Private Ethics and Public Morality: Reflections on Healthcare Ethics

David C. Blake, PhD, JD

A Recovering Bioethicist

aka
Vice President, Corporate Compliance
Chief Compliance and Privacy Officer
Cedars-Sinai Health System
The puzzle...

- In the context of a contemporary healthcare institution, why are conversations on some issues/problems so easy and comfortable, whereas on other issues/problem the conversations are so difficult and uncomfortable, even though both types would seem to be about “ethics”?

  - For example...
    - Are the spouse’s demands consistent with the patient’s wishes and/or best interest?
    - How can we promote virtue among our fellow caregivers?

- It’s as if only a certain type of “ethics” is easy for us to perform.

- If so, why so?
"Me? I'm just one of those shadowy figures who inhabit the mysterious twilight world where the medical and legal professions meet."
What follows...

- Some preliminaries on terms and definitions.
- Reflections on the current state of “ethics talk” at play in the culture.
- A suggestion about an apparent “paradigm shift” in our understanding of ethics.
- A proposal about how this paradigm shift was necessitated by the solution to a particularly modern political problem.
- The particular effects of all of this on the field of healthcare ethics or bioethics.
- A reformulation of the difference between ethics and the law.
- Some suggestions on where we are left regarding the moral authority of healthcare professions and institutions.
‘Ethics’ vs. ‘Morality’

“Miss Dugan, will you send someone in here who can distinguish right from wrong?”
Ethics (via Latin ethica from the Ancient Greek ἠθική [φιλοσοφία] "moral philosophy", from the adjective of ἤθος ἕθος "custom, habit")...
“Whilst ‘morality’ and ‘ethics’ are broadly interchangeable terms, ‘morality’ usually refers to the actual principles held as authoritative in governing correct behavior. By contrast ‘ethics’ more commonly refers to the systematic philosophical study of these principles.”
A neat distinction…but can it hold up in the repository of popular culture…the internet?
A Bloggers' Code of Ethics

Some bloggers recently have been debating what, if any, ethics the Weblog community should follow. Since not all bloggers are journalists and the Weblog form is more casual, they argue they shouldn't be expected to follow the same ethics codes journalists are. But responsible bloggers should recognize that they are publishing words publicly, and therefore have certain ethical obligations to their readers, the people they write about, and society in general.

CyberJournalist.net has created a model Bloggers' Code of Ethics, by modifying the Society of Professional Journalists Code of Ethics for the Weblog world. These are just guidelines -- in the end it is up to individual bloggers to choose their own best practices. CyberJournalist.net follows this code and urges other Weblogs to adopt this one or similar practices.

Integrity is the cornerstone of credibility. Bloggers who adopt this code of principles and these standards of practice not only practice ethical publishing, but convey to their readers that they can be trusted.

A BLOGGERS' CODE OF ETHICS
What does government have to say about ethics?

Plenty!!
Senate passes ethics bill

WASHINGTON (AP) — The Senate voted Thursday to make lawmakers disclose more about their efforts to fund pet projects and raise money from lobbyists, a move some called the biggest advance in congressional ethics in decades.

Democrats hailed the 83-14 vote as proof they are fulfilling their 2006 campaign promise to crack down on lobbying abuses that have sent some lawmakers and a prominent lobbyist to prison.

RELATED: Stricter lobbying standards passed in House

But the White House said President Bush had "serious concerns" about the measure and had not decided whether to sign it. The bill contains "toothless provisions" for disclosing "earmarks" slipped into spending bills, said White House
Supreme Ethics Problem?
What Was Supreme Court Justice Antonin Scalia Doing on Day of Supreme Court Swearing-In?

By BRIAN ROSS
Jan. 23, 2006

At the historic swearing-in of John Roberts as the 17th chief justice of the United States last September, every member of the Supreme Court, except Antonin Scalia, was in attendance. ABC News has learned that Scalia instead was on the tennis court at one of the
Welcome to the Office of Government Ethics' Web site. Here you will be able to access data about OGE and the services it provides. We hope this site will help you understand the executive branch ethics program and our effort to reach Federal employees and the general public.

