In addition, a trait such as courage, which has to do with carrying out practical projects in the face of difficult or threatening obstacles, can readily be seen as having utilitarian benefit, for carrying through in such difficult situations is obviously necessary in many contexts for promoting social and individual welfare.

Nor need a utilitarian deny that virtues of many kinds, which perhaps began being valued as means, now may be valued for their own sakes. Mill points out that:

[Utilitarians] recognize as a psychological fact the possibility of [virtue] being, to the individual, a good in itself, without looking to any end beyond it; and hold that the mind is not in a right state, not in a state conformable to utility, not in the state most conducive to the general happiness, unless it does love virtue in this manner—as a thing desirable in itself, even although, in the individual instance, it should not produce those other desirable consequences which it tends to produce, and on account of which it is held to be virtue . . . . The ingredients of happiness are very various, and each of them is desirable in itself, and not merely when considered as swelling an aggregate.18

As Urmson argues in "Saints and Heros," much of morality lies beyond the sphere of strict duty which we can exact like a debt from others. The utilitarian "hard core" of morality, consists of rules for maintaining social life, or highly prized features of social life.

18Utilitarianism, Ch. 4.
There are saintly and heroic acts of supererogation which no one has a right to demand of anyone else, but which have a high degree of moral worth, and which exhibit, generally, various virtues. Urmson is explicit that many acts lie between those duties which we may exact like a debt and the virtuous extreme of the saint and hero:

Heroic and saintly actions are not the sole, but merely conspicuous, cases of actions that exceed the basic demands of duty: there can be cases of disinterested kindness and generosity, for example, that are clearly more than basic duty requires and yet hardly ask for the high titles, 'saintly' and 'heroic' . . . . It is possible to go just beyond one's duty by being a little more generous, forbearing, helpful, or forgiving than fair dealing demands, or to go a very long way beyond the basic codes of duties with the saint or the hero.19

A utilitarian mixed theory of virtue is precisely the attempt to formulate more clearly some of the terrain lying between basic duties enjoined by moral rules and the actions of a saint or hero. Within this landscape lie forms of benevolence.

One noteworthy effort in this direction, oriented particularly towards professional ethics, has been provided by John Ladd. Ladd's views are both detailed and clear. While he discusses mainly medical ethics, his position is easily applicable to a wide range of different professions. This gives his view a great deal of theoretical interest in the present context. I shall first summarize Ladd's "Legalism and Medical Ethics," and then provide a discussion from the rule-utilitarian perspective defended here.

Ladd begins with some general remarks on "legalism," by which he means:

The ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules.

The main thrust of legalism, however, is the legalization of morality and the moralization of law, which generally imply the assimilation of moral and legal issues, reasoning and problems.

Ladd grants that legalism has definite advantages. The law serves as something of a lingua franca in America for discussing moral and social problems, providing the ground rules for resolving conflicts. Another practical advantage to law is that since it consists of rules of conduct, it defines relationships with strangers as well as with people whom we know. The concept of rights is useful in defining our relationships with large, impersonal institutions and the functionaries within them. This is especially important in the medical context, where we often find ourselves suddenly in a hospital bed: a strange place surrounded with strangers.

The burden of Ladd's argument, however, is to distinguish law and morality sharply, and thus to oppose the main thrust of legalism. He holds that legal functions, concepts, and arguments are part of a different "language game" than ethical functions, concepts, and arguments. Law usually arises out of conflicts, but:

Ethics, on the other hand arises out of and is concerned with much wider and deeper perplexities about life and our relations with each other.

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20 John Ladd, "Legalism and Medical Ethics," The Journal of Medicine and Philosophy 4 (1980), p. 71. An unpublished ms. of this essay providing greater detail, also was consulted.
Ladd's argument is that implications and limitations of legalism are best exhibited by attending to the concept of rights:

[The notion of rights] is a typical legalistic category and one that is very generally used as a bridge concept between law and ethics in discussions of medical ethics.21

He sees three specific, logical properties connected to the notion of rights: The first logical property of rights is their peremptoriness. That is, rights may be demanded peremptorily, and it is usually permitted to use coercion to secure them. Actions are authorized, such as killing another person while exercising the right of self-defense, which would otherwise be forbidden. The second logical feature of rights is that they are held or possessed by one person against another person or persons. They normally are asserted reactively, as a response to another person's negative behavior. They are most at home in an adversary context. Finally, rights reflect the concept of a self-governed person, because one can possess a right only if one can choose not to exercise it. Rights, Ladd says, are conceptually connected with autonomous choice.

