

Ethical Values and Health Care Access/Reform  
Bishop's Convocation on Health Care Reform and Faith  
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In this presentation I make some suggestions for providing a moral evaluation of the public policies that surround the issues of health care access and health care reform. In particular, I outline the main values that ought to be used in determining the morality of a particular policy and the method for justifying those evaluations. The suggestions concerning core values provided here are nothing novel and are grounded upon philosophical work which has been occurring since Aristotle convincingly pointed out that ethics is an inherently practical endeavor. However, I suggest that the various traditions which many philosophers take to be incompatible should be unified into a single system which can be used to make a more complete evaluation. Thus, this presentation is in three main parts. Part 1 provides a brief sketch of the terrain concerning the evaluation of public policy. Part 2 provides a sketch of the three main questions which should be asked of a policy and the history of the values behind those questions. (This is the majority of the paper.) Part 3 provides a brief sketch of how these different values can be utilized in making a coherent moral judgment.

Part 1: Evaluating Public Policy

When we make decisions concerning public policy there are many variables and values at play. Along with ethical considerations we consider economic efficiency, practicality, legality (which may or may not be connected to morality), various political factors, plus other considerations which I am sure I am forgetting. This presentation will not attempt to explain how we should weigh out all of these different variables. The

scope of this presentation is limited to the evaluation of public policy from a moral point of view, but I would like to point out that it is not the case that we either do or should think that moral considerations always trump other considerations. For example, when we build a large bridge we know that people will almost certainly die during the construction process. Morally speaking, taking a course of action which will almost certainly lead to the death of innocent people is questionable, at the very best. However, our society values economic factors and transportation conveniences to the degree that we determine that they outweigh the likely death of construction workers. At the same time, we should not believe that any other consideration, such as economic efficiency, should always outweigh moral judgments.

When we formulate public policy regarding health care access, economic factors, public health, legal questions, and other issues must be weighed alongside moral factors. We can neither say that a moral requirement must be fulfilled at any cost nor that a financial bottom-line must outweigh every moral consideration. The point of thinking carefully about moral issues is similar to the point of making careful evaluations of finance: we need the best available understanding of all the factors involved in the ultimate public policy decision.

### Part 2: Central Ethical Questions

There are three central questions which should be asked in evaluating public policy from a moral point of view. These three questions capture the main values which are at the heart of the systems of many contemporary ethical theorists. The questions one should ask about any particular policy are as follows: 1) Is it good? 2) Is it right? 3) Is it

fair? These three apparently simple questions will provide us with the tools we need to evaluate the morality of policies surrounding health care as each of the central concepts, goodness, rightness, and fairness, are complicated concepts which capture large areas of the moral landscape.

*Question 1: Is it good?*

The first question draws upon the utilitarian tradition of Jeremy Bentham and John Stuart Mill. The notion of goodness is tied to the consequences of an action. An action is good insofar as it leads to good consequences. There are various definitions of good consequences. Good consequences are often conceived as those that maximize overall happiness, overall pleasure, or the satisfaction of preferences. Importantly, it is not the maximization of good for a single person, but the maximization of good for all persons affected by the practice. So, a practice is thought to be good insofar as it yields consequences that maximize happiness, for example, for all persons who are affected by the practice. The easiest way to think of this is that the best action, according to the core value of goodness, is the action which yields the best overall net consequences.

If we consider a public policy, this consideration is the one that gets us to consider the effects of our policy. So, if we think about access to health care, we will consider the effects of our policy upon all persons affected and what the overall net happiness, or net good, would be of the policy. If we can think of a policy that would yield better consequences overall, then that policy would be better according to this core value. So, if we determine that a policy of privatized health care leads to more happiness than socialized health care, then that is the better system according to this core value.

It is no small debate concerning how we ought to determine and measure the overall outcomes, or consequences, of a particular course of action. One of the large problems looming here is the comparison of the pleasure of different persons against each other. The core value of goodness is built upon some comparison of different states of affairs and the effects they have upon individuals. So, we must find some way to compare these different states of affairs. For example, if we determine that the best way to measure the goodness of a particular situation is by measuring the amount of happiness, or pleasure, caused, as per Mill's version of utilitarianism, then we must compare the happiness of those who benefit from the policy against the unhappiness, or pain, which the policy causes against those who are harmed. Some people consider this intuitively impossible while others view such a comparison as quite common. I do not know how it appears to you, but in case you take it that this is an impossible task, let me provide a brief defense of its plausibility. We make comparisons between the harms and benefits that a course of action has overall all of the time, and we have apparent standards for these judgments. For example, when we evaluate the safety and effectiveness of new medications, we balance the amount of good the medicine will produce in terms of alleviating symptoms or curing illnesses against the possible side effects of the medication and the risk that some patients might develop adverse reactions. Any time a medication is prescribed for an individual, the physician and patient are ideally making such a decision of balancing the potential good of the medication against the potential risks, but at the level of public policy, the decision must be made across individuals.

