

Chapter Eleven (Newest)

Applied Ethics: Part One

A man is truly ethical only when he obeys the compulsion to help all life which he is able to assist, and shrinks from injuring anything that lives. He does not ask how far this or that life deserves one's sympathy as being valuable, nor, beyond that, whether and to what degree it is capable of feeling. Life as such is sacred to him. Albert Schweitzer

1. Applied Ethics. Thanks to the conventions that guide our discussions, any time we take a moral stand, questions about meaning and justification are just around the corner; and thanks to the complexity of the problems and their interconnections, any attempt to answer those questions can quickly strand us in remote areas of philosophy. The episode of interest in metaethics was an honest attempt to confront natural questions about meaning and justification, but the inherent difficulty of the related problems made every controversy indefinitely expandable. When this finally became clear, moral philosophers moved to avoid the “interminable metaethical squabbles” by putting “theoretical” questions about meaning and justification to one side, and turning directly to what came to be called “applied ethics,” though, given our distinction between ethics and morality, what was going on might better have been called “applied *morality*.” Let us keep this in mind as we discuss what was, and still is, called “applied ethics.”

A question from “applied ethics” is a question about the *morality* of some act or practice. When, if ever, is abortion morally permissible? Does a fetus have a right to

life? Is suicide forbidden by morality? Is the death penalty morally justifiable? Would it be morally wrong to televise an execution? When, if ever, is torture a moral option? What moral duties do we have to the poor, to relatives, to future generations, to the members of other species, to the ecosystem? Applied ethics brings these questions to the center of the stage—sometimes by “applying” moral theories like utilitarianism to generate answers, and sometimes by plunging in without assuming some fundamental moral principle. The unifying hallmark of applied ethics, however, is the attempt to find true answers to relatively specific questions about our moral values, obligations, and rights.

Let us remind ourselves of what it takes to *apply* a normative theory of moral obligation like utilitarianism to some practical question that might come before us. We would first have to formulate some version of the principle of utility, and we would have to assume, since we won't be able to show, that this version of the principle is true or warranted in a way that competing versions are not. Before drawing any conclusions, we would need to establish our “sphere of considerability” and our theory of value. We would also have to assume that some kind of quantitative or qualitative comparison is a possibility and not a philosopher's fantasy, and that our knowledge of the present and the future is more extensive than it could possibly be.

But utilitarians are not the only ones with problems. Rule deontologists and rights theorists are burdened with equally unanswerable questions: how do we determine the relative importance of different rules, or of different rights; how do we resolve clashes among them; and, of course, what role, if any, does a rule about utility play? These difficulties, which we have already explored, should be more than

sufficient to suggest that moral abolitionists might be in a better position than moral realists or moral fictionalists to deal with the issues that concern applied ethicists.

a. *The Interest in Applied Ethics.* In spite of the daunting theoretical difficulties confronting them, moral philosophers remain devoted to applied ethics. This is partly explained by the fact that they now realize how easy it is to become lost in those “interminable squabbles” of metaethics. They seem to think that if they can avoid the bog of metaethics, they can find the high ground of normative ethics, where the questions are relevant, urgent, and, they presume, answerable.

Another explanation for the widespread fascination with applied ethics is commercial. By the early seventies, those who taught and wrote about moral philosophy and their publishers were moving to meet the demands for relevance that were so urgently expressed in the late sixties. Countless anthologies were produced, and quickly revised, as public attention flitted from one hot issue to another. At the end of the millennium, few ethics courses taught in universities neglected applied ethics, and many of the new, huge, and expensive anthologies of articles about moral problems contained little else. Nearly everyone seemed to have come to agree with Harman’s complaint that metaethics isn’t interesting.

A third factor that helps account for the increased attention to questions of applied ethics is the growth of the media and of the technology of information-sharing. We can now observe and weigh in on events as they are happening. Secrets are far more difficult to keep, opinions are far easier to publish, and smart phones are always ready to record the events that trouble and delight us so that everyone can see and then comment on them.

Since none of our problems (disease, hunger, poverty, inequality, intolerance, and governmental incompetence and corruption, to mention a few) can be resolved without some people being placed at risk, dislocated, regulated, taxed, fined, fired, impeached, and in other ways inconvenienced, arguments that appeal to justice and rights are permanent features of our social and intellectual environment. Those who participate in these arguments usually have serious personal interests at stake, and they come to the argument with biases and moral dogmas, their own account of the facts, and a tendency to use every rhetorical trick in the book. Caught by the metaphor ARGUMENT IS WAR, they never question the assumption that they are in the right, and that their mission is to establish this, by any means necessary. While it won't fit on a bumper sticker, another metaphor might be more accurate: ARGUING ABOUT WHAT IS RIGHT AND WRONG IS WALKING INTO A QUAGMIRE WITHOUT AN EXIT STRATEGY.

b. Applying Ethics. In *Ethics and its Applications*, Baruch Brody “applied” one form of utilitarianism and one form of deontology to some of the problems of applied ethics: suicide, euthanasia, abortion, crime and punishment, the justification of law, and the distribution of wealth. His deontologist has intuitions about rights and the need for retribution, and his utilitarian thinks punishment is justified only when it deters. The utilitarian calls an act a crime if the good that results from stopping it outweighs the harm that results from stopping it; while the deontologist says that crimes are acts that harm people by violating their rights. (Brody, 55 and 68) His utilitarian supports plea-bargaining and wants to lower the standard of evidence in order to convict more criminals. His deontologist wants to retain the requirement of proof

beyond a reasonable doubt, and thinks that plea-bargaining is an unfair practice that ignores desert.

