


Newsletter: The Center for Professional Ethics, January 1987

Case Western Reserve University

Follow this and additional works at: https://scholarlycommons.law.case.edu/professional_ethics

 Part of the [Applied Ethics Commons](#), [Bioethics and Medical Ethics Commons](#), [Business Law, Public Responsibility, and Ethics Commons](#), and the [Ethics and Political Philosophy Commons](#)

Scholarly Commons Citation

Case Western Reserve University, "Newsletter: The Center for Professional Ethics, January 1987."
https://scholarlycommons.law.case.edu/professional_ethics/2

This Book is brought to you for free and open access by the Law School Publications at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Center for Professional Ethics by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

MONDAY EVENING CONVERSATION

January 26, 1987

"CONTRAGATE: THE MORAL OBLIGATION TO OBEY THE LAW"

The first program event of the Center in 1987 is a Monday Evening Conversation dealing with the legal issues, the moral dilemmas, and therefore the ethical decisions involved in the United States Government's dealings with Iran and Nicaragua. Professor Robert P. Lawry of the CWRU Law School will lead the discussion. The program is scheduled for 7:30 p.m. in the 1914 Lounge of Thwing Student Center on the CWRU campus. We hope you will plan on attending this important discussion.

The subject and content of this program reflects a new direction the Center is taking with some of its programs in the first half of 1987. This new direction is more fully described in the following article.

The Center for Professional Ethics at Case Western Reserve University

NEWSLETTER

JANUARY 1987

THE CENTER'S EXECUTIVE COMMITTEE DESIGNS A NEW PROGRAM FORMAT FOR THE FIRST HALF OF 1987

Whenever members of the Center gather together, regardless of their professional fields, the conversation frequently turns to the moral and ethical issues which mark some of the important current events in our world. Be it South Africa, Boesky or Iran, these issues do affect our daily lives and challenge our personal ethical thinking. Therefore the Executive Committee of the Center is focusing one of the Monday Evening Conversations each month around such news-breaking events. The first such Conversation is described above.

The Executive Committee is planning two Monday Evening Conversations each month. They will usually fall on the first and third Mondays. One of these Conversations will center on a current news issue; the other will deal with current ethical issues arising in one or more of the professions. We hope this more contemporary approach will better respond to the needs of our members who will be informed of these programs through our monthly Newsletter.

Our members should know the Center's Executive Committee is composed of a group of very dedicated men and women who are trying very hard to make the Center's activities relevant to its members. The Executive Committee members are:

Mark Barr, a recent graduate of the School of Dentistry.
Lisa Bower, a student in the School of Management.
Kate DeVito, a student in the School of Law.
Fr. Ed Kordas, a staff member of the Hallinan Center.
Valerie Rice, a student in the School of Nursing.
Becky Snider, a student in the School of Nursing.
Kari Still, a nurse practitioner at University Hospitals.
Robert W. Clarke, Co-Director of the Center.
Robert P. Lawry, Co-Director of the Center and Professor of Law at CWRU.

Of great importance for the success of the Center is the need for students within each of the schools who will work with those members listed above in publicizing the Center within their school. If you are interested and time permits helping in this way, contact the person in your school and indicate your willingness and the time you have available.

Further, we are seeking representation from the School of Applied Social Sciences and the School of Medicine. Anyone interested should contact Mr. Lawry at 368-2667 or Mr. Clarke at 368-5349.

Finally, if you who are our members have an issue which you feel important for our agenda, please be in touch with any of those listed above. The best discussions are held around issues which are affecting your life and work.

LAW AND MORALITY

by Robert P. Lawry

Robert P. Lawry, Professor of Law at Case Western Reserve University's School of Law, teaches the course on Professional Responsibility. We have asked Bob to write on the subject of law and morality because a number of people assume that if a certain act is "legal" it is therefore "moral" or "ethical." We believe that there is a significant difference between these concepts. Further, we want to note the difference between "morality" and "ethics." One's morality consists of a range of fundamental beliefs about human life. When one acts on these beliefs, one is making an ethical decision based on one's moral foundation.