The main point here is not to determine the adequacy of the approach, but instead for us to see that this is an important part of what we ought to do when we evaluate our

public policies, and in particular our policies concerning health care. We need to consider the long-term consequences of our policies, as best as we can determine what they will be, and use this as part of our overall evaluation of the policy.

*Question 2: Is it right?*

The second question draws upon the deontological tradition of Immanuel Kant. Deontology is simply the study of moral duties, or moral obligations. Kant provides a systematic approach to morality which is driven not so much by a list of particular moral duties, although he does derive 4 duties to illustrate how the system works, but is instead an approach to testing the acceptability of any particular moral principle. Once one knows which moral principles are acceptable and which are not, then one should simply act in accordance with the principles one knows are right. Kant, as it turns out, is not concerned about the consequences of the actions at all, but is instead concerned about whether or not the action is right, or in accord with our moral obligations. So, Kant provides us with the method for determining the content of our moral obligations.

Kant begins by pointing out that when we decide what to do we are following a principle, or a maxim, in our course of action. To know whether or not we are doing the right action we must determine whether the maxim, or principle, we are following is a good one. Thus, Kant provides methods for testing our principles. Kant gives them to us in *The Groundwork of the Metaphysic of Morals* in the very exciting formulations of:

“Act only in accordance with that maxim through which you can at the same time will it to become a universal law.”

And:

“Never act in such a way as to treat humanity, whether in your own person or in that of another, as a mere means only but always as an end in itself.”

Think of these two statements as ways of determining whether a particular course of action is in accord with our moral duties. The process is in stages. First, you ask yourself what maxim, or principle, you would be following if you took up a particular course of action. After you determine what maxim you would be following, then you ask whether or not the maxim is one that could be followed all of the time by all persons (as stated in the first statement above) and whether or not the action uses people as a means to some other end or if it respects the persons and does not use them to get what you want in a manner which they would not agree to if they had all of the information (which is the second statement previously read).

The idea here is quite simple. Kant is suggesting that the morality of an action is not determined by the outcomes of the action as Mill and utilitarians believe, but instead the morality of the action is determined by whether or not the action respects other persons involved and allows for them to determine for themselves what they want in a particular situation. So, if we use this notion of rightness in evaluating a public policy, then we will ask whether or not the policy manipulates people and treats persons as means to ends, in which case it would be morally objectionable, or whether the policy treats persons with the respect that they deserve.

For the purposes of evaluating public policy, I suggest that we take this core value of rightness and think about it in terms of duties and obligations. We use Kant’s insights to help us to remember that when we consider a policy we should not only be concerned about the effects of the policy, but also upon the rights of individuals to be respected as

individuals. Persons have some basic rights to determine how they want to be treated and we need to make sure that our policies respect those rights. Also, we need to make sure that our policies treat everyone in the same manner, which is what the first statement quoted earlier is getting at with the notion of a universal law. Is the policy one which will treat everyone in the same manner?

It is worth noting here that Kant's idea of 'everyone' means rational human beings. Most of us would agree that children should not, medically speaking, be treated the same way as adults. For example, it seems acceptable to trick a toddler into taking lifesaving medication, whereas normally functioning human adults should not be coerced into medical treatments.

In terms of formulating health care access policies, Kant's views tend to suggest that a policy will be right only if it treats all people with dignity. It would rule out policies that use certain groups of people for medical experiments without their consent, as was done in the infamous Tuskegee experiments concerning the treatment of syphilis. It may or may not rule out policies that attach health care access to income, since one might argue that, in principle, all humans in a capitalist society have the chance of amassing personal wealth.