Brody acknowledged that his versions of utilitarianism and of deontology are not the only possible ones, and, as I observed in Chapter One, he is aware that moral philosophers have never adequately met the challenges of nihilists, skeptics, subjectivists, and amoralists. He allowed that these challenges are serious, but did not concern himself with them because they are problems for theoretical ethics, and his book “is not about theoretical ethics.” (Brody [2], 6)

It is a weakness, not only of Brody’s book but of applied ethics in general, that so many of these “theoretical” questions are put to one side and so much is taken for granted. We must feel sympathy for the applied ethicist who, wanting to avoid getting mired in traditional metaphysical, epistemological, and linguistic issues, yields to the temptation to treat “theoretical” questions as annoying distractions. But when we ignore these questions, or dismiss them in short paragraphs as Brody does, we run the risk of being seen as constructing theories of sand on a foundation of thin air. Not everyone is willing to assume, “for the sake of argument,” that moral realism is true.

A different approach to applied ethics can be found in Peter Singer’s *Practical Ethics*. While Brody prefers a form of deontological intuitionism, Singer is a preference utilitarian—that is, an act utilitarian with a theory of value according to which the good is not happiness but the satisfaction of preferences. From the (alleged) facts and (undefended) principles of this brand of utilitarianism, Singer easily generates answers to questions about taking life and about the distribution of resources. It follows from his preference utilitarianism that it is wrong to kill most of the animals we now kill, that

abortions are not morally wrong, that sometimes infanticide is justified (Singer [2], 122), and that “those earning average or above average incomes in affluent societies, unless they have an unusually large number of dependents or other special needs, ought to give a tenth of their income to reducing absolute poverty.” (Singer [2], 181) Needless to say, neither the premises nor the conclusions of Singer’s arguments have been accepted by omnivores, those with a strong belief in property rights, or moral error theorists.

The historian who surveys the battlefields of applied ethics will be impressed by the energy expended by competing moralists, but also by the ritualistic character of the arguments and by their renowned inconclusiveness. There are so many views about what is good and right, so many beliefs about duties and rights, so many wishful predictions and ways to interpret events, that it really does appear that we can mount a moral defense for anything we might have chosen to do, and a moral assault on anything or anyone we happen to dislike. It also appears that if we know how the game is played, we can never be shown to be completely wrong. So, what is the point?

2. Abolishing Morality. If we agree with the error theorist that applied ethics is undermined by the falsity of its assumption that there are objectively correct answers to questions about moral duty and intrinsic value, then what are our options? We may fear that if we are unable to resort to moral language we will be disadvantaged in our dealings with others, and so, for practical reasons, we might continue to speak as if we were “believing” moralists. At the end of Chapter Six we considered the pros and cons of continuing as “moral fictionalists” after we have come to accept the error theory. My choice was to avoid the pretence, embrace moral abolitionism, and try to show that

moral abolitionism is not to be feared, but to be considered, and perhaps even embraced.

If we ask moral abolitionists how they would answer the moral questions that attract the attention of “applied ethicists,” they will tell us to forget about answering them—at least as long as they are thought of as *moral* questions. Like Sextus, the Buddha, and Wittgenstein, moral abolitionists say that some questions are a waste of time and only distract us from questions that are important and answerable. Moral abolitionists may have a great deal to say (and learn) about the practical issues that concern moral philosophers, but their greatest contribution to moral philosophy may be their steadfast refusal to address the question of *what we ought to do*.

We have seen that when we abolish moral language and thinking we are not left without resources for dealing with life’s problems, and we know, I hope, that error theorists are not, as such, violent, heartless, or selfish. What allows us to cause great suffering for even small personal gain is not a rejection of morality, or a refusal to speak in moral terms, but a lack of attention, consideration, understanding, and compassion. We are predisposed to neglect and even harm others when we don’t know them and/or don’t like them, when we are uninterested in the way they feel, when their suffering doesn’t bother us.

We are natural information gatherers and problem solvers, and when our problems involve other people, it can be disastrous not to gather what information we can about their circumstances, beliefs, interpretations, explanations, and values. If “Know thy enemy” is good advice, isn’t “Know thy friend” even better advice, and isn’t Socrates’ contribution, “Know thyself,” the best of all, and the one we should start with?

We spend our lives constructing that self and with it our story, a narrative in which we are the main character. Let us admit this and then acknowledge that everyone else does the same thing, and that their versions are always different, and sometimes very different, from ours. Unless we attend to the versions of others, and to their version of our version, we will fail to understand why they do what they do, and whether our aim is to help them or to manipulate them, we will probably fail.

Information about what others think and feel, about their beliefs, principles and values, is a major component of a healthy and evolving understanding of the world. If we can prevent our understanding from being warped by the need to accommodate false and foolish beliefs, two things happen. First, our decider is treated to a relatively accurate view of what is going on, and, as a result, we come up with fewer dumb decisions. Second, as we collect more information about others and free ourselves from mistakes foisted upon us by our tradition, our desires and our language, we will almost certainly become less self-centered, more compassionate, and more cooperative. This is not to say that deeper understanding will always lead to harmony, forgiveness, assistance, encouragement, or even toleration, but without it, none of the five items just mentioned has a much of a chance.

In these final two chapters I will try to show that informed and compassionate moral abolitionists have many reasonable and helpful things to say about the fundamental topic that concern the applied ethicist. I have already indicated that I believe that moral abolitionists are in a better position than moralists to discuss these matters and even to give helpful advice. For one thing, the moral abolitionist, free of the mistaken beliefs of the moralist, can avoid the inevitable and interminable disputes

about which values and principles are the right ones. For another, moral abolitionists will not feel compelled to take a stand on every thought experiment inventive moralists might concoct. Moralists, who assume that moral questions do have right answers, have been willing to invest serious time and energy discussing imaginary scenarios that are improbable and often quite bizarre. There is something to be learned from this, but it may not be what the fans of “moral dilemmas” think.

