

3

Ethics in the context of society: ethics, society and the law

Objectives

In reading this chapter you will:

- learn to distinguish ethical issues from social issues;
- reflect on the requirements for the smooth running of society;
- consider the nature of social decision-making;
- learn to distinguish the moral and the legal;
- consider the principles that govern just societies;
- briefly consider the nature of political authority.

In thinking ethically we are trying to decide which actions are right and wrong, which actions we should or shouldn't perform. But no man is an island, and the decisions we make about how to act must be made in the context of the laws of the land in which we live. Some of the most important ethical decisions, therefore, are not primarily decisions about how individuals should or shouldn't act, but rather decisions about whether a given action:

- **should or shouldn't be illegal**

Nearly every country in the world has made it illegal to clone a human being for reproductive purposes. Even if an individual believes that human cloning is morally acceptable, therefore, he cannot rationally clone a human being without taking into account the fact it is illegal and that the state will punish him if it discovers what he is doing. (We shall be considering reproductive cloning in Chapter 8.)

- **should or shouldn't be regulated by law**

In Britain and in some US states (e.g. Rhode Island, California and New Jersey) it is legal to clone a human being as far as the blastocyst stage of embryo development for the purposes of research (so-called 'therapeutic' cloning). Anyone wanting to clone a human being for such purposes, however, must jump through the myriad hoops by which such activities are regulated by the law. They will, for example, in the UK, need a licence from the Human Fertilisation and Embryology Authority (HFEA),¹ whose job it is to subject requests for licences to close examination, then they will need to

obey the various regulations governing the activity itself, then finally they will have to destroy the clone by the 14th day. (We shall be considering therapeutic cloning in Chapter 7.)

- **should or shouldn't be funded by the public purse**

In the United States, under President Bush, therapeutic cloning, though legal, could not be carried out by anybody needing public funding. It was forbidden to use money from the public purse for such activities. Only private organisations able to fund their own research were therefore able to take advantage of the legality of therapeutic cloning in the United States.

Such decisions cannot be made by ordinary individuals, they must be made by the nation-states to which individuals belong as citizens or as subjects, or by the parts of those nation-states to which the nation-state has delegated decision-making power.



Box 3.1 Philosophical background: The state of nature

In deciding the principles by which the state should be governed political philosophers talk about the 'state of nature'. This is the condition human beings were in before governments came into existence. The questions asked about the state of nature include: how did humans act? Were there any rules all human beings followed? Why did humans bring states into existence?²

There are different views about what life was like in the state of nature. Some, for example British Philosopher **John Locke** (who was instrumental in writing the US constitution), believed that in the state of nature human beings would be naturally sympathetic and co-operative. He also believed there'd be a natural morality which he called the 'law of nature'. This law gave us, in Locke's opinion, the right to self-defence and to own those goods with which we 'mixed our labour' (for example, if we plough some land, we become the owner of that land). Locke believed the state would come into existence because we would soon see that this would be a better way of making sure the law of nature is imposed fairly and in accordance with majority rule.

Another British philosopher, **Thomas Hobbes**, rejected Locke's benign view of human nature. He believed that in the state of nature we would be constantly at war with each other and that life would be 'solitary, poore, nasty, brutish and short'. Hobbes believed our motivation for introducing the state would be our need to protect ourselves from each other: we would want a single leader, one strong enough to put down the insurrections, disagreements and infighting that would inevitably arise without the rule of such a leader.

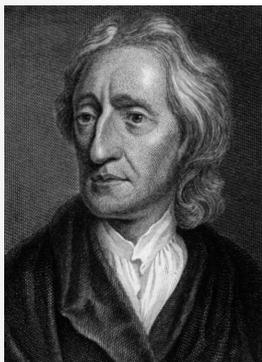


Figure 3.1 John Locke.
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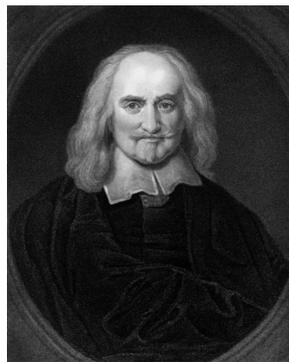


Figure 3.2 Thomas Hobbes.
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In making these decisions the state sometimes has a very difficult task. In every society there are issues, often moral, that cause huge controversy. On such issues most citizens believe themselves to be right, but they disagree with each other on exactly *what* is right. Sometimes these disagreements can become very bitter. Those who believe that experimentation on animals, or abortion, is wrong, for example, have resorted to extreme violence to make their case (as we'll see in Chapter 20).