Law and morality are distinct but interrelated subjects. We expect laws to be just, and therefore moral; but we sometimes say a particular law is unjust, i.e., a tax deduction or tax exemption for one group over others similarly situated may well be unjust. Indeed a whole system of laws may be unjust. Look at the scheme of apartheid in South Africa. So our everyday experience indicates two salient points: (1) laws ought to be just or moral, there ought to be a coincidence between the two; and (2) laws are not always just or moral, there is sometimes divergence between the two. A third point lurks behind these common sense ones, and is important to uncover and stress. The hidden point is: even in situations where the law is just, there may be moral obligations that go beyond the pale of the law. For example, the law may force me to pay a legally contracted debt; but contract law in the United States does not force me to discharge a moral obligation only. So if someone agrees to give me food and lodging for a week in exchange for \$100, the law would oblige me at the end of the week to give over the money. However, if someone simply took me in and cared for me without expecting or bargaining for any monetary return, the law would not force me to say so much as a "thank you." Ordinary moral principles, however, would indicate that I am indebted to the person who cared for me. The discharge of that obligation may or may not be met by the payment of a \$100 bill or a genuine expression of gratitude, but something is called for beyond what the law would require.

What I have said so far seems to me to be rather straight forward and non-problematic. A tougher question awaits us, however. The answer to this question may be inferred from what I have already said, but my guess is that without further elucidation, the answer would not be readily forthcoming. The question is this: given a law which seems to be particularly relevant to the case at hand, does meeting the requirement of that law satisfy our moral obligation on the matter? I assume, of course, that the law in question is not considered unjust. If the law were unjust, other complications would arise; but before we deal with the more complicated question, let us take a close look at the question just posed. To get a handle on it, let me use a hypothetical example. A law is passed in Ohio requiring the use of a device on smoke stacks to cut down the pollution caused when large amounts of smoke are discharged into the air. The owner of a factory complies. Despite the compliance, animals on adjoining farms are made sick and many die from the pollution. Has the factory owner met his moral obligation if he does nothing more? Assuming for the sake of my point that the owner can do more at minimal expense to alleviate the harm to the nearby animals, it is not hard to construct a convincing moral argument that he must do more, that he has a moral obligation to do more. This example is typical of those that people cite when they say of another: "he/she is hiding behind the law." Lawyers often are paid large sums of money to allow people to do perfectly legal things which are morally bankrupt. Our own ordinary experience tell us that.

Now what sometimes happens in a society like ours in a case of the kind I just described is that an injured farmer brings a lawsuit for damages suffered as a result of his cows getting sick or dying. The factory owner defends by saying he had installed the device in accordance with the law. Oddly enough, the farmer may win, because the judge believes it is morally right that the factory owner compensate the farmer for damages he caused and could have avoided by a small expenditure. The judge will apply a general pre-existing principle like "negligence" to the facts of this case in order to have law and justice coincide.

If you have followed me so far, you have discovered something interesting and important about law. Law is not a set of pre-established rules that are used to maintain order and predictability in society. Law is partially that, of course; but law is also social morality on the move, changing, adapting, growing to meet the unforeseen case. In any given case the law may not change, justice may be thwarted; but the tendency in a good society is toward the conservative law moving to encompass justice in new settings and in new ways.

If it is true that obedience to law does not always exhaust one's moral obligation in a matter, is it also true that an unjust law does not bind at all? May we, with impunity, simply disobey a law that is unjust? This question has caused nightmares for legal philosophers through the years. The answer is complex; and in the space allotted me I can only suggest the frame of an answer. First of all, a law can be unjust in

several different ways. A law may be unjust because it was beyond the power of the lawmaker. Our civil rights movement in the sixties involved a challenge to many segregationist laws that were unjust in this manner. Another way a law can be unjust is that it burdens one segment of society or favors another segment disproportionately. Tax "loopholes" are often seen as examples of these kinds of laws. A third way would be for the law itself to be substantively immoral. The fugitive slave laws in the antebellum south are examples of these kinds of unjust or immoral laws. My short answer to the question whether there is a moral obligation to obey unjust laws is: (1) unjust laws do not bind in conscience, but the problem of determining whether any law is unjust is complex indeed and not to be undertaken by any citizen without careful thought; but (2) even after careful thought, if the conclusion is that the law is unjust, one should still not disobey if others would be led to do evil things as a result of the disobedience. President Nixon once argued that the Watergate burglars were led to do what they did because of the acts of law-breaking committed by people involved in the civil rights movement. I think Nixon was demonstrably wrong in his argument, but it is the kind of argument one has to take seriously. Ghandi once called off a demonstration of massive but justified law-breaking in India because a strike had occurred which crippled the State. In his view the strike altered the moral character of his otherwise justified law-breaking. Finally, it should be stressed that if you are forced by the law to do an evil thing, you must not do it. The early Christians had to decline to worship the false gods of Rome; to do otherwise would have amounted to a direct violation of the first commandment of God.