**WHAT'S NEW AT OGE!**
This section provides information on the latest developments at the Office of Government Ethics (OGE). You will find notices about the release of the most recent DAEOgrams, the passage of recent legislation pertaining to executive branch ethics, upcoming training sessions, and job vacancies at OGE. *Page updated 11-02-07.*

**ABOUT OGE!**
This section includes information about the background, mission, organization and functions of OGE. This section also provides referral information of matters that are outside of OGE's jurisdiction. Finally, there is specific guidance about how to make a Freedom of Information Act request for OGE records and information about ERO Complaint Statistics. *Page updated 11-01-07.*

**LAWS & REGULATIONS**
This section contains a list of ethics statutes and regulations and links to the text of conflict of interest laws at 18 USC and to the text of ethics regulations at 5 CFR. You can also find links to Executive Orders and Federal Register Issuances that pertain to ethics. Finally, you can find other miscellaneous resources, such as OLC opinions, court cases, and the annual conflict of interest prosecution survey. *Page updated 08-28-07.*

**ADVISORY OPINIONS**
This section contains opinions issued by OGE's Office of General Counsel and Legal Policy in response to questions OGE receives about the conflict of interest laws and regulations, the standards of conduct, and financial disclosure requirements in the executive branch. It also contains information on searching the advisory opinions and ordering available printed opinions. *Page updated 09-21-07.*

**DAEOGRAMS**
DAEoGrams are memoranda from OGE to the executive branch Designated Agency Ethics Officials (DAEoOs) providing guidance on how to implement and comply with ethics regulations. *Page updated 09-21-07.*
Are there folks to keep us honest, ethically speaking?

You bet!
For Chief Ethics Watchdog in Albany, a Dozen Years of Conflict Draw to a Close
Tuesday, June 05, 2007

Americans Rate Morality

Real Clear Politics had this article titled Americans Rate the Morality of 16 Social Issues. Gallup conducted a poll of what Americans think of certain issues. Most discouraging, I thought, was that 65% of Americans feel that divorce is morally acceptable. Other issues included the death penalty, medical research, gambling, etc. The most contentious issues appear to be having a baby outside of marriage, doctor-assisted suicide, homosexual relations, and abortion.

Of course the poll had to also analyze the data according to party, or political philosophy. So I guess my question is, when the people are so far apart on the morality of certain issues (homosexual relations, sex between an unmarried man and woman, having a baby outside of marriage and abortion, notably), who decides what is moral? A simple majority? Majorities have been wrong in the past, have they not? Is it each person to himself? But we live in a society, with each other. How can we tolerate what we believe to be immoral behavior in others?

Tolerance is such a buzz word lately, but I think that it could be the key. We need to be tolerant of each other but not to the point of being morally blind. We need to be able to respect the conscience of others without being judgmental.
Mondag, September 24, 2007

In re: The Anglican Communion

The Anglican Communion is at a crossroads. The Anglican Communion is on the brink of schism. The Anglican Communion is teetering on the brink of schism. The Anglican Communion faces the specter of schism. Schism looms for the Anglican Communion.

These statements are quite a mouthful. They have been used so often in so many articles over so many years now, that it is quite possible for readers of these articles, to skim past them, and the accompanying paragraphs explaining why and how, knowing fairly well their general point. These articles have been saying the same thing, often using the same “leading” sources, for quite some time. Very little of it is new or useful.

About me

The AOM
The Episcopal Church, United States

When not navigating the high seas, I may be found on my deck chair with a stiff whiskey and my favorite shorthair tabby, watching the frothy waters of Episcopal and Anglican neer-do-wells crash upon the rocks of self-importance and rancorous holier-than-thou-isms. Why the name “Admiral of Morality”?

View my complete profile
Can you test yourself?

You bet!
Welcome to YourMorals.org, where you can learn about your own morality while contributing to scientific research on moral psychology.

Many aspects of personality are related to morality. Many aspects of behavior are influenced by moral motives. And many conflicts and misunderstandings are driven by differences in morality. But rather than simply telling you these things, we want you to see for yourself. After each questionnaire or experiment you complete, we'll give you an immediate report on how you scored, and what your score means.

So please join us and register and begin exploring your morality. Registration takes just 2 minutes, and it will allow us to hold your scores for you so that you may return at any time and continue to build up your morality profile. (You might want to compare your results with those of your close friends and family).

Please note that this site requires that your browser accept cookies to work properly.
If you experience technical difficulties, please contact our webmaster.