The aspect of impersonality is the strength of legalism in some contexts, but is the major limitation on it in the context of medical ethics. Appealing to rights destroys trust, which is essential to the relationship of patient and physician. Most morally problematic situations in medical practice bypass questions about rights because none of the persons involved feel it necessary to appeal to their rights. Standing on rights is a last ditch stand which is taken only after communication has broken down or has never started. With those who

21Ladd, JMP, pp. 72-73; See Ladd, ms., pp. 4-10.
are related more personally than this, the appeal to rights is improper. Ladd concludes, with Aristotle, that "when men are friends they have no need of justice."

In place of the legalistic moral conception with its over-emphasis on rights, Ladd proposes a model of medical ethics based on interpersonal relationships:

When it comes to personal relationships of a more permanent nature, like relationships between friends or between members of the same family or community, the exhaustive and exclusive division of morality into obligatory acts and acts of supererogation that typifies an ethics of rights does not seem appropriate. The morality of taking care of another person with whom one has some kind of personal relationship cannot be reduced either to an obligation corresponding to a right or to a gratuitious favor. If we include among such relationships the doctor-patient relationship ... optimum as contrasted with minimum concern is neither something that the patient is in a position to demand peremptorily as a right nor is it simply an extra kindness on the part of the doctor.\(^\text{22}\)

What are the components of Ladd's ethic of personal relationships, and how does his conception differ from a legalistic ethic based on rights? He holds that the various sorts of moral duty which stem from interpersonal relationships can be brought together under the more general concept of "responsibility." He provides two formulae to explain his notion schematically:

\[
\text{A ought to do X for B because A is related to B (\text{ArB}) and B needs X (\text{BnX}).} \tag{23}
\]

Or, in terms of the concept of responsibility--

\[
\text{A is responsible for B's welfare (i.e., B's health, education, etc.) because ArB.}
\]

\(\text{Ladd, ms., pp. 17-18.}\)

\(\text{Ladd, JMP, p. 76; ms., pp. 19-21.}\)
In this sense of responsibility parents are responsible for their children's welfare, friends are responsible for each other's welfare, and doctors and nurses are responsible for the welfare of their patients.

Ladd thinks that being responsible is a virtue, and that good medical practitioners should endeavor to act with responsibility:

Being responsible is a kind of virtue, and being irresponsible is a kind of vice for it is impossible to be a good parent, a good friend, a good doctor, or a good nurse without taking one's responsibilities for the other seriously, that is, acting responsibly toward him, being responsible.24

Important differences emerge when the two models of ethics are compared. Doing what a right holder demands may be inconsistent with one's responsibility to him, because it may not be good for him. After making this somewhat troubling point, Ladd mentions four additional ways in which the ethic of responsibility is unlike legalism. First, decisions based on moral responsibility involve a wide range of relevant factors—risks and benefits, other relationships, the concerns, needs and abilities of those affected by and affecting the decision. The way of acting requires judgment. When a decision is based on an appeal to rights, on the other hand, normally:

One is not permitted to consider any factors other than those directly relating to the status of the right itself and one's ability to do what it requires.25

Secondly, the ethic of responsibility can give a due and proper status to moral attitudes and dispositions, since it is "impossible to conceive" of responsible persons in the present sense without the virtues of concern, caring, and so forth being present. In an ethic of

24Ladd, JMP, p. 76; ms., p. 21.
25Ladd, JMP, p. 77; ms., p. 23.
rights, Ladd asserts, only the outward performance is needed, and inner dispositions are irrelevant.