3. Thought Experiments and Actual Decisions. Here is one “case” that has cost philosophers and philosophy students many hours. We are trapped in a cave because a fat man is stuck in the only exit, his head protruding into the world above. Water in the cave is rising and everyone in the group, with the exception of the fat man, will soon drown. One member of the group has a stick of dynamite and argues that the only way to escape certain death is to blow the fat man out of the hole—thereby killing him. Should we do it? Kai Nielsen, working with act utilitarian assumptions, concludes that “if there really is no other way of unsticking our fat man and if plainly, without blasting him out, everyone in the cave will drown, then innocent or not, he should be blasted out.” (Nielsen [2], 186)

The example is under-described, but no amount of filling would place us, sitting in our comfortable chairs, in a position to decide what someone else *should* do in a case as bizarre as this. Maybe the fat man is on the brink of finding a cure for AIDS. Maybe the others are criminals who were torturing the fat man. Maybe the explosion will set off a chain reaction and destroy the earth. Who knows? If the people in the cave are utilitarians, they will drown before they figure out how blowing up the fat man will affect

the lives of even his immediate family. And if they do blow him up, they will never, till their dying day, be able to establish that they did “the right thing.”

If the moral error theorist is right, there is no correct answer to the question of what we ought to do in that wet cave because there is nothing that we ought to do. This doesn't mean that we don't get into situations where we have to make hard decisions about what to do. But until we get into one of those situations, we cannot say, with any confidence, what we would do. When we find ourselves in a difficult, unprecedented, or even bizarre situation where no option is attractive, what we end up doing will depend on any number of factors, only some of which will be present to our awareness. If we are not actually in the situation, but are just reading about it in a book or hearing about it from a moral philosopher, what we tell ourselves we “should do” or would do is no more than a fantasy about a fiction.

Consider the “Trolley Problem,” a recent thought experiment that has managed to entice many moral philosophers to leave Nielsen's cave. This moral dilemma exercise has attracted enough attention to have been satirized on the Science Fiction Channel's “Stargate Atlantis” in an episode called “The Game.” The annoying but brilliant scientist Rodney McKay is at dinner with Teyla, a level-headed and sensitive alien, Ronon an alien warrior, and John Sheppard, a human and their leader:

Rodney: Let me ask you a question. Say there's a runaway train. It's hurtling out of control toward 10 people standing in the middle of the tracks. The only way to save those people is to flip a switch and send the train down another set of tracks. The only problem is there is a baby sitting in the middle of those tracks

Teyla: Why would anyone leave a baby in harm's way like that?

Rodney: Why? I don't know. That's not the point. It's an ethical dilemma. Katie Brown brought it up over dinner the other night. The question is: is it appropriate to divert the train and kill the one baby to save the ten people.

Ronon: Wouldn't the people just see the train coming and move?

Rodney: No. No they wouldn't see it.

Ronon: Why not?

Rodney: I don't know. Well look. Say they're blind.

Teyla: All of them?

Rodney: Yes, all of them.

Ronon: Why don't you just call out and tell them to move out of the way?

Rodney: Well because they can't hear you.

Sheppard: What, they're deaf too?

Rodney. (Exasperated pause)

Sheppard: How fast is the train going?

Rodney: The speed doesn't matter.

Ronon: Sure it does. If it's going slow enough you can outrun it and shove everyone to the side.

Sheppard: Or better yet, go get the baby.

Rodney: For God's sake I was just trying to . . .

At that point the discussion is interrupted by a call to Rodney from Major Lorne on M4D05A. Applied ethicists should be so lucky.

Perhaps political correctness has led philosophers to retire Nielsen's example of the fat man in the cave, but while Peter Singer does not use the word 'fat', largeness is involved in one hybrid example he offers us. After noting that most of us would agree that we "should" pull a switch that would divert a trolley and cause it to kill one individual

(even a baby) rather than everyone in the group it was bearing down on, he turns to his hybrid.

In another dilemma, the trolley, as before, is about to kill five people. This time, however, you are not standing near the track, but on a footbridge above the track. You cannot divert the trolley. You consider jumping off the bridge, in front of the trolley, thus sacrificing yourself to save the five people in danger, but you realize that you are far too light to stop the trolley.

Standing next to you, however, is a very large stranger. The only way you can prevent the trolley from killing five people is by pushing this large stranger off the footbridge, in front of the trolley. If you push the stranger off, he will be killed, but you will save the other five. When asked what you should do in these circumstances, most people say that it would be wrong to push the stranger.

<http://www.utilitarian.net/singer/by/200703--.htm>

Singer allows that we (i.e., the moralists among us) have these moral intuitions, and he mentions Marc Hauser, a Harvard researcher who devised a “Moral Sense Test” and placed it on the Internet. “After receiving tens of thousands of responses he [Hauser] finds remarkable consistency despite differences in nationality, ethnicity, religion, age, and sex.” It appears that almost everyone is more inclined to favor throwing the switch than the body, even if the final count is the same—one dead and five saved.

Singer says that philosophers have “puzzled about how to justify our intuitions in these situations.” He is, after all, a utilitarian, and a utilitarian will usually say (as Nielsen did) that we ought to save more lives when we can. So, as far as Singer is concerned, we need to explain why, in this kind of a case, our intuitions do not tell us to do what is right. Our reluctance to throw the large man onto the tracks may not be justifiable on utilitarian grounds because it is hard to discount the fact that five is greater than one, but the reluctance can be explained, which is all that Hauser was attempting to do. By using MRI techniques he found that when we think about hands-on violence against a person, our emotional areas flare up (presumably in an uncomfortable way) more than they do when we think about doing similar damage by pulling a switch or pressing a button. We may feel differently about acts of direct and acts of remote harming because we have had eons to develop inhibitions against hands-on violence, whereas the possibility of killing people remotely is quite new. The utilitarian will say that our evolved inhibition against hands-on violence has made us lose sight of the fact that squeamishness here (or in Nielsen’s cave) would be quite immoral.

If Singer is allowed to assume the correctness of his preferred form of utilitarianism he will have little trouble “justifying” the judgment that we ought to save the five. But there are other equally indefensible moral perches from which one could “justify” letting things take their own course. One could claim that it is morally wrong to do anything that you believe will result in another person’s death. Not that this is a particularly plausible claim, but it is more plausible than many of the things moralists have said. Or one could say that the very large stranger had a very large right to life.