Thank you for your interest....
How moral are you? What is your attitude to morals, sex and honesty? The fascinating personality test below was written by a Sydney marriage expert who is a qualified psychologist. It began as a dinner party conversation gimmick, but it has been prepared in this form for readers to test themselves. To do the "test" you must give your honest opinion about morals and honesty of the four characters in our story of Sherwood Forest. Forget any preconceived ideas you may about them - this is a different sort of story from all the others. Ready?

The Sheriff of Nottingham captured Little John and Robin Hood and imprisoned them in his maximum-security dungeon. Maid Marion begged the Sheriff for their release, pleading her love for Robin. The Sheriff agreed to release them only if Maid Marion spent the night with him. To this she agreed. The next morning the Sheriff released his prisoners. Robin at once demanded that Marion tell him how she persuaded the Sheriff to let them go free. Marion confessed the truth, and was bewildered when Robin abused her, called her a slut, and said that he never wanted to see her again. At this Little John defended her, inviting her to leave Sherwood with him and promising lifelong devotion. She accepted and they rode away together.

Now in terms of realistic everyday standards of behavior, put Robin, Marion, Little John, and the Sheriff in the order in which you consider they showed the most morality and honesty. There is no "right" answer, and you'll be given the psychologist's estimate of you for each of the 24 arrangements.

Instructions

♦ Choose honestly. I'm trying to survey what people really believe.
♦ Submit your answer as a "first profile" only once.
♦ Set "first profile" to "No" for following answers.
♦ Once you're counted, see all the answers go to the answers list.
If you fail the test?

It’s curtains!! (But not to worry.)
Is this just a bunch of PR?

You bet!
"The Public Relations department is frequently the ethical heart of an organization."
Is ethics good for business?

You bet!
Welcome

Major changes in the fields of food and agriculture in recent years, including accelerating technological development, changes in the resource base, and economic and market developments, have brought to the fore a variety of ethical questions of relevance to food security and sustainable rural development.

Ethics is by its nature crosscutting and multidimensional, and FAO has therefore designated "Ethics in Food and Agriculture" as a Priority Area for Interdisciplinary Action, and established an internal Committee on Ethics in Food and Agriculture to guide the Organization's actions in this regard.

The Director-General has also established, under Article VI.4 of the FAO Constitution, an independent Panel of Eminent Experts on Ethics in Food and Agriculture, to advise him on pressing issues of ethics in food and agriculture.

A new publication series, the FAO Ethics Series, has been launched, with the aim of making widely available information on major issues on ethical questions of relevance to the work of the Organization.

We hope that the Panel's deliberations and the publications in the FAO Ethics Series will help focus a wide-ranging global debate on ethical issues in food and agriculture, and enrich the deliberations, within FAO and in the wider community.
Ethics and Culture Management Services for Organizations

Getting Ethics Into Organizations Improves Performance.

- Ethics Quality™ is a performance approach to ethics management that seeks to continuously improve behavior in a sustainable way.
- Getting ethics into the organization’s culture is one of management’s highest responsibilities, yet managers develop skills and supporting environment to be effective culture champions.
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We provide training aids, and onsite training and consulting programs to help groups develop high performance ethics systems cultures.

Pittsburgh, PA
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Email Us
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Code of Ethics for ASHI Inspectors

Effective on June 13, 2004

If you are a home inspector and would like to take the ASHI Code of Ethics exam, please click here.

Haga clic aquí para la versión en español

The ASHI Code of Ethics details the core guidelines of home inspection professionalism and home inspection ethics. Covering crucial issues such as conflicts of interest, good faith and public perception, these home inspection ethics are central pillars of home inspection professionalism for the entire industry.

Integrity, honesty, and objectivity are fundamental principles embodied by this Code, which sets forth obligations of ethical conduct for the inspection profession. The Membership of ASHI has adopted this Code to provide high ethical standards to safeguard the public and the profession.

Inspectors shall comply with this Code, shall avoid association with any enterprise whose practices violate this Code, and shall strive to uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

All inspector members of ASHI have agreed to abide by this Code of Ethics.

1. Inspectors shall avoid conflicts of interest or activities that compromise, or appear to compromise, professional independence, objectivity, or inspection integrity.