All of what I have said cannot be properly understood or assessed unless and until we struggle with the question of the definitions of words like law, justice, morality, authority and the like. That struggle is a complex one, and I am unable to do more than scratch the surface now. As a teaser, however, I am going to offer definitions of law and of morality which I cannot explain or defend in this brief article. First: law is a rule of reason for the common good, promulgated by those who have care of a community. This definition is ideal, but none the less, more accurate and useful than alternative definitions. Second: morality is that fundamental discipline or practice which deals with questions of right and wrong, good and evil, seen from the perspective of the total human being. It is my belief that there is a general moral obligation to obey the law; but that if a conflict exists between law and morality, one's moral obligation is paramount.

Perhaps I should have offered these definitions at the beginning. I did not because I thought they would get in the way of a common sense understanding of law and morality, which operates well enough to understand the distinctions I made in the body of this essay. Much the hardest part of a true understanding of the interrelationship between law and morality, however, comes from a meaningful wrestling with the definitions of these and related concepts. A good text in Jurisprudence gives a start in understanding these words and their meanings. A long life of thought may be necessary before one can be satisfied that he or she has got them even approximately right.

BOOK REVIEW

Habits of the Heart

Richard N. Bellah, Richard Madsen, Wm. M. Sullivan, Ann Swidler, and Steven M. Tipton,
Harpers & Row, 1985.

Michelle B. Creger graduated from Case Western Reserve University Law School and is presently an associate in the law firm of McDonald, Hopkins & Hardy in Cleveland. Because we feel that this book contributes greatly to an understanding of our nation today we asked Michelle to share her superior writing ability in reviewing this book for our members. We thank her and commend this book for your reading.

Habits of the Heart is the product of five years of field interviews by the authors who spoke with over 200 Middle-class Americans. Throughout the book there are references to the comments, stories and reflections of these individuals. From these interviews the authors have created a thoughtful, well-written analysis of how Americans make sense of their lives, how they think about themselves, and how their ideas relate to their actions.

In this book, the authors describe the nature of American individualism, asking whether individualism, as the dominant ideology of American life, is undermining the conditions of its own existence.

The authors examine three traditions in American culture: *biblical*, *republican*, and *individualist*. The *biblical tradition* is that brought by the Puritan settlers and subsequent Judeo-Christian immigrants. It stresses the inherent goodness of a just and ethical life, the building of a stable community, and attention to the spiritual life. Freedom in the biblical tradition is the freedom to do what is morally right.

The *republican tradition* focuses on the ideal of a self-governing society of relative equal individuals in which all participate. The vision of Thomas Jefferson exemplifies this tradition. Freedom in the republican tradition is more than the right to be left alone. It requires the participation of educated and active citizens.

The *individualist tradition* has two aspects: utilitarian individualism and expressive individualism. In utilitarian individualism, the social good automatically emerges from each person pursuing his or her own interests. The successful life is achieved by getting ahead on one's own initiative. Ben Franklin's sayings in *Poor Richard's Almanac* are representative of this tradition. For example, "God helps those who help themselves." In *expressive individualism*, the focus is still on the individual, but the successful life is one spent cultivating and expressing the self and exploring one's social and cosmic identities. Freedom in this tradition is the freedom to express oneself.

The authors elaborate on these traditions throughout the book, emphasizing that these traditions are still alive and speak to our present questions. The message of *Habits of the Heart* is that we have allowed individualism to dominate our thinking and that we need to recover the insights of our biblical and republican traditions.

In one sense, the book is a commentary on the work of Alexis de Tocqueville, *Democracy in America*. In the 1830's, Tocqueville described the mores and traditions—the "habits of the heart"—of the American people. He warned that individualism might eventually isolate Americans from each other and undermine the conditions of freedom. The authors of *Habits of the Heart* show how this prediction is becoming a reality.

The book is divided into two parts: private life and public life. In discussing private life, the authors explore the themes of biblical, republican and individualist traditions in personal development, marriage and friendship. For example, they address the tension between seeing marriage as providing psychological gratification (individualist tradition) and seeing marriage as providing people with stable committed relationships that tie into the larger society (biblical tradition).

In discussing public life, the authors consider the topics of religion, citizenship and public involvement. For example, they point out that we think of our American society in terms of the political economy, i.e., government and large corporations, while ignoring our mores, culture and daily practices of life. They describe the fragmentariness of our modern culture and the domination of material ambition.