Most people who believe such things are wrong do not act so unreasonably. But when reasonable people disagree the state cannot adjudicate.³ All it can do is to take account of that controversy in making its decisions.

The decisions made by the state or its agents all involve the allocation of important social resources such as freedom, power and public money. It is the state that decides what its citizens are free to do and not to do, who should have the authority to act on behalf of the state, and how state-sponsored activities should be funded.

Different nation-states have different decision-making processes. Some states are dictatorships. In Zimbabwe, until recently, decisions have largely been made by one man, Robert Mugabe,⁴ and by those he has appointed. The same is true in North Korea.⁵ Other states, including most of those in the west, are democracies in which decisions are made by those who have been elected by the people to represent them. Different democracies go about the process of decision-making in different ways. The decisions they make are sometimes very different.



Box 3.2 Activity: Group activity

There are two parts to this activity, one could be carried out as an individual activity (an essay perhaps), the other as a group discussion. Or both could be done as group discussions (perhaps at different times) or as individual activities.

Everyone in the group should imagine that they are in the state of nature (see Box 3.1) and must therefore look out for themselves and their family group. There is no law and therefore no protection from the law for individuals.

1. In small groups participants should:
 - (i) try to identify the advantages and disadvantages of their situation;
 - (ii) decide whether they would like to continue to live without benefit of the law or whether they'd prefer to agree to live together according to the rule of law.

Each group should appoint a spokesperson to explain the group's view and the reasoning behind it.

2. Participants should discuss the type of government they think would be best. They might choose from (some combination of):
 - (i) anointing a hereditary monarchy;
 - (ii) electing a representative government;
 - (iii) appointing a leader for life;

- (iv) appointing a short-term leader;
- (v) anything else they can think of.⁶

Again each group should appoint a spokesperson to explain the group's view and the reasoning behind it.

In a democracy individuals are able to participate in the process of deciding what their government should or shouldn't do. Some participate only to the extent of voting for a representative, others don't even do this. Some do far more than this. It is clear that the more concerned one is about the decisions that the state makes (and about the laws that one will therefore have to obey) the more one should engage actively in the process of making these decisions.

In order to participate effectively in such decision-making, individuals must be informed about the decisions to be made, must have reflected on the decisions they think *should* be made and, ideally, will have put their reflections to the test by engaging in debate with those whose views differ. Such debates provide an opportunity for those involved to attempt to achieve a 'reflective equilibrium' between their different beliefs.⁷ This can be achieved by listening to others' arguments and taking good arguments into account in their own thinking.

Democracies, ideally, will try to provide forums to help citizens participate in such activities, expect schools to prepare citizens for participation, and perhaps provide incentives for citizens to participate.⁸

As biotechnology advances and makes it possible for us to engage in many activities that have previously been impossible, it is not just individuals who must decide for themselves whether or not the activities made possible are morally permissible, required or forbidden: states must also make such decisions. The decisions made by states will, of course, interact importantly with the decisions of individuals.

Morality and the law of the land

That the law of the land is quite different from what many have called the 'moral law' can be seen in the fact that there are actions that are immoral but not illegal and vice versa.

Lying, for example, is not illegal, though most people would agree that lying is – usually – morally wrong. There are types of lie, of course, that *are* illegal (fraud is usually against the law and fraud is a type of lying), but no state would pass a law forbidding you from falsely telling your friend you think she looks nice.



Box 3.3 Activity: Personal reflection

Why do you think no (sensible) state would pass a law against lying to your friend about her hair?

Reflect on the different ways we punish those who have broken the law and those who have acted immorally. Why should there be such different sorts of punishment?