   A. Inspectors shall not inspect properties for compensation in which they have, or expect to have, a financial interest.

   B. Inspectors shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

   C. Inspectors shall not directly or indirectly compensate realty agents, or other parties having a financial interest in closing or settlement of real estate transactions, for the referral of inspections or for inclusion on a list of recommended inspectors, preferred providers, or similar arrangements.

   D. Inspectors shall not receive compensation for an inspection from more than one party unless agreed to by the client(s).
Marines Focus on Battlefield Ethics

Marine Corps, Under Fire for Some Civilian Deaths, Ramps Up Battlefield Ethics Training

By THOMAS WATKINS Associated Press Writer
SAN DIEGO Jul 14, 2007 (AP)

Perched atop a stack of foot lockers in a spotless barracks, drill instructor Gunnery Sgt. Celestino Casias asks 45 shaven-headed recruits what it takes to be a Marine. "Honor, courage, commitment!" the aspiring fighters shout in unison.

The words come easy in this new class about ethics, but allegations that Marines killed women, children and unarmed captives in Iraq and Afghanistan suggest they may sometimes prove hard to live by.

"When you are out there, you
ETHICS

Ethics: The Essence of Our Business

Through Ethics Awareness, Diversity Dialogues, and Full Spectrum Leadership

Click here to acknowledge completion of the 2007 Ethics Awareness Training
Case BRI-1001

United Technologies Corporation: Running a Global Ethics and Compliance Program

Lisa A. Stewart
Dear David,

Before you have compliance, you have to have ethics. Without a proper training tool, compliance officers can miss the opportunity to address specific standards outlined in their hospital’s code of conduct and provide the solid training employees need to conduct themselves appropriately.

Make the Right Call: Ethics Training in Corporate Compliance is a 15-minute video that presents scenarios that might play out in any healthcare organization. These scenarios raise ethical questions that providers and employees face every
Do you need a code of ethics?

No problem!
Self-Integrity – The Foundation of Ethical Decisions
by Chuck Gallagher

Be the first reader to add a comment

“As authentic self-knowledge begins to unfold, our principles, thoughts, commitments, and actions rise up to be in accord with who we truly are.”
(Yasukiko Genku Kimura)

Your Code of Ethics
The Internet Library of Oaths, Pledges, and Codes of Ethics
Police Codes of Ethics

To locate codes of ethics, pledges, oaths, and so on pertaining to police and law enforcement, refer to the Government / law / legal / police / military associations' codes of ethics category and the Governments (federal, state, city, global) category by clicking those links in the column to the right under "Categories."

If you don't find what you're looking for, submit a 'comment' at whatever category comes closest to the one of your interest. Or consider starting your own code project by clicking here.

Photograph Associations' Codes of Ethics

To locate codes of ethics, pledges, oaths, and so on pertaining to photography, refer to the Creative arts' associations' codes of ethics: photography category by clicking that link in the column to the right under "Categories."

If you don't find what you're looking for, submit a 'comment' at whatever category comes closest to the one of your interest. Or consider starting your own code project by clicking here.

Philosophical Associations' Codes of Ethics

To locate codes of ethics, pledges, oaths, and so on pertaining to philosophy, refer to the religion / philosophy associations' codes of ethics category by clicking that link in the column to the right under "Categories."

If you don't find what you're looking for, submit a 'comment' at whatever category comes closest to the one of your interest. Or consider starting your own code project by clicking here.
What else?

Now it gets a little strange!
A call for machine morality

Posted by Stefanie Olsen

SAN FRANCISCO—Prediction: We are just a few years away from a catastrophic disaster brought about by an autonomous computer system making a decision—a disaster that will provoke a political response on par with 9/11.

That prediction is from Wendell Wallach, lecturer at Yale University's Interdisciplinary Center for Bioethics, who hypothesized about the challenges and opportunities we face in an age of artificially intelligent machines, such as self-driving cars or household robots. Wallach spoke here Saturday at the Singularity Summit, a two-day conference about AI and the possibility of developing smarter-than-human machines.
The ethics of iPhone

By Bruce Weinstein, Ph.D., The Ethics Guy

Does the i stand for isolation? Ten years ago, Apple Inc. began using the phrase "Think different" in its advertising campaign, and the phrase quickly became as iconic as "Where's the beef?" "Got milk?" and other catchy slogans.