But at the same time, the republican and biblical traditions continue in families, churches and associations to give meaning to our lives and to create a morally and intellectually intelligible world. The authors ask, "is there not the danger that the erosion of these traditions [biblical and republican] may eventually deprive us of that meaning altogether?"

The author suggests a social transformation to seek an understanding of what we have in common and the goals we seek together, and to link these interests together. Mere procedural changes through political consensus are not enough. Rather, a social movement is needed that would, among other things, 1) restore the concept of "calling" to the choice of work, 2) minimize the economic rewards/punishments in choosing a particular career, 3) replace the language of individualism with the language of the biblical and republican traditions, 4) reaffirm the value of education as a way to connect private aspirations with the common culture, and 5) emphasize that our common life requires more than the exclusive concern for material accumulation.

The book is valuable to the historian because it connects where we come from with where we are. It is important to the philosopher because it looks beyond the structures and practices to the values they embody. The book speaks to the social scientist because it describes the experiences and perceptions of real people in our society. But most importantly, the book is written for the non-expert. In its style and message, it offers us an honest and challenging look at ourselves.

BOOK REVIEW

Caring: A Feminine Approach to Ethics and Moral Education

Nell Noddings; University of California Press, Stanford University, 1984.

Wendy Miano is a graduate of the Case Western Reserve University School of Nursing. After several years of full-time nursing, Wendy devoted a period of time as full-time mother. She is now employed part-time with Lake County Hospice and University Hospitals cancer unit. We appreciate the contribution of her review of a book of importance to all who care about their relationships with others.

Nell Noddings opens her thesis of ethical caring in the following paraphrase:

- The relation of natural caring will be identified as the human condition that we, consciously or unconsciously, perceive as "good" . . .

- It is our longing for caring—to be in that *special relation*—that provides the motivation for us to be moral.
- It is this *ethical ideal*, this realistic picture of ourselves as one-caring, that guides us as we strive to meet the other morally . . .
- We shall not have absolute principles to guide us . . .
- Where there is a principle, there is implied its *exception*, and too, principles function to separate us from each other . . . (p. 5).

It is this position I will define as it unfolds in a fluent, unique perspective on ethics—an ethic of caring.

The view of ethics Noddings offers in this book is a feminine view, rooted in receptivity, relatedness, and responsiveness. Noddings purports ethics has been discussed largely in the language of the father, “the detached one,” in principles and propositions using terms such as *justification*, *fairness*, and *equity*. The mother’s voice has been silent. And it is a stance that might turn a reader off, raise a defensive voice, and block understanding the position Noddings suggests. But Noddings’ ideas and thoughts transcend societal sexism, are devoid of judgement for or against feminist or masculine views. Rather, it represents an alternative, one that “begins with the moral attitude and longing for goodness.”

I want to define Noddings’ ethical stance through examples of her ideal. Noddings suggests that women, (and I would argue men are capable of this approach), when faced with a moral dilemma, often ask for more information. Women need to talk to the participants, see their eyes and facial expressions, to *receive what they are feeling*. Women can and do give reasons for their actions, but the reasons often reflect feelings. Let me illustrate using the issue of abortion. I pick this issue as it is one discussed frequently as a moral dilemma. First I reflect on my own pregnancy and secondly, on my action in response to another’s.

Operating under the guidance of an ethic of caring, we are not likely to find abortion, in general, either right or wrong (p. 87). Noddings defines an “incipient embryo as an ‘information speck’: a set of controlling instruction for a human life; it has no given sanctity” (p. 87).

Suppose the information speck is mine. As “one-caring” I am concerned with human feelings. I am deeply aware of this child-to-be as a product of love between a man deeply “cared for” and me. I may wish I was not pregnant, but there is already a *relatedness*. My decision against abortion has been made therefore out of natural caring.

But let us consider that this daughter of mine has grown up and it is she who is pregnant and considering abortion. She is not certain of her love for the man and is deeply upset about her economic and emotional future. I might convey *sanctity* over this child-to-be; but I am not all-knowing. I am the mother of this suffering “cared for.” This “information speck” is just an “information speck” and that is all. There is no relation. Nonetheless, as this embryo grows, so does the possibility for relatedness. To consider abortion, the “one caring” *cares first* for the one in immediate pain or peril. I do not require everyone, my daughter included, to behave as I would in the same situation. This position supporting abortion, likewise is a stance of caring. One may disagree with Noddings’ definition of a human embryo. However the main point is directly related to the caring relation between the “one caring” and the “one cared for.”