There are also actions that are illegal but not obviously immoral. In Britain it is illegal to drive on the right, for example, in the United States it is illegal to drive on the left. Morality, however, says nothing about the side of the road on which one should drive. At least it doesn't until a law is passed, then it might be argued that as morality *would* say 'obey the law', then morality also says 'drive on the left when in Britain and on the right when in the United States'. Nevertheless it is easy to see that here there is an arbitrary element to the law: this law is needed to co-ordinate behaviour not to enforce morality.

Other laws, for example 'do not kill', seem to have a clear moral element. If human beings have the right to life then morality would say 'you must not kill', and the law of the land merely gives state expression to the moral requirement. In doing so the state gives itself (or its agents) the power to punish anyone who kills another human being. In deciding whether or not to kill someone, an individual who is not dissuaded by the immorality of doing so, might be dissuaded by the illegality of it. If not, and he is caught, he will be punished.

Another indication that the law of the land is not the same as the moral law is given in the fact that morality can seem to require the making of, or the abolition of, a law. Many people in the United States, for example, believe that the death penalty is immoral. How could a law be immoral if there was no more to morality than the law of the land? In Britain many people believe that morality demands that a law should be passed permitting assisted dying. How could morality demand a law that doesn't exist if there was no more to morality than the law?



Box 3.4 Factual information: Civil disobedience

Civil disobedience involves disobeying the law openly and with every intention of taking due punishment in the hope of changing the law. Mahatma Ghandi famously used civil disobedience in his dealings with the British Empire. He proposed the following rules for those engaged in campaigns of civil disobedience:⁹

1. harbour no anger
2. suffer the anger of the opponent
3. never retaliate to assaults or punishment; but do not submit, out of fear of punishment or assault, to an order given in anger
4. voluntarily submit to arrest or confiscation of your own property
5. if you are a trustee of property, defend that property (non-violently) from confiscation with your life
6. do not curse or swear

7. do not insult the opponent
8. neither salute nor insult the flag of your opponent or your opponent's leaders
9. if anyone attempts to insult or assault your opponent, defend your opponent (non-violently) with your life
10. as a prisoner, behave courteously and obey prison regulations (except any that are contrary to self-respect)
11. as a prisoner, do not ask for special favourable treatment
12. as a prisoner, do not fast in an attempt to gain conveniences whose deprivation does not involve any injury to your self-respect
13. joyfully obey the orders of the leaders of the civil disobedience action
14. do not pick and choose amongst the orders you obey; if you find the action as a whole improper or immoral, sever your connection with the action entirely
15. do not make your participation conditional on your comrades taking care of your dependents while you are engaging in the campaign or are in prison; do not expect them to provide such support
16. do not become a cause of communal quarrels
17. do not take sides in such quarrels, but assist only that party which is demonstrably in the right; in the case of inter-religious conflict, give your life to protect (non-violently) those in danger on either side
18. avoid occasions that may give rise to communal quarrels
19. do not take part in processions that would wound the religious sensibilities of any community.

The making of the law, as an activity, is itself governed by morality. There are three important moral considerations that must be taken into account in every decision the state makes:

- public welfare;
- individual rights;
- justice between individuals.

As we work through this book we will see that it can be hugely difficult to balance these considerations against each other: just as the values that guide the conduct of individuals conflict, so the values that guide the decision-making of states conflict: hard decisions cannot be avoided.



Box 3.5 Activity: Creative writing

It is 2020. Scientists have discovered a procedure that used once will reliably add 10 healthy years to our lives. Used a second time it produces 10 extra years, but not healthy ones. Unfortunately, each use of the procedure is very costly. But the news is out: people everywhere badly want to be able to use the procedure once to gain those extra 10 years.

Write a short piece (about 500 words) describing the thoughts of a person (the President? The Prime Minister?) who will be involved in making the government's final decision.

We will think more about this in Chapter 12.

This completes our discussion of ethics in the context of society, and of the relation between the 'moral law' and the laws of the land.