The value of rightness, unlike the other two values, has the appearance, on the surface, of trumping non-moral considerations, or even considerations of goodness and fairness. In Kant's view, if an action is right, then it should be done, no matter what the consequences or effect on others. In matters of public policy, however, we must always balance weighty concerns. If we decide that a policy would be wrong, perhaps because it treats persons with certain genetic dispositions with less dignity than it treats other

persons, but the financial considerations for adopting the policy, and the goodness of the policy in terms of better consequences for society overall, weigh overwhelmingly in favor of that policy, then we might well need to adopt a policy that is wrong but good and fiscally responsible. As an example, consider a policy that denies medical insurance to persons with an extremely rare genetic disposition, tested for at birth. Imagine that one person in a million is born with the predisposition, and without medical care, the person is likely to die before reaching age 20. Ordinary persons would be unable to pay for the care, since medical care would cost an outrageous amount over the course of the person's life. The effect of this policy would be to reallocate the money that would have been spent on the medical care of a few persons with the genetic predisposition on the rest of society. The policy would be wrong, since it would treat persons with the genetic predisposition as a means to saving money. But it would be good since it would entail better medical care for many, many people.

Notice the difficulty already in what I am suggesting. Even in an extreme case, we become uncomfortable with the idea of conflicting values. What this kind of example really shows us is how clear and careful we need to be in acknowledging these different considerations and constraints of our decision making. It also shows how precise we need to be in specifying the different aspects of a policy decision. A policy could be very good, but wrong, or a policy could be right but not good at all. It is at this point that we must remember that the moral realm is messy. Any honest attempt to address the moral realm must not oversimplify morality by reducing it to a single core value as some ethical theorists are want to do, but must acknowledge and confront the complexity.

*Question 3: Is it fair?*

The third question draws upon the contractual tradition of John Rawls. Rawls is explicitly a political philosopher who is concerned about how we should structure a just society. However, many moral thinkers believe that the political realms and the moral realms are connected in central ways. Ultimately, I am not sure what I think about the connections between the moral and the political; however, I do think that Rawls' insights concerning the notion of fairness can help us in making moral evaluations. The claim that an action is not fair is often, and correctly, thought to be a moral condemnation of the action. Thus, if a policy is not fair, then it will fail to be morally acceptable in a serious manner.

Rawls' view is a procedural view of distributive justice. So, he is not centrally concerned with determining what the precise content of a practice should be, but instead he is concerned to establish a process for determining whether or not a distribution of goods is fair. For example, consider a cake. If there are 5 people at the party and you want to share the cake, Rawls does not want to think about what the precise distribution of the cake should be for the distribution to be fair, but instead to think about what process would yield a fair distribution of the cake. (The answer according to Rawls, incidentally, is to give one person the knife and have that person cut the cake into 5 pieces. The person who cuts the cake is then the last person to get a piece of the cake. This will ensure that they are as careful as possible in cutting the cake.)

Rawls identifies a manner of approaching questions of the distribution of goods to determine whether or not the distribution of goods is fair. The approach he identifies employs a thought experiment. One imagines that one has gone behind what Rawls calls the veil of ignorance, or being in what Rawls refers to as the original position. Behind

the veil of ignorance one does not know anything particular about one's life; one does not know one's gender, social status, economic status, or any of one's beliefs (political, religious, etc.). The idea is that if you would accept a policy from behind the veil of ignorance concerning the distribution of goods then the policy is fair. The veil of ignorance is supposed to help to remove bias and to help us to be more objective in our determinations.

If we apply this idea to the distribution of health care, or the access to health care, then we place ourselves behind the veil of ignorance and we do not know anything about our economic situation, our health care needs, etc. Then we ask, what distribution of health care, what type of access, etc, would I accept from this position behind the veil of ignorance? At the very beginning of this section concerning the notion of fairness I stated that Rawls is in the tradition of contractualism. At the heart of this tradition is the notion that justified principles, either political or moral, are those that are established through rational agreement, or the establishment of a contract. A distribution of health care that leaves a large portion of the population without health insurance and the health care that one is able to receive due to the possession of insurance, is unlikely to pass this test as one will know that it is possible that they are in this group. So notice, this question of fairness is certainly connected to the notion of one's long-term self-interest. The notion of an agreement is apparent at this point of Rawls' work because a legitimate principle is one which reasonable persons would agree to from behind the veil of ignorance. I think this is a very helpful way for us to determine whether or not a policy, or a distribution of goods, is fair. The process forces us to think about a policy from a completely different point of view than we normally would.