Moralists can be expected to show up on with an opinion about even the most bizarre thought experiments, but if the moral error theorist is right, then there is no truth about what we ought to do on Singer's footbridge, and no justification of any intuition about it. There is only what we believe we ought to do (if we are moralists), what, if anything, we believe we *would* do, and what we actually would do if we found ourselves in such an unlikely situation. I doubt the three are often identical.

When moral abolitionists are faced with genuine hard choices, they can make decisions at least as efficiently and intelligently as moralists or moral fictionalists, but because the mechanism we actually use to make these decisions runs best on concrete details about real situations, and uses clues we might pick up subconsciously, our decider is not very useful in dealing with whimsical examples and underdescribed thought experiments.

Every day of our lives we are forced to find a satisfactory ground between too much and too little. How much shall we give, help, learn, demand, or take? Who, or what, shall we include within our sphere of considerability? How much deception, coercion and exploitation are we willing to accept, or to practice? Moral abolitionists are fortunate to be in a position to think about these questions without the need to find the one right answer, indeed, without the debilitating handicap of believing (or having to pretend) that there *is* a right answer. In the next few sections we will see how this helps them when they confront some of the major issues of applied ethics.

4. Crime, Punishment, and the Death Penalty. In Chapter Eight I mentioned our natural instinct to “lash out” at those who injure or displease us. This fierce tendency may have aided us in our evolutionary ascent, and it can be a useful trait if our goal is control. The oldest law codes we know were devoted to setting out punishments for the various offences of the day. Hammurabi decreed that “If a man has broken into a house, they shall put him to death and hang him before the breach which he has made.” (Nice, 27) Hobbes thought that a powerful “Sovereign” might, out of sheer self interest, institute and enforce laws that would forbid and punish the most dangerous forms of uncivil behavior, and our modern idea of a sovereign state with clear and well-enforced criminal laws is also grounded in the hope that the fear of punishment will make us behave.

When moralists debate about punishment, every form of (mis)treatment has defenders. Hammurabi wanted to send a strong message to burglars, and today’s utilitarians often defend severe punishments in order to discourage all sorts of crimes. Kinder utilitarians insist that mercy and rehabilitation have better consequences. Deontologists think that criminals ought to suffer in some way, but they oppose punishing anyone to send a message or to take out our individual or collective anger.

“Punishment is punishment,” F. H. Bradley said,

only where it is deserved. We pay the penalty, because we owe it, and for no other reason; and if punishment is inflicted for any other reason whatever than because it is merited by wrong, it is a gross immorality, a crying injustice, an abominable crime, and not what it pretends to be. (Bradley, 26-27)

The passage in the Bible that calls for “an eye for an eye,” expresses (but does not justify) the relatively advanced thought that we deserve what we have dished out—no more and no less. “And your eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” (*Exodus* 21:24) This deontological call for pitiless proportional punishment is a step beyond the application of the death penalty for petty offences, but it is based on the flawed moralistic idea that it is sometimes morally right, or even morally required, for us to cause suffering to someone “because it is merited by wrong” that he or she has done.

The metaphor at work here is JUSTICE IS BALANCING THE SCALES, and the blindfold that Justice is often depicted as wearing serves to secure her impartiality. When you have done something wrong, the scales of Justice, not our anger or lust for revenge, determine how much you must suffer to pay for your misdeed. Our belief that wrongdoers deserve their due is so deep that we have not been willing to leave the job of distributing desert to human agents. We know that sometimes law and human action fail to balance the scales, so we have imagined a variety of hells, and adopted a vague, unverifiable, but emotionally comforting non-sectarian doctrine of karma, often expressed by the slogan “What goes around comes around.”

There is much to argue about here, but fortunately the moral abolitionist is not saddled with the need calculate how much any person, even the most extreme offender, deserves to suffer. Apart from the stipulated penalties in the laws currently in force, any one of which can be changed, nobody deserves to suffer for any reason whatever. A serious rejection of the idea of “moral desert” will be what finally makes it possible to discuss responses and remedies to crimes and incivilities without having to pander to

moral ire and posturing. We have overdosed on desert, and it would be both healthy and economical to consider going on a diet.

Error theorists are not anarchists. Like almost everyone else, they will want laws to protect themselves and others from human predators, and laws to regulate important transactions, enforce contracts, and sometimes even to regulate where our dogs can relieve themselves. They will not consider themselves *morally* bound to follow the laws of their state, or even the conventions of their society, but there is no reason to think they will conform to those laws and conventions any less than moralists. If a law is particularly cruel or stupid, however, an error theorist may be more reluctant to conform to it than would a moralist who believes in a moral obligation to obey the law. That reluctance can be very healthy, if not for the error theorist, then at least for his or her society.

Error theorists will not believe, and moral abolitionists will not say, either that punishment is morally justifiable or that it is morally wrong, but they can take a stand on their government's, or any government's, policy of punishment. A moral abolitionist who believes that only strict laws and harsh punishment will make society work is likely to throw in with the hard-liners. Another moral abolitionist with different beliefs and preferences may favor kinder and gentler laws. Decisions about what laws and policies to support are difficult enough without bringing in indefensible moral assumptions and inflammatory moral language.

As I observed in Chapter Eight, and as almost everyone would admit, our penal system is broken. Our prisons are clogged with between two and three million people, many of whom are innocent and/or harmless. Arbitrary and ancient moral and religious

beliefs have led to laws that punish victimless crimes and to punitive and inconsistent, drug laws that harm users and their families more than the drugs they prohibit. It is not my intention to present here, in a few pages, a plan to fix our broken and shameful system, but I am tempted to offer a few suggestions based on the thought that in a sense, the real culprit is not the inmate in our prisons, but the ancient and deluded idea that we are ever morally obliged to make anyone suffer.