Third, the asymmetry between physicians and patients is built into the responsibility model, because it presupposes an antecedent inequality between the two persons involved. One person needs something, and the other person is in a position to provide it. In contrast, the model of rights:

Is based on the assumption of a certain kind of antecedent equality between the two parties, as is supposed to exist between those entering into a contractual agreement; of course, in actuality, this presumed equality is more often than not fictional.\(^2^6\)

Ladd hastens to add, however, that the ethic of relationships implies another kind of equality, the equal worth and dignity of individuals, the helpless and infirm as well as those who are healthy and powerful. Persons in relationship must treat one another with equal consideration, meaning that help should be a response to wants and needs rather than to demands or merit.

Fourth and finally, while rights are conceived as preexistent and predetermined before the decision even begins, responsibility relationships are dynamic. Relationships involve discussion and on-going education. A good doctor, for example, explains to the patient the nature of his disease, options for treatment, risks, benefits, and the probable prognosis. The legalistic model leaves no room for this sort of dynamic mutual accommodation. The aim of the relationship is equality, while in an ethics of rights equality is not a \text{terminus ad quem} but a \text{terminus a quo}.

\(^{26}\)Ladd, JMP, p. 79.
I turn now from exposition to critical analysis of Ladd's view. A good place to begin is with the notion of legalism itself. Surely we can agree that a blind, slavish adherence to rules is at least sometimes inappropriate in human relationships. Whether it is the nit-picking bureaucrat, the New Testament Pharisee, or the almost demonic Nurse Rachett in "One Flew Over the Cuckoo's Nest," we rightly disdain the attitude of narrow rule worship. But the issue here is not whether one should always narrowly adhere to a code of rules, be it Old Testament laws, OSHA regulations, or hospital procedures. Obviously, there are occasions when one would be wrong to do so.

While morality cannot be reduced totally to rule-following, and while Ladd rightly tries to accommodate a theory of virtue in medical ethics, we must be clear that appeals to rules are necessary. But it happens that Ladd does not uphold a pure ethic of virtue. He objects to the attempt to reduce all moral issues and argument to debates about rights, because he is worried about the damage such peremptory appeals do to personal relationships. He does not object to any and all appeals to moral rules:

It would be a great mistake . . . to conclude that these other categories [rights, obligations and acts of supererogation] ought to be jettisoned altogether, simply because what they require sometimes conflicts with what is required by responsibility.27

Ladd is right to go this far, but he has not gone far enough. Some forms of benevolence are possible only given preexisting practices and the rules which constitute them. That is, in many personal relationships, involving mutual benefit, it is only when agreement about the

27Ladd, ms., pp. 22 & 29.
ground rules exists, an agreement which is explicit and acknowledged, that it is possible for forms of benevolence to exist at all. One clear example of this is the virtue of economic generosity, a virtue possessed by the person who gives away more of something having economic value to some other person(s) than is customary or expected, given his relationship to the other person(s). Obviously, this virtue can only exist in the context of an economic system which makes it possible for things to have an economic value, and which, furthermore, contains a practice of ownership such that it makes sense for a person to "give away" some item of value which belongs to him.28

At a more ordinary level, consider friendships in which the friends share responsibility for a common task, for instance, roommates who share the day-to-day household chores. In such cases, dividing up the chores according to an explicit set of rules may be the only way of preserving the friendship and the household. Surely many relationships which allow for virtuous dispositions and acts in contemporary organizational contexts are analogous to this, in opposition to the claim that friends have no need for explicit rules. Whatever the value of spontaneity and affection in such relationships, surely consistency and coordination of effort also have a place.

Some writers, such as John Ladd, oversimplify the genus of benevolence considerably by lumping together several very different sorts of personal relationships. The form of benevolence which parents owe to

their children has some similarities to other forms of the virtue, but hardly implies that professionals (for example) should respond to clients in need of food and shelter in the same way that parents should respond to these needs of their children. Ladd's "Responsibility for" is too broadly inclusive a form of benevolence, which obscures important differences.