On June 29, the company released its newest invention, the iPhone, and Wall Street analysts expect 3 million units to be sold in the coming weeks, according to the New York Times. Everyone who hopes to be cool will want one, and what could be wrong with that?

A lot, as it turns out.

Our society has devolved into a mass of turned-on, tuned-out and plugged-in technophiles. Whatever distinction used to exist between public and private life is all but gone. Waiting on line at the grocery store or post office used to mean striking up a conversation with the person in front of you; it now involves blurring the intimate details of one's love life into a cell phone for all to hear, or scrolling through a playlist for just the right song, or checking our e-mail.
Get Complimentary Ringtones!
Download Instantly In 3 Easy Steps!
Get your Ethics Ringtones!
SKorea draws up code of ethics -- for robots

08.07.07, 12:42 AM ET

SEOUl (ThomsonFinancial) - South Korea, at the forefront of the drive to develop robots which can do anything from guarding the border to caring for the elderly, is now drawing up a code of ethics for them.

The action, which has not an ambiguity...
And then there’s...
O.J. Ethics

By Bruce Weinstein, PhD
Fri Sep 14, 8:08 AM ET

After a delay of almost a year, you now have an opportunity to buy a copy of O.J. Simpson's book If I Did It.

You have a right to buy it. But you shouldn't. This is an immoral book that should never have seen the light of day.

Beaufort Books, a small, independent publisher, had a legal right to publish If I Did It, but it was wrong for them to do so.

The Price for a Free Society

How is it possible that we can have a right to do something that is wrong? Who is to say that this book, or anything for that matter, is immoral? I'll explain.

Living in a free market economy means that, except in extreme circumstances, merchants are entitled to offer whatever goods and services they please, and consumers are free to decide what they want to purchase and what they wish to do without. Not everyone is able to buy what they'd like, and most consumers will find something objectionable in the marketplace. However, unless a product or service is justifiably illegal (e.g., child pornography, heroin, or pirated movies), consumers are obliged to put up with the sale of material that they might find offensive, disgusting, off-putting, or immoral. A broad level of tolerance is the price we must pay for living in a free society.

Still, having the right to buy something does not mean that it is right to do it, and simply because it is legal to do something doesn't mean that it's ethical to do it. For example, you are not breaking any law by lying to your spouse, but you shouldn't do so. You have a right to eat junk food three times a day, but a steady diet of hamburgers, fries, and...
“As officers and employees of Enron Corp....we are responsible for conducting the business affairs of the Company in accordance with all applicable laws and in a moral and honest manner.” Ken Lay
So...

Could all these folks mean – or think they’re saying – the same thing when they speak of “ethics” or “morality”?
In popular culture, ‘ethics’ and ‘morality’ seem to float...

☐ From...
  ■ Personal taste with attitude.
  ■ My own personality profile.
  ■ Doing what’s right for me.

☐ And...
  ■ Rules to go by.
  ■ Doing the right thing in some sense.
  ■ Being good according to some measure.

☐ To...
  ■ God knows what!...“Ethical Ringtones”
Given how the terms are used, you have to wonder...

- What’s the difference between an ethical person and an unethical person?
- What’s the difference between ethical rules and other sorts of rules?
- Ethics can’t be about simply following just any old set of rules or standards!
Otherwise, these would be signals of “ethical” violations...
What to conclude?

☐ Perhaps not this bad...

[I thought about stopping here!]
It is curious...

- While ethics or morality is obviously a hot topic...
  
  [Personally, I try to work ethics into every cocktail-party conversation I have.]

- Its very popularity seems to entail a certain level of...should we say...ambiguity in what the hell people are talking about.

- We even seem to appeal to ethics or morality to make serious, some matters that are necessarily trivial.

- **But how did things get this way?**
What way?...This way!

“I’ve never been what you’d call an ‘ethics head.’”

© Cartoonbank.com
Could it possibly be...

- Ethics and morality are concepts that have been cut loose from some older cultural and cognitive context in which they would enjoy more coherence and consistency in meaning and use.

- Which bring us – as I’m sure you have guessed – to Captain Cook!
‘Taboo’
MacIntyre...