(a) Reduce the prison population. We know that many of those in our prisons and jails are innocent. Compassion urges us to make an effort to determine who they are and to release them as quickly as possible. If there is even a chance that DNA evidence would show that someone is innocent of any crime, then why would we hesitate to consider it? It is hard to imagine anything more distressing than being falsely incarcerated. Information about how one organization is working to help those in this situation can be found on the web site of “The Innocence Project”

<http://www.innocenceproject.org/>.

Even if we manage to release all or most of the innocent, there is much to be done before we can begin to feel comfortable with our justice system. We could revise our harsh drug laws and our mandatory sentencing laws, and then release harmless recreational drug users, and even some non-violent first-time lawbreakers. Some addicts and alcoholics will need treatment and support, but addiction is a disease rarely chosen freely, and with the right treatment it can often be defeated. The “right treatment,” however, does not include confinement with other addicts in a dirty and dangerous prison. Restoring former addicts and reformed criminals to society would be less expensive in the long run than the system we now have, and it would be a

thousand times more humane. This is not to recommend that we just “throw open” the prison doors. A robust restoration strategy will work only if those we release are prepared for life on the outside, and only if, after they are released, they are given serious and concerned help getting (and keeping) their new lives up and running.

Even if we manage to reduce the prison population, reform some laws, set humane standards for prisons, and change our attitude about desert, we will still want to keep those who are incorrigible and dangerous where they can do no harm. But even in those cases, there is no reason (other than our lust for revenge) to cling to the idea that the role of prison is to deliver the suffering that we believe our criminals deserve.

(b) *Respect the prisoner.* Just as police officers are taught to treat those they confront with respect, and to use force only when necessary, the same rules should apply to guards and workers in our corrections system. Incarceration and even isolation or physical restraint may sometimes be necessary, but the lessons of non-violence and respect for others can only be taught by those who practice them. Filthy living conditions and guards with bad attitudes were not part of the sentence. Let cells be clean and the food simple and healthy. Make it clear to prisoners that violence will result in isolation or a withdrawal of privileges, but that it will not be repaid with violence.

Prisons contain hardened and habitual offenders, but they also contain others who are there because of a single foolish decision, or because of pressures few of the well-behaved understand. An enlightened prison system will employ sensitive and trained social workers and psychologists whose goal is to find out as much as possible about those who have been separated from society. What is their story? What are they

good at? How, and how well, do they understand their own situation? What are their goals and skills? Are they capable of regret, remorse, and reform?

It is true that punishment has been around from the beginning. Even Adam and Eve were punished. But perhaps the time has come to take a more informed and humane approach to those who violate our wishes or our laws, and to construct a less vindictive system that is free of the anger and the errors of moralism. As we grow in our understanding of even our lawbreakers, we will replace our vengeful moralism with compassion, and then we will find ourselves turning from the question “What punishment do they deserve?” to the question “What help do they need?”

(c) *Prison is no place for privacy.* It is hard to understand why jails and prisons do not monitor their inmates 24/7. Bullying, sexual predation, drug use, gang activity, and abuses by prison authorities require privacy and secrecy, so why not act to minimize both, at least in common areas? Violence against inmates by other inmates and by prison guards can be reduced by constant monitoring by a well-paid professional staff using the best available technology.

(d) *Don't be cheap.* Unfortunately, good technology and trained and dedicated workers are more expensive than equipment from the last century and local toughs and drop-outs. This is true, but skimping here may cost more than it saves. Aggressive monitoring might well prevent enough harmful and disruptive behavior to result in a savings. What is more, dedicated professionals (guards, social workers and dieticians) can make a great difference in the quality of an inmate's life, not only in prison, but also after release.

Even if fewer inmates, improved conditions, and extensive monitoring turns out not to be cost-effective, it would almost certainly prevent much violence and abuse, and the bottom line isn't the only line. But there is a bottom line. With a drive to shrink the prison population, prison construction and management will no longer be seen as a profitable investment. This has already started to happen in states with less draconian sentencing laws and more reasonable ways of dealing with drug users and non-violent offenders. We may have been unwise to put so many "correctional facilities" in private hands. When we privatize prisons we create an incentive to build, and then to fill, more of them. When less money is spent on the food, welfare, education, and rehabilitation of the inmates, there will be more profit for the corporations that build and manage prisons and, not coincidentally, lobby for longer prison sentences and tougher laws.

Why are we so unwilling to support a humane "corrections" policy that would improve life for the thousands being abused by our criminal "criminal justice" system? It may be that we may place prison reform so low on our to-do list because we fail to *realize* what life is like for the inmates in our prisons (and for their relatives). It is also likely that many of us still harbor the uncharitable moralistic belief that criminals deserve to suffer for what they have done. A further disturbing possibility is that our prison policy is a manifestation of racism. (See Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.) This blend of greed, ignorance, racism and self-righteous moralism is, as ever, the cause of great and unnecessary suffering

(e) Restorative Justice. Restorative justice is an approach to criminal justice that has recently become a movement in many countries. John Braithwaite, a critic of systems of law that look first or exclusively to punishment, characterizes restorative justice as an attempt to restore the offender, the victim, and society to a state of harmony through understanding, remorse, restitution, and forgiveness. The method is to bring involved parties together to work out some acceptable resolution of the disruption in the social order caused by the crime. According to Braithwaite, elements of restorative justice can be found in ancient Arab, Greek, and Roman civilizations, early Germanic tribes after the fall of Rome, Hinduism, Buddhism, Daoism, and Confucianism. (John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford, 2002)

Braithwaite claims that such a system can be more effective in reducing offences than our current punitive system, more satisfying to the victim, and better for the community. The scant research we have seems to bear this out. According to the web page of the *Centre for Restorative Justice*, affiliated with Simon Fraser University, many studies do indicate that “offenders diverted to restorative justice programs tend to recidivate less, and that all who are involved in the process generally feel more satisfaction when compared to traditional methods.” (<http://www.sfu.ca/cfrj/intro.html> and see <http://www.anu.edu.au/fellows/jbraithwaite/lectures/index.php>)

The human capacity for anger is great, but so is the capacity to forgive. This is shown by the work of “Truth and Reconciliation Projects” in South Africa, Australia, and elsewhere where citizens have set out to come to terms with their past. These reconciliation projects often lead to a kind of forgiveness that goes far beyond what

many of us would have thought possible; and yet critics worry that in some cases forgiveness can come too soon and too easily. Opponents of Desmond Tutu's "Truth and Reconciliation Commission" in South Africa argued that it was unjust to ask the victims of apartheid to abandon their desire to see their former oppressors get what they deserve. Similar arguments, all based on the moralistic idea of desert, are made against the proponents of Restorative Justice everywhere.