Noddings describes in great detail her characters, the “one caring” and the one “cared for.” Caring for the “one caring” involves “a feeling” with the other (p. 30). This is an “engrossment,” an empathy that receives, communicates with, and works with the other.

For example, a mother (and I would argue, father) naturally *feels* with their infant. As my baby cries, I respond to her and feel something is wrong. This is my infant’s feeling and it is mine also. I receive it and share it. I may respond to my baby, seeking to comfort her; “I’m here, everything is all right.” From there I ask, “What’s wrong?” My baby may not respond verbally, but my question and tone invoke her attentiveness. This root fosters then, a relation of caring.

The one “cared for” in turn shares in this relatedness. Noddings defines a reciprocity exhibited by the one “cared for.” The “cared for” responds to “one caring” in some way. There will certainly be differences in responsiveness. One child may share with his parent a spontaneity of feelings. Another child may be less inclined to share her life fully with her parent. The “one caring” recognizes the difference; the levels of responsiveness are accepted for what they are. In this way the parent allows her children freedom as individuals.

To summarize, a caring relation requires the engrossment of the “one caring” and the spontaneous response of one “cared for” (p. 78). It is in this context of ethical caring Noddings explores issues of right and wrong; joy as an ideal; caring for animals, plants, things, and ideas; and re-structuring moral education. Noddings argues that even when caring is not felt (instead the one “cared for” feels absence of caring) there is hope that one “cared for” can learn to care and learn to be cared for.

Caring is a book of philosophy and, therefore, not light reading. It assumes no particular knowledge or experience in the reader other than having lived awhile. Some parts of the discussion will seem strange, even disturbing. But this book will also leave you confirmed and strengthened in that most natural and most precious of human capacities: caring.

129 Yost Hall—Case Western Reserve University—(216) 368-5349

The
Center
for
Professional
Ethics
at Case Western Reserve University

BOOK REVIEW

The Foundations of Bioethics

H. Tristram Engelhardt, Jr.; Oxford, 1986

We appreciate the contribution of this book review by Dr. Mary Briody Mahowald, Associate Professor of Medical Ethics at CWRU's School of Medicine. Dr. Mahowald has been closely associated with our Center and is Co-Director of the Center for Biomedical Ethics at CWRU.

In The Foundations of Bioethics, H. Tristram Engelhardt, Jr., describes bioethics during the last two decades as "the story of the development of a secular ethic." He then proceeds to elaborate his own version of such an ethic for a pluralist society: a Kantian approach which focuses on the meaning of persons as moral agents, i.e., individuals who are "rational, able to choose freely according to a rational plan of life," and possessed of a notion of blameworthiness and praiseworthiness." Only through persons, says Englehardt, can a moral or "peaceable community" come into being.

The author is both philosopher and physician at Baylor School of Medicine, and member of the National Advisory Committee for CWRU's new Center for Biomedical Ethics. To his credit, Engelhardt carries through on his starting emphasis, even where this leads to rather disturbing conclusions. For example, he supports the view that parents may refuse life-sustaining treatment for defective newborns (e.g., Bloomington's Baby Doe), and argues for a definition of death as cessation of neocortical function. The latter position implies that Karen Quinlan was in fact dead during the ten years in which she breathed on her own, while lacking capacity for cognitive function.

Of the two crucial principles of bioethics, autonomy and beneficence, autonomy is paramount so long as we are dealing with persons. When we are dealing with non-persons, e.g., animals, fetuses, infants, the profoundly retarded, and those permanently comatose, our moral obligations are based on beneficence, or on respect for the autonomy of others who are persons. Although suicide, assisting suicide, and active voluntary euthanasia are morally acceptable options, the right to health care (even minimal health care) is not a universal right. Inequities that exist among us, according to Engelhardt, are unfortunate, but not unfair.

Inequities in delivery of health care might nonetheless be reduced through the virtue of liberty, i.e., the generosity of free individuals. Other "cardinal virtues" of Engelhardt's secular ethics are tolerance and prudence. Taken together, these virtues support diverse interpretations of "the good life" within the moral constraints of reason and authority. While endorsing pluralism, Engelhardt considers his own conclusions "intellectually unavoidable to even the most committed Christian, Jew, Hindu, Buddhist or Communist, who does not wish to use force to receive moral disputes."