Summary

In this chapter we have considered:

- that many ethical decisions must be made by governments rather than individuals;
- that individual ethical decision-making always takes place in the context of a society governed by laws that will have to be taken into account;
- that in a democracy individuals are able to contribute to the governmental decision-making process;
- that advances in biotechnology will generate many moral decisions that must be addressed by governments as well as individuals;
- that the laws of the land are distinct from the rules of morality, though ideally they are constrained by these rules;
- that in making moral decisions good governments are constrained by concern for welfare, rights and justice.

Questions to stimulate reflection

What is the difference between an 'ethical issue' and a 'social issue'?

How are the rules that are the laws of the land related to the rules of morality?

What is the 'state of nature' and why is it important to political philosophers?
Are we morally obliged to obey the law? Why?

Is rebellion against the law ever justified? If so, when? What form might this rebellion take if it is to be morally acceptable?

What are the principles that guide decision-making in the context of the state?

Should citizens and subjects of a democracy contribute to the decision-making process? Why?

Additional activities

Put 'Hart–Fuller debate' into a search engine, and find out about this famous debate about the extent to which morality and the law go together.

With a partner, role-play a discussion between John Locke and Thomas Hobbes on what life would be like in the state of nature.

Access this website: <http://www.wgp.cf.ac.uk/CitizensJury.htm> and learn about the Citizens' Jury on Designer Babies conducted by the Wales Gene Park with the University of Glamorgan and Techniquet.

Consider setting up a citizens' jury of your own on a social issue generated by biotechnology.

Access this website: <http://webarchive.nationalarchives.gov.uk/20100824180635/http://yourfreedom.hmg.gov.uk/> and learn about a British government's attempt to discover which laws British citizens believe should be scrapped.

Conduct an opinion poll amongst your family, friends and fellow students on the laws that local people believe should be repealed.

Access this website: <http://www.pbs.org/wnet/religionandethics/episodes/march-20-2009/civil-disobedience/2473/> and decide whether or not you think Tim DeChristopher should go to jail.

Can you find any famous cases of civil disobedience in your country?

Notes

- 1 <http://www.hfea.gov.uk>. The website of the HFEA.
- 2 http://www.open2.net/historyandthearts/philosophy_ethics/state_of_nature_p.html. The state of nature from the BBC with the Open University.
- 3 <http://www.procon.org/>. A US website offering the pros and cons on many controversial issues. The website: <http://www.sac.edu/students/library/nealley/websites/controversial.htm> contains many useful resources on controversial issues.
- 4 <http://www.guardian.co.uk/world/robert-mugabe>. Articles on Robert Mugabe from the UK's *Guardian* newspaper.
- 5 <http://www.bbc.co.uk/news/world-asia-pacific-15256929>. A BBC Country Profile on North Korea.
- 6 http://news.bbc.co.uk/cbbcnews/hi/find_out/guides/world/united_nations/types_of_government/newsid_2151000/2151570.stm. A BBC website on different types of government.
- 7 <http://philosophy.hku.hk/think/value/reflect.php>. An OpenCourseWare website on the type of critical thinking known as striving for 'reflective equilibrium'.
- 8 <http://www.ncl.ac.uk/peals/dialogues/juries.htm>. A website from PEALS (Policy, Ethics and the Life Sciences) describing its 'Citizens' Jury' project.
- 9 Gandhi, M.K. (23 February 1930) 'Some Rules of Satyagraha'. *Young India* (Navajivan) (*The Collected Works of Mahatma Gandhi*, vol. 48, p. 340).

Further reading and useful websites

Boucher, D. and Kelly, P. (eds.) (2009) *Political Thinkers from Socrates to the Present*. Oxford: Oxford University Press.

Haldane, J. (2009) *Practical Philosophy: Ethics, Society and Culture*. St Andrews: St Andrews Studies in Philosophy and Public Affairs, Imprint Academic.

Miller, D. (2003) *Political Philosophy: A Very Short Introduction*. Oxford: Oxford University Press.

<http://www.citizen.org.uk/>. The website of the UK's Institute for Citizenship offering plenty of resources and activities to promote citizenship.

<http://www.changemakers.org.uk/>. A website aimed at encouraging young people to engage in active citizenship.

<http://www.youtube.com/watch?v=nmVtdFLzlvI>. A lecture on the history of political philosophy by John Rawls, a highly influential contemporary political philosopher.