It often feels good to cause, or to learn of, the suffering of those we blame for causing us to suffer. But it also feels good when those who have hurt us admit to the deed, realize the harm done, regret their actions, and feel a sincere desire to make restitution. These three R's, realization, regret, and restitution, can lead to a fourth, which is restoration to full membership in a community or group. It is important to restorative projects that the realization is genuine, the regret is sincere, and the restitution is willingly undertaken by the offender. If the restitution is enforced, it will be seen as just another form of punishment, like a fine or a sentence to manual labor.

Successful restoration also depends on the willingness of the injured party or parties to forgive. In Chapter Ten I suggested some exercises for experiencing harmony, one of which was to forgive someone. There I distinguished between an external or formal kind of forgiveness, and an internal forgiveness that comes from the heart. Anyone can say "I forgive you," but it is harder for those who buy into the ideas of good, evil, duty, desert, and the other elements of morality, to forgive deeply because they recognize an entire layer of moral offence that needs additional forgiveness, a layer that is not even acknowledged by the moral abolitionist.

It is sometimes hard to be sure that someone really does regret having done something that has hurt someone, or that he or she has reached the point of saying “Never again!” and meaning it. Skeptics say that we can never be sure that someone is truly remorseful, but let us not underestimate our own acuity in spotting deceit, or our ability to help others realize the harm they have done.

The greatest barrier to a more humane and effective criminal justice system remains the belief that morality requires justice, that justice means people getting what they deserve, and that offenders deserve to suffer enough to make up for the evil that they have done. Restorative justice may be impossible on any large scale until this unkind manifestation of moralism is purged from our justice system, if it ever is.

(f) The death penalty. Death is a very special punishment.

Deontologists are likely to say that some people deserve to die because of what they have done. The slogan “a life for a life” expresses the thought that by taking a life, a killer has created a debt that can only be paid with his own life. Some utilitarians support the death penalty by claiming that we are better off with it because it deters potential murderers, and other utilitarians oppose it by claiming that it has little deterrent effect and that we are better off without it.

What happens when we abandon moralism and look at the death penalty from the point of view of the moral abolitionist? Moral abolitionists who believe in the deterrent power of the death penalty, or who have lost a loved one to violence, may support it, but they won't appeal to our moral duty, or our moral right, to impose it. Other moral abolitionists may oppose it, but again without appealing to the traditional moral considerations. They will not be able to say that “life as such is sacred,” but they

can still have an opinion. Perhaps they find it inconsistent to embrace the murderer's assumption that killing is one way to deal with a problem. Or they may feel that the death penalty is an outdated and unevenly applied remedy that doesn't deter murderers nearly as well as any number of less final responses would. Or they may just hate the thought of anyone being killed on purpose. None of this, by the way, means that a moral abolitionist who opposes the death penalty might not on some occasion find himself or herself supporting it, perhaps in deference to the retributivist wishes of the family of a brutally murdered child.

There will also be moral abolitionists who have not arrived at an opinion about capital punishment. They may never have had the occasion to confront the question in a way that forced them to take a position, one way or the other. They know that there are intelligent and dedicated advocates on both sides of the issue, and that many states and over a hundred countries have abolished capital punishment. But they are aware that there is also strong support for it. The obvious move for such an indecisive moral abolitionist is to learn more about capital punishment. There is no better alternative to ignorant moralizing or thoughtless conformity than investigating the actual laws we have, the ways they are enforced, and the ways this unique form of punishment affects the lives of all those involved. It is hard to see how the death penalty will be able to survive this investigation.

5. Reproductive Issues. The vague title of this section is a sign that our focus has widened since the heyday of the "applied ethics era." Then, the hottest of the hot topics was abortion. While "pro-choice" and "pro-life" are both misleading labels, the two sides were clearly drawn and the arguments assumed familiar patterns. But recent

developments in the technology of reproduction have raised new questions and started new arguments, and with expectable advances in embryonic stem-cell research just around the corner, questions about the use and disposition of embryos have multiplied.

In this section, I will first look at the way a belief in objective morality both intensifies and destabilizes discussions about abortion. Then I will mention some of the harm caused by moralistic meddling when the topic is stem-cell research. Finally I will argue that there are some who allow their moralistic and religious beliefs to overcome both common sense and compassion when the topic is contraception.

(a) Abortion. The questions we ask about abortion are different from other questions about killing because the status of the “victim” is unclear. A newly fertilized ovum may be genetically human, but it is contentious to call it a *person* or a *human being*. Terminology is not neutral. Whether you refer to a fetus as a “person,” “fetal tissue,” an “unborn child,” or a “tiny defenseless baby” will depend on your beliefs and attitudes about abortion, and on what beliefs, attitudes, and policies you hope to influence.

The egg is human before it is fertilized. From conception to the third week it is called a **zygote**. From four to seven weeks an **embryo**, and from eight weeks to birth a **fetus**. A zygote or an embryo is human and alive, but is it a “human being” or a “human life”? If we take words as they are used, neither a zygote nor a fetus is a human being or a person. If we ask how many people were at a party, we do not count pregnant women as two, nor are they charged double admission. The usage of our forefathers seems to have been the same as our own. In his decision in *Roe v. Wade*, Justice Blackmun wrote that the use of ‘person’ in the Constitution seems to have application

only “postnatally.” (Roe v. Wade, 410 U.S. 113 [1973]) When we apply a term like ‘person’ or ‘human being’ to a zygote, an embryo, or even a fetus, it is almost certainly in order to discourage abortions by linking them with murder (which we then understand to be the *wrongful* killing of a human being).