I want to end this section by addressing a possible concern which some might have about these three suggested core values. You may notice that nowhere have I discussed what some take to be the main focus of the ethical life, what kind of character a person has. Virtue ethics, as formulated by Aristotle, focuses upon precisely this concern. I believe that character traits are certainly important and I believe that the society that one lives in contributes to the type of person, the character traits, that one will develop. However, the appeal to character and the notion of virtue is unnecessary for two reasons. First, the focus here is upon evaluating public policy from the moral point of view and I believe that moral principles, like those of Mill, Kant, and Rawls, provide a better way of evaluating policy issues. The notion of character is important in evaluating individuals, but it becomes a very cumbersome manner of evaluating policy. Secondly, if we keep all three of these core values as our focus, then any policy which has passed through this test will have a very good chance of being the type of policy that will influence people to develop the types of character traits which are normally deemed praiseworthy.

### Part 3: Unified Ethical Judgments

The final part of this presentation accomplishes two goals. First, I will illustrate how these three different core values can be used together to make a unified moral evaluation. Secondly, in performing the first goal, we will employ the system to the issues of health care access to begin the process of reaching an overall judgment.

When employing asking these three questions, one should not think that one question, or core value, is the most important value in every determination. Each of these

three questions should be asked and the answers that each question yields should be matched up and weighed against the answers to the other questions. It is not the case that when these questions yield different answers that one of the core values always overrides, or trumps, the other values. The core values have equal standing. Each of these core values brings into focus a different important aspect of the moral terrain and we want to use all three of them to reach a more perspicuous evaluation. So, in cases where a determination is that a policy is good but it is not right and not fair, then we have to determine whether or not the overall good is enough to outweigh the breach of rightness and fairness. In some cases, we do precisely this. Take the example of building a bridge which I mentioned earlier. The overall consequences of having a large bridge, for the sake of the argument, are tremendously good. However, the practice of putting innocent people's lives in danger is not right. Also, the practice is determined to be unfair. The economic situation which gets people to accept work which endangers their life is not one that would be determined to be acceptable from behind the veil of ignorance. The situation is thus one in which an action is good, but neither right nor fair. It is plausible that one could still think of building the bridge as a morally acceptable practice.

The process for weighing out these values and making these determinations is best articulated by T.M. Scanlon in his work *What We Owe to Each Other*. Following Scanlon, I suggest that the process for weighing out these values is by justifying one's actions to other reasonable persons through seeking acceptance from other reasonable agents. The idea is that a moral evaluation is acceptable if it is reasonably justifiable to other thinking creatures. If I am investigating a policy and trying to determine why I should support the policy, then the fact that other people find the policy justifiable gives

me good reason to seriously consider the policy. What I then do is enter into a dialogue concerning the reasons to support or oppose a policy. The model of reasonable justification is built around a dialogue occurring between a set of reasonable agents. However, the possibility of an internal dialogue where a single agent weighs different considerations is also a possibility. Such an internal dialogue should work in the same manner, but I do think that the assurance that one has of the justifiability of the action is less using such a process. Ultimately, the decision concerning a policy must be justifiable to another agent.

Thus, to evaluate each part of our health care system we should ask if the particular practice in question is good, right, and fair. The current cost of health care, and particularly of prescription drugs, gets much of the attention in the current discussion. The issue becomes more emotionally fraught as the seriousness of the illness increases. For example, my father had been diagnosed with a rare and terminal form of cancer and was receiving treatment. He received a shot that the doctor informed him would cost \$4000. He passed away not long after receiving the shot. However, about a month after his death his wife received a bill for \$9000 for the shot and it was not clear that the insurance company was going to pay for any of it. Such a situation is the type where people often believe that the costs of medication are unreasonable and fail some moral test. But which one? We want the best medications possible and research is very expensive – it costs millions of dollars to bring a medication to the market. Are the overall consequences good? Is it right, according to the Kantian tests discussed earlier? What maxim is the doctor and the pharmaceutical company following? Is it one that can be applied to everyone consistently while respecting each person's autonomy? Finally, is

this practice fair? Is it one that any reasonable agent would accept from behind the veil of ignorance? These are the questions that I think we should ask when determining our moral evaluation of such practices and of our health care policies more generally.

So, it is precisely events such as this one which I believe are necessary, morally speaking, for us to make sound evaluations of our policies concerning health care. The type of discussion concerning the health care system which is being undertaken here is the type which is needed for two reasons. First, it will help us to find the justification which we need to find firm grounding for our moral judgments concerning these most difficult issues. Secondly, it is through discourse that we are better able to reach sound particular moral evaluations.

Ultimately, morality is difficult and somewhat messy. I hope this approach will help you in your attempt to find your way through the difficult terrain that is the moral realm.