“In the journal of his third voyage Captain Cook records the first discovery by English speakers of the Polynesian word *taboo*. When they enquired why men and women were prohibited from eating together, they were told that the practice was *taboo*. But when they enquired further what *taboo* meant, they could get little further information. Clearly *taboo* did not simply mean *prohibited*; for to say that something...is *taboo* is to give a particular reason for its prohibition....What this suggests is...that the native informants themselves did not really understand the word they were using....Deprive the taboo rules of their original context and they at once are apt to appear as a set of arbitrary prohibitions, as indeed they characteristically do appear when the initial context is lost, when those background beliefs in light of which the taboo rules had originally been understood have not only been abandoned but forgotten.” (emphasis added)
One such “native informant”!

"Ethically I'm probably at, or perhaps just a bit below, the national average."
So here’s a thought...

- Unlike how they are currently used, ‘ethics’ and ‘morality’ are terms that are meant to conjure up the lived experience of... **being-human-in-community**.

- Put differently...
  - **What if the idea of ethics has more meaning and coherence in relation to the realization that humans are by nature social beings who may individually prosper only by prospering as social beings; that is, only by prospering together.**
  - The idea of ethics is supposed to be the idea of **humans flourishing in a righteous and compassionate society**.
  - But what ever happened to such an idea?
Suppose...

- That a particular solution to a central problem of modern politics had the unintended consequence of re-shaping our conception of ethics.
- And how ethics was re-shaped resulted in cutting the connection between ethics and our social nature, which in turn gave rise to the kind of incoherence or arbitrariness we see in current uses of the term ‘ethics’ and current appeals to the idea of ethics.
The modern problem of politics...

- The setting:
  - Religious and cultural diversity (fragmentation) within politically integrated states.

- The challenge:
  - Grounding political authority across sectarian boundary lines.
    - Accounting for political authority and not merely the rule of force or power.
    - Force operates through fear, whereas authority operates through respect.
“The Social Contract”
The political solution...

- STEP ONE: “Deconstruct” society (the human community) from a natural condition to an artifact.

- STEP TWO: Re-conceive the individual as an asocial being:
  - Outside the context of certain “natural communities,” there is nothing/no one with natural authority over the individual.
  - The individual exists in this state of nature as not just self-interested, but rationally self-interested.
  - As a matter of rational self-interest, the individual would never concede all his natural authority to another.

- STEP THREE: Postulate that civil society and its governing structures (its state) have only limited, delegated or conventional authority over the individual.
  - Limited because its delegated authority exists only so long as the individual sees it in his or her rational self-interest to allow it.
The exception to the idea of delegated authority...

- “Natural communities”:
  - The family.
  - Possibly some faith communities.
  - Others? [We’ll come back to this!]

- That is, by its very nature, the group or institution has authority over the individual independently of any possible delegation of authority from the individual.
  - This community’s legitimacy to direct behavior of its members is not dependent on the “consent of the governed.”

- But set these aside for the moment; we’ll return to them later.
Original, natural authority

Delegated, conventional authority
How easy would it be for this account of political authority to morph into an account of ethical authority?
That is, to see the interplay of individuals in general in terms of the relative political authority of civil society over the individual...

- To believe that most human groups and institutions, with some exceptions, have only delegated authority and thus may exercise that authority only to serve the rational self-interests of the individuals who constitute the group or institution.

- To believe this about any group or institution that "looks like" civil society!
  - Voluntary in its association
  - Diverse in its composition

- **How easy?**
This easy...
The Harm Principle...

“...the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.” (emphasis added)
Two stipulations...

- The harm to be avoided must be apparent and in some way tangible.
- Those possibly harmed must be identifiable, determinate individuals.
- Thus, only a material infringement of the actual liberty of others may justify constraints on the liberty of any one individual.
The uncivilized are an exception...
“I'm afraid you've had a paradigm shift.”
The shift completed...

- From...
  - Ethics as a reflection on and a project about the flowering of human personality within a truly righteous and compassionate human community.

- To...
  - Ethics as a reflection on and a project about the individual’s natural authority to pursue purely self-regarding behavior (even if aberrant and/or self-destructive), and the group’s delegated authority to limit or control the individual’s behavior only in the rational self-interest of all; i.e., only to prevent the kind of harm all would be inclined to avoid.
Thus...

- Except for those few “harm” which we would all wish to avoid, this new paradigm of ethics easily resolves into a kind of personal preference in the values I pursue and the rules I follow.

- While this new “ethics” fits nicely into this new political culture, it opens up the possibility of moral discourse being reduced to the kind of chatter evidenced on the internet and throughout popular culture.
Need I say more?