Ladd's analysis, while it focuses attention on the value of personal relationships and the virtues which may be displayed within them, neglects the structure of rules which specify strict duties, as well as the function of moral rules in actual cases of moral conflict and deliberation. The disposition to perform kind, caring, and generous actions is both an ingredient in the happiness of the individual who has the virtue, and a means towards promoting the well-being of others. While the virtues of benevolence may once have had purely instrumental value, they now are ingredients of happiness as well as means to it. Since the utilitarian considers actions which benefit others to be worthwhile, along with other "various ingredients" of happiness, in Mill's phrase, forms of the virtue of benevolence will be seen as doubly valuable.

While we require some actions which benefit others, there remain forms of benevolence which go beyond the demands of strict duty. Certainly, a professional may strive to exhibit virtues of benevolence, practicing in a caring and kind way in response to the various needs of clients. Many such relationships begin only as means to further ends, often income on the one side and professional services on the other, but later the relationship itself becomes valued as an end, as
the parties over time come to know and value each other. It would be far too simple to suppose that even these professional encounters, let alone personal relationships in general, have a single, unique etiology and moral structure. We need not suppose that such values are incompatible with highly rule-structured roles. Rule utilitarian accounts of moral action which focus primarily on strict duties leave open as optional extras all actions which go beyond compliance with strict duty.

A professional who practices in a benevolent way, who aspires to exhibit and have forms of benevolence, is no hero for doing so, even though he may have gone beyond the demands of strict duty. To the degree he does so, he is worthy of praise. The line between duty and actions which go beyond duty is imprecise, and is structured by existing practices and expectations. But there nevertheless is a distinction between the acts morally essential to those in professional roles and other actions which are needed to judge that a person has given full or ideal or praiseworthy service. Grading papers is essential to the role of professor, but giving many hours of extra time to committees is not. The role of aspirational rules in codes of professional ethics should be to identify the sorts of actions and ideals which go beyond the strict requirements and prohibitions of a professional role.

Though these values are complex and dynamic, they are clearly compatible with a utilitarian mixed theory of virtue which focuses on the virtues which are possible within a professional role. Naturally, these virtues are not the whole of virtue, any more than professional ethics is the whole of ethics. While it is far from my purpose to endorse a blinkered and hobbled moral perspective, moral philosophers
need to take account of the problems and aspects of morality which come to be experienced by those who are professionals. This essay has aimed to develop the possibilities latent in such a task.

Conclusion

Seeing professional activity from a purely aesthetic, internal point of view reveals some things and conceals others. Some professionals seem to see their activity in this purely internal fashion, and it thus provides a convenient point of departure. By broadening and deepening a complex competency at work, professionals who seek the craft-like satisfactions emerging from within their activities are able to find them there. But these satisfactions are easily mistaken for the only or primary value structure of professional experience. Yet to see one's calling or profession in this way, divorced from all other forms of human welfare, is far too narrow. When carried too far, the aesthetic approach to professional ethics leads naturally to a denial of shared values and individual moral agency. To Florman, the ends and policies of engineering are totally divorced from professional practice, becoming in this view the proper job of employers, consumers, or other regulators of engineering.

In medicine, the Hippocratic tradition's ethics also neglects the dynamic of mutual interaction and transformation of means and ends in professional practice. In the case of medicine, however, the practitioner is thought to have a monopoly on active, moral agency. This poses of "gratuitious altruism" is rightly criticized by writers like William May, who stress that the medical relationship rather should involve reciprocity and an exchange of benefits. The physician is not
the only bestower of gifts, but a recipient as well. Formulating the relationship clearly in contractual or quasi-contractual terms allows patients the protections sorely lacking in models of the relationship based on covenant or tacit consent.

In one sense the status of medicine and engineering are opposed, even though both involve the elaboration of scientific knowledge in technical procedure. The temptation for the engineer is the denial of his own moral agency; the temptation for the physician is the denial of the patient's moral agency. There are social and historical reasons for this difference, among them the success of medicine in achieving a strong, national professional organization. The contrasting fragmentation of engineering societies along with the growth of engineering as a function of the growth of the modern industrial corporation, reinforce the dependence and instrumentality of the professional engineer.