Information is no more neutral than the terminology we use to convey it. Some opponents of abortion want to force women to listen to pro-life lectures before they are allowed to proceed with an abortion, and others would have them view pictures of the mutilated remains of “unborn babies.” Of course there are other things these women could be told and shown that support the choice to abort. Naturally we are strongly impressed by those facts that support our position, and it is also natural to want to share those facts with those on the other side. But when we try to do this we are often disappointed because those who disagree with us have their own favorite facts.

We might have hoped for more agreement because there is more information about reproduction and the social, political, and psychological considerations that bear on abortion decisions and policies than ever before. But not everyone has access to this information and many who do still resist the information because their minds and their emotions are already made up. Way too many people who could not say what “Roe v. Wade” mandated still believe that the Supreme Court ought to overturn it.

The law concerning abortion stands, with some modifications, as established in 1973 by the Supreme Court in Roe v. Wade. This case was brought to the court by Roe (the appellant) against Wade, who represented the state of Texas. The lawyers for Roe argued that the Texas laws forbidding abortion were unconstitutional and that a woman ought to be allowed to have an abortion at will, for any reason, at any time. The lawyers

for the State of Texas argued that abortion is murder and ought always to be forbidden by law.

The court ruled that the Texas law banning abortions is unconstitutional because it is a violation of a woman's right to privacy, and because there is no support in the Constitution for the claim that the fetus is a person. But the Justices did not agree completely with the appellant either, so they decided to place no restrictions on a woman's right to seek an abortion during the first trimester, but ruled that during the second trimester, the state has an interest in regulating abortions to protect the health of the woman, and that in the third trimester, abortions may be regulated out of concern for the fetus.

While legitimate legal questions can be raised about privacy and personhood, those who oppose *Roe v. Wade* so vehemently are worried about more than Constitutional Law. They claim that the real issue is the moral one, so let us put the law aside and ask what there is to say about abortion from the moral point of view. The two extreme positions found in *Roe v. Wade* are reproduced in the moral arena. The "Pro-life" claim that "Abortion is murder" is based on the assumption that the fetus is a person, because only persons can be murdered. The "Pro-choice" claim that women have a right to "abortion on demand," is based on the assumption that the fetus isn't a person, otherwise the right to have an abortion would amount to the right to commit murder. Since the word 'person' is so laden with rhetoric and so utterly open to appropriation, it is impossible to imagine that moralists who support and moralists who oppose abortion will find a definition of 'person' on which they can agree. The truth is, of course, that whatever else a fetus is, it is a developing group living of human cells,

and an abortion decision is a decision to kill it, whatever it is called. It is just that calling it a baby, or seeing or thinking of it as a baby, triggers deep seated impulses to protect. That is why “Baby killer!” attached to abortion providers still lead to assassinations.

Moralists who reason about the morality of abortion can show up on either side of the fence. Some emphasize the rights of the (potential) child, others insist on the rights of the mother. Utilitarians criticize rights theorists (as Bentham did) for simply objectifying their preferences. Only utilitarians, they say, can point to something real on which to base a judgment—How much good can be expected from the available choices? But this question is much easier to ask than to answer, and anyone who takes it seriously runs the risk of getting lost in a web of hypotheticals and bogus calculations about imaginary futures.

Still, utilitarians are likely to end up supporting choice, and their concern to maximize happiness or preference-satisfaction may even lead some to support infanticide. Peter Singer supports it in some cases—much to the horror of many who think differently. Those who oppose it can be asked to justify forcing life on newborns who are destined for a brief life of uncomprehending pain. Moralists who are not forced by circumstances to make one of these actual life and death decisions would be wise to stand aside in mute sympathy for those who are.

Some moral abolitionists will, on some occasions, have to make decisions about whether to have an abortion, to support or oppose someone who is considering having one, or to work for or against abortion restrictions. When this happens, they will be well-positioned to make such a decision. They are unlikely to be under the influence of charged moral language, indefensible moral assumptions, or religious dogmas.

Clearheaded moral abolitionists will not allow themselves to get caught up in rhetorical traps, and they will not be hampered by the belief that there is one and only one right way to deal with situations as complex and personal as unwanted pregnancies.

(b) Stem Cell Research. The opponents of both abortion and stem cell research are troubled by our treatment of human embryos, whether *in utero* (in the uterus) or *in vitro* (in a glass lab vessel). The opponents of *in vitro* fertilization often criticize the whole concept, but they are particularly concerned about what happens to embryos that are not implanted. Some are frozen for possible later implantation, some are discarded, and sometimes others are killed so that their stem cells can be removed (harvested) for research purposes. So if abortion is murder, then research on stem cells from “sacrificed” embryos is in the same moral boat. Both require the deliberate killing of embryos. It appears that everyone who really believes that a human being or a person comes into existence at the moment of conception should be willing to say that killing an embryo is as much a moral offence as killing a second or third trimester fetus, or even a human baby. On this view, doctors and abortion providers would be subject to prosecution for homicide. Finally, morality would demand the rescue of as many of those stranded embryos as possible and would obligate us to strive to get them implanted so that they can continue their journey through life. Few of those who take the “pro-life” side are that consistent.

Utilitarians have only to look at the probable medical benefits of stem cell research to find plenty of reasons to support it. It promises to help in treating Alzheimer's disease, Parkinson's disease, cancer, and spinal cord injury, for starters. But one does not have to be a utilitarian or a rights theorist, or any kind of moralist, to

be in favor of expanded stem cell research. Given the great promise of that work, anyone who cares for the health and happiness of his or her fellow humans, and is not under the influence of the idea that the embryo is a person, is likely to support it. Those who find stem cell research morally objectionable can forgo medical treatments based on it by making their reluctance a part of their living wills. What the moral error theorist wants to know is why we should (in any sense of 'should') allow what we believe to be false factual, moral, and religious beliefs to stand in the way of making life better, and sometimes bearable, for thousands of certifiable "persons."