GOSSIP
JEANNETTE WALLS DELIVERS THE SCOOP

Paris defends Britney's ‘partying ethics’
Plus: Does Richard Gere blame Sly Stallone for gerbil rumor?

By Jeannette Walls
MSNBC
Updated: 6:59 p.m. PT Dec 12, 2006

Paris Hilton is defending her new best friend
Britney Spears on her MySpace site.

“Lately, you’ve been seeing pics of me and
Britney partying (blah blah) [sic] and she knows
that some of her fans are very upset about
what they call her ‘behavior’ and sadly they’re
blaming the issue on her being friends with me,”
Hilton wrote. “For people to call out her
parenting skills on behalf of her partying ethics
is appalling. Britney loves her kids to death, and
I know for a fact that it truly hurts her when
she sees these cruel things being written about
her. She goes home every night to her babies.

December 1, 2007 Kaiser Permanent Bioethics Symposium
And who should perform at such parties?
And along comes bioethics!
And so...

- At the dawn of healthcare ethics -- bioethics...
  - The intellectual and cultural context – that is, the political culture – was set up to perceive *ethical problems* as problems about the interests of individuals (*as individuals*) at odds with other competing concerns.

- And...
  - To perceive the *ethical solution* to such problems as involving primarily the promotion of toleration for the self-regarding preferences of individuals.
A heroic effort...
“The four clusters of principles...”
Their intention...

- Four mid-level principles each containing a variety of concerns which only together form a framework for an adequate and comprehensive ethical discernment of issues in health care.
The reality...

What are the patient’s rights in this case?

Is there an advance directive?

Do we know the patient’s preferences?

Whom did you say is the surrogate?

Here’s what the statute says.

I wonder what justice demands... ah, better not ask that question!
Through the prism of an idea about politics morphed into an idea about ethics, the Four Principles of Bioethical Ethics become...
Now here’s what’s interesting...

In general, the courts, and not Beauchamp and Childress, got this new paradigm of ethics right!
Bouvia v. Superior Court, 179 Cal.App.3d 1127 (1986):

“Here Elizabeth Bouvia’s decision to forego medical treatment or life-support through a mechanical means belongs to her. It is not a medical decision for her physicians to make. Neither is it a legal question whose soundness is to be resolved by lawyers or judges. It is not a conditional right subject to approval by ethics committees or courts of law. It is a moral or philosophical decision that, being a competent adult, is hers alone.”
A modest proposal...

- What the court is articulating is not simply a legal rule or principle that may be counter-posed to some possible ethical rule or principle.
- Rather, the courts become the voice of this new paradigm of ethics.
  - They begin to articulate the only ethical principle that is consistent with a particular type of civil society and its institutions.
  - The only ethical principle suited to a political culture founded on the proposition that in the bargain for civil society, each individual retains his or her natural authority over conduct not specifically harmful to other, determinate individuals.
Close...but not quite it!

“Let’s just say that I’ve lived up to the highest moral code permitted by law.”
The law as a moral code...

- **The law – in particular, a jurisprudence of individual rights protected within a zone of privacy – becomes a kind of de facto moral framework for any setting – health care included – that is characterized by the defining features of civil society.**

- That is, a healthcare or other setting characterized by:
  - The **voluntariness of association** - the individual (provider or patient) may choose to be there, or not so; and
  - The **diversity of composition** - those interacting are ethnically, religiously, and culturally diverse.
And consider what this jurisprudence does with…

“The ethical integrity of medicine”
The integrity of medicine as seen through the new paradigm...

- Thor v. Superior Court, 5 Cal.4th 725 (1993):
  - “Our conclusion that a patient’s choice must be respected regardless of the doctor’s judgment does not denigrate professional standards of care....Patient autonomy and medical ethics are not reciprocals, one does not come at the expense of the other. The latter is a necessary component and complement of the former and should serve to enhance rather than constrict the individual’s ability to resolve a medical decision in his or her best interest.”
And again...

- *Compassion in Dying v. State of Washington, 79 F.3rd 790 (9th Cir. 1996):*

  “Recognizing the right to ‘assisted-suicide’ would not require doctors to do anything contrary to their individual principles. A physician whose moral or religious beliefs would prevent him from assisting a patient to hasten his death would be free to follow the dictates of conscience. Those doctors who believe that terminally ill, competent, adult patients should be permitted to choose the time and manner of their death would be able to help them do so.”
In this new ethics...