Focusing too much on the internal features of professional experience, paradoxically, makes the opposite extreme point of view seem more plausible. Illich's external critique of the professions denies altogether that these structures are organized to promote the general welfare. But Illich's critique assumes an unpersuasive view of human nature such that omnicompetence becomes a moral ideal overriding gains in efficiency attending increased specialization. According to Illich, professions are defined as purely self-interested groups seeking the power to impute human needs to others. Thus the internal and external views are reinforcing, in as much as both see a radical split between the professions and the general welfare.
Several considerations tell against these extreme views. We need not accept a definition of the professions according to which egoistic motivations are built in. The situation is rather more complicated than that. As a general theory, neither psychological or ethical egoism is satisfactory. The many different professions share a number of typical features, but have no hidden essence at all. Both extreme views neglect the ideal of service, the other-directed dispositions, values and rules which professionals espouse and which many of them hope to serve. Professional activity is both an individual and a social practice, and its moral structure can be fruitfully explored from within the traditions of moral philosophy.

Among traditional moral theories, utilitarianism is best able to mesh with the existing codes and practices of professional ethics. The utilitarian can account for and assist the person already occupying a professional role, a person already situated in a moral problem field. How morality comes to one, and what response one makes to it, crucially depends upon the tasks one is set in the occupational world. Professionals are situated in roles which are structured by rules on the second tier of morality, rules which make some direct contact with their experience. We are misled by a model of ethics which portrays moral decisions occurring in a vocationless vacuum.

Few moral principles possess the initial plausibility of the utilitarian principle which identifies right actions with those types of actions which tend to maximize overall happiness or well-being. When properly understood, Mill's proof of the principle of utility is by no means the web of mistakes critics have alleged. Alternative
moral systems based on acts of consent or on intuitions of absolute
mustness, are less satisfactory in themselves and are less able to
order and respond to the moral features of professional experience.
While most moral theories today consider a non-utilitarian principle
of distributive justice to be required for an overall, satisfactory
moral view, I have quite consciously avoided commitment on this issue.
It may well be that in considering the allocation of professional
roles, or the income policy we should adopt towards well-rewarded pro-
essionals, a separate theory of justice is needed. I have argued,
however, that once these roles are established, the content of profes-
sional ethics is best regarded from a utilitarian point of view. The
initial plausibility of utilitarianism is increased by the power and
fruitfulness of the theory when it is applied to the issues and con-
cerns of professional ethics.

Utilitarianism is applied to a variety of issues in the second
part of this study. A general function of moral rules from the point
of view of an individual in a problematic moral situation is to reduce
indeterminacy. Rules of different sorts possess different sorts of
moral force, and are enforceable to various degrees. Existing codes of
engineering ethics can be made clearer and more effective by attending
to the differences which have been discussed. No radical gulf between
moral and legal rules exist; codes of professional ethics share fea-
tures of both. The issue of the enforcibility of the codes hinges on
how far the codes should embrace effective sanctions akin to those
found in the law. This is a matter for decision, although it is clear
that not all moral rules either can or ought to be made enforceable.
When professional self-policing does little to reduce or punish grossly immoral conduct, such legislative remedies as the protection of whistle-blowers and the greater involvement of laypersons on professional licensing and review committees, are needed to promote the public welfare.

The effort to clarify and strengthen the rules of professional ethics is appropriately viewed as an effort in the direction of legalism. But some recent writers in medical ethics have advocated precisely the opposite approach, by defending the primacy of virtue. When these views are examined, however, they offer little which cannot be accepted by a rule-utilitarian who also recognizes the fundamental importance of the virtues of benevolence. The exercise of virtues, considered as moral ideals, generally presupposes a stable structure of rules and practices which has logical priority. A theory of virtue in the context of medical practice, moreover, fails to safeguard the interest of patients: when we see a physician, we want him to help us with a variety of specific actions; we do not desire a virtuous man or a friend, but a competently delivered service. A mixed theory of virtue which distinguishes praiseworthy and required actions along the lines suggested by Urmson incorporates the most significant aspects of aspirational rules which theories of virtue bring forward.

Professions are important to modern life, while philosophy is simply important. The dialogue attempted here is far from concluded, but perhaps it has been helped along.


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Davis N. James
English, Philosophy & Foreign Languages Department
Longwood College
Farmville, VA 23901