(c) Contraception. It seems obvious that the best way to reduce abortions is to reduce unwanted pregnancies. Unfortunately, a confused form of moralism often blocks the shortest path to this goal by opposing efforts to supply information about, and materials necessary for, birth-control even to those adolescents who are already sexually active. Only a moralist, and a pretty ill-informed one at that, would be able to find reasons for a policy that puts young people at such a great risk for disease and unwanted pregnancy. But morality may not deserve all the blame. Politics and religion are also deeply involved in this fracas.

What do moralists have against contraception? Utilitarians who understand the threats of overpopulation and sexually transmitted diseases will rarely be troubled by abortion, and are likely to see contraception as a better option. A small number of utilitarians who oppose contraception will head for the nearest slippery slope. They may argue that providing information to the young about sexuality, pregnancy, and sexually transmitted diseases (or even discussing these topics) will lead to early sexual activity, and that will lead to unwanted pregnancies, and that will lead to abortions, and worse.

The assumption that openness and accurate information about sexual matters is harmful to young people has been discredited by the disastrous outcome of the Bush administration's "abstinence only" policies. Google the topic and learn (from *Wikipedia*) that "Abstinence-only education has been criticized in official statements by the American Psychological Association, the American Medical Association, the National Association of School Psychologists, the Society for Adolescent Medicine, the American College Health Association, the American Academy of Pediatrics, and the American Public Health Association, which all maintain that sex education needs to be comprehensive to be effective." See also Julie F. Kay and Ashley Jackson, *Sex, Lies, and Stereotypes: How Abstinence-Only Programs Harm Women and Girls*.

http://www.hsph.harvard.edu/pihhr/files/resources_and_publications/meeting_reports/SexLies_Stereotypes2008.pdf

If we set far-fetched slippery slope arguments to one side, are there any other considerations that might lead us to think that it is morally wrong to practice safe sex and birth control? There are, and their main source is the Catholic Church. Two considerations are traditionally advanced, and it is hard to say which is worse. One claims that contraception is wrong because it thwarts nature, and the other says that it is murder.

Contraception is against nature. Clement of Alexandria tells us that "to indulge in intercourse without intending children is to outrage nature, whom [we] should take as our instructor." (Quoted by John A. Hardon, S. J. in "The Catholic Tradition on the Morality of Contraception," hereafter CTMC.) St. Augustine even opposed *coitus interruptus*, saying, "Onan, son of Juda, did this very thing, and the Lord slew him on

that account. Therefore, the procreation of children is itself the primary, natural, legitimate purpose of marriage.” (CTMC) Therefore?

http://www.therealpresence.org/archives/Abortion_Euthanasia/Abortion_Euthanasia_004.htm

The idea that some activity goes against nature has been used to oppose everything from vaccination to celibacy. Pope Pius XI said that those who indulge in sex without aiming at procreation “act against nature” and that this is “shameful” and “intrinsically immoral.” (CTMC) Nature may push us in many directions, but when we push back in an effort to give some shape to our lives, neither the struggle nor the result is shameful or intrinsically immoral. The world isn’t designed, but even if it were, everything that has come into being, including babies and condoms, would be natural and part of the plan. Even going against nature would then be a part of our nature.

Contraception is murder. St. Jerome scornfully referred to those women who drink potions “to ensure sterility and are guilty of murdering a human being not yet conceived.” (CTMC) Caesarius, Archbishop of Arles in France (470-542), agreed and claimed that if a woman accepts “a potion to prevent conception . . . she will be held guilty of as many murders as the number of those she might have conceived or borne, and unless suitable penance saves her she will be condemned to eternal death in hell.” (*Sermon* 1, 12; CC 103, 9) (CTMC)

We have seen how there is a permanent rhetorical struggle over the meaning of expressions such as ‘person’ or ‘human being’. Given the way we now use the words, it is controversial to say that a fetus in the third trimester is a person, more so to say the same of an embryo or a zygote, and ludicrous to speak (as St. Jerome does) of

murdering a “human being” who has failed to come into being because of *coitus interruptus* or some more reliable form of contraception.

We are currently extracting our laws about contraception from the clutches of religion, factual ignorance, and fear. For the moral abolitionist the answer is simple. Make information available, make contraception available, and trust parents, health professionals, and ourselves to figure out what to do. There are healthy ways to communicate about sex if we can manage to speak truthfully, freely, and without embarrassment. This is not easy because underlying many of our peculiar and incomprehensible prohibitions and taboos regarding sexual matters is the idea that sex is dangerous, evil, shameful, and yet irresistible. When moralists get onto these topics they can be meddlesome, naïve, unappreciative of difference, in love with conformity, and comically righteous. In these matters, as in all other aspects of life, we need to find a way to free ourselves from the uninformed, dogmatic, and often harmful moralistic beliefs of those who came before us.

We have glanced at three areas of reproductive ethics, and in each area we have found that moralists make things worse by promoting ideas that do not stand up to criticism and considerations that cannot overpower our natural impulses. When and if we are faced with a real need to make a decision about reproductive matters, the advice of the moral abolitionist is, as ever, to begin by silencing our assessor, and then to follow that up by clarifying our situation and our options. Then, like everyone else, all we can do is wait to see what decision pops up.

7. Conclusion. In this chapter we have examined some traditional topics of those working in applied ethics. My goal was definitely not to answer the related moral

questions, but to suggest that we can make progress on these matters only when we have turned the moral questions into practical questions. Don't ask what you ought to do, decide what you will do.

Moralism has almost destroyed our criminal justice system by making moral desert a centerpiece and an excuse for mistreatment. It also confuses us about our reproductive choices, relying on utterly false beliefs and sub-standard arguments to influence decisions that affect our whole lives. In the next, and final, chapter we will add to our survey of the damage done by those who moralize about our interactions with humans, non-human animals, and the environment.