- The ethical integrity of medicine becomes one and the same with accommodating the individual’s natural authority over his or her own conduct!
Voila!
Now here’s the serious stuff…

☐ This new ethics may very well make intractable two of the most troubling issues in health care today:

☐ As we’ve just seen:
  ■ The problem of professionalism:
    ☐ Ethical codes/standards seen as merely advisory and optional, especially in any context wherein harm to others does not seem a problem.
  ■ The problem of justice:
    ☐ The over- and under-accessing of services.
And the dilemma...

- There are foundational assumptions about ourselves in civil society and the governing of civil society that form conceptual barriers to reclaiming a concept of ethics with which the problems of justice and professionalism might be effectively resolved.

- For example,
  - Futile medical treatment.
  - No or limited access to needed health care.
  - Conflicts of interests among healthcare providers.
  - Financial considerations instead of community needs driving decisions to develop services.

- The “ethics” that our political culture accommodates cannot do the heavy lifting needed to solve these (types of) problems!
What are our options?

- An attempt to resurrect that older concept of ethics might involve...
  - Rethinking and reformulating the foundational terms of our political culture and its notions about the nature of civil society and the individual’s place within it;
  - Or arguing that certain institutions and/or certain groups are in fact forms of “natural communities” (like the family) whose ethical authority is not derived (exclusively) from the individual’s delegation of authority.

- Since the first option looks impractical – perhaps even ill-advised – what would the second option look like?
Civil society vs. natural communities...

- If voluntariness of association and diversity of composition characterizes civil society and its institutions and groups, what characterizes a natural community?

- Natural Communities...
  - The individual’s membership is in some sense not optional.
  - The community or group is marked more by its commonality of purpose than any diversity of interests.

- In natural communities, authority (moral or otherwise) is derived from the common purpose and may be seated along lines of natural abilities or talents.
Again, consider medicine as a profession...
Is this code merely advisory for members of the profession?

Or could it be considered compulsory?
Resurrecting the older concept of ethics in reformulating the ethical integrity of medicine...

- Medicine as a profession constitutes a natural moral community in so far as it exists for the common good of health and its members belong through a calling to heal.
- The profession as such – and as exercised through its governing organizations – has moral authority over its members independent of any delegation of authority by its members.
- Medicine as a profession – and not just its individual members – has “moral agency.” It can speak authoritatively on its own behalf on matters of morality.
- Therefore, how medicine defines the terms of righteousness and compassion for the profession become mandatory ethical injunctions upon its members.
Could a similar account also work for a provider institution?

- Could a hospital have ethical authority over its patients and employees over and above what might be delegated to it through patients’ consent and employees’ agreements?

- Could hospitals be re-cast as “natural moral communities”?
  - Could they – as individual institutions or whole systems of institutions – have a common purpose and their members a common calling to that purpose?
“I'm not a miracle worker. I can't do the surgery for less than four thousand.”
To sum up...at last!!!

- Our current concept of ethics may make better political sense than ethical sense.
- And exactly for that reason this new concept of ethics cannot be easily abandoned, even despite its apparent shortcomings.
- However, it may be only by escaping this current concept and reclaiming that older concept of ethics that we will resolve the intractable problems of healthcare ethics.
- If we cannot and should not abandon the political assumptions about civil society that ground this current concept of ethics, we are left with attempting to re-position either healthcare professions or healthcare institutions as natural moral communities with original moral authority over their members.
- In particular, medicine or a hospital seen as a natural moral community with moral authority over its members may be able to effectively tackle some of the intractable problems of health care in ways medicine seen as a voluntary trade association or a hospital seen as a service-providing business could never do.
And so I leave you with this question...

- Is Kaiser Permanente a natural moral community of caregivers and patients; or is it just a mini-version of the larger civil society in which each individual retains full moral authority over his or her own conduct up to the boundary of harm-to-others?

- How you answer this question may very well dictate whether futile treatment, among other problems, will forever remain intractable.
Better stop here...I think I heard Tom Priselac calling me...

“Just a goddamn minute here, professor. Have you forgotten whose corporate ethicist you are?”
Thanks for your patience...