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DON MACNIVEN

Creative Morality

Don MacNiven

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Creative Morality

Creative Morality is a philosophical study of moral dilemmas. It describes the ethical systems on which the majority of us make our moral decisions and provides a theoretical basis for critical discussion of these systems.

Western moral thought has relied on two basic ethical perspectives – utilitarianism and Kantianism – to resolve dilemmas. Professor MacNiven argues that no real progress can be made with modern moral problems unless these traditions are coherently synthesized. The book deals with such diverse topics as academic honesty, confidentiality of medical records, terrorism, experiments with human subjects, euthanasia, bribery and environmental issues. The hypothetical dilemmas which are used are all based on real life situations, so that theory might be tested against reality. The solutions are not definitive because, as MacNiven demonstrates, creativity is an intrinsic characteristic of moral thought. Answers to moral problems require the restructuring of personal and social affairs in ways that express conflicting values through the maturing agency of creativity.

This book is a contribution to the development of a comprehensive ethical theory which can address complex moral problems. It forms a useful introduction to the problems of practical ethics.

Don MacNiven is Professor of Philosophy at York University, Toronto, Ontario, Canada.

Preface

This book grew, in part, out of a radio series on practical ethics, entitled 'Making a Moral Choice', which I developed for Margaret Norquay, who was then the director of the Open College at Ryerson Polytechnical Institute in Toronto. The series, which consisted of twelve one-hour programmes, was broadcast by Open College/CJRT FM, from 10 February to 30 April 1985. The series was part of a wider investigation I was conducting into the relations between ethical theory and practical ethics, which led me beyond the confines of the academy into the living world of everyday morality. Besides teaching my regular courses on ethical theory, the history of ethics and practical ethics at York University, Toronto, I became involved in several public projects. My assumption was that no progress could be made with contemporary moral issues without some first-hand experience of them. I participated in TV Ontario's project 'The Moral Question' from 1979 to 1980, producing a text on ethical theory for it. I was a member of the 'Moral Values Advisory Committee' of the Board of Education for the city of North York, Ontario, from 1981 to 1984. I was on the board of directors of the 'Ontario Patient's Right's Association' from 1981 to 1985, and was chair of the Canadian Society for the Study of Practical Ethics from 1987 to 1990. I conducted seminars on practical ethics for business and health care professionals. With my colleague Harold Bassford, I organized a series of seminars at York University on professional ethics, which were later published in 1990 by Routledge under the title *Moral Expertise*.

All these activities have contributed in diverse ways to the making of this book. Although the book is essentially a work in theoretical ethics, it has its soul in the lived experiences of ordinary people who grapple with moral problems on a daily basis. Without their concern and insight, ethical theory would be empty.

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Parts of the book have appeared in print before in slightly different forms: *The Moral Question: Ethical Theory*, TV Ontario, Toronto, 1982; 'Towards a Unified Theory of Ethics', in Douglas Odegard (ed.), *Ethics and Justification*, Academic Printing & Publishing, Edmonton, Alberta, 1987; 'The Idea of a Moral Expert', in my *Moral Expertise*, Routledge, London, 1990; 'Business Ethics in the Global Village', in Douglas Odegard and Carole Stewart (eds), *Perspectives on Moral Relativism*, Agathon Books, Toronto, 1991. I thank the editors and publishers of these works for allowing me to integrate some of this material into this book.

I would also like to thank Margaret Norquay for her help and insight in producing the radio series 'Making a Moral Choice' on which this book is partly based; the Department of Philosophy at the University of Leeds, especially Jennifer and Christopher Jackson, for their useful comments on the parts of the book which I read to them at Leeds in November 1990; the members of the Department of Health and Society at the Tema Research Institute, Linköping University, Linköping, Sweden, especially Professor Lennart Nordenfelt, who was my host when I lectured on my book there in 1990. I found their responses to my work extremely insightful and valuable. I would like to thank my research assistants, Mary Takacs and Deanne Rexe for helping with the footnotes and Lori Tureski for her help with the text. The index was produced with the aid of a grant from the Faculty of Arts, York University, Toronto, Canada.

I would also like to thank my daughter Maia and her husband Gordon Baird for their computer wizardry. Finally I owe a special debt to my wife Elina for her patience. She is a writer who understands better than most of us how to establish the proper balance of attachment and detachment to one's creative work.

Don MacNiven
York University
Toronto
June 1992

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Introduction

'Making a Moral Choice', the 1985 Ryerson Open College radio series out of which this book developed, was essentially a philosophical study of moral dilemmas. Each programme, prepared with the help of Margaret Norquay, who was the director of Open College at the time, featured a pre-taped discussion of a specific moral dilemma, a critical philosophical commentary by myself, and selected comments from participants and listeners, read and discussed by Margaret and myself. The pre-taped discussions were unrehearsed and unsupervised. As Margaret explained in the introductory programme:

> We gathered together various groups of friends and neighbours and acquaintances, and met in someone's living room and taped a discussion of each dilemma. No one knew what he or she was going to talk about until their arrival. There was no moderator, no expert, no celebrity – just folks. We had the kind of discussion you might well have in your own family or at work when someone has read something in the paper or heard something over the air and wondered was that the morally right thing to do?[1]

Once broadcast, the dilemmas were discussed with groups of students supervised by Margaret, myself and others from the Open College/Ryerson Polytechnical Institute and York University, Toronto. Some of the participants were enrolled in the course for a university credit, others were taking it out of interest as a non-credit course, and some were listeners who just tuned in. The purpose of the series was to heighten the awareness of the ethical systems most of us use to make our moral decisions, and to provide an opportunity for people to discuss critically some important contemporary moral issues. In my commentaries I always offered solutions to the dilemmas from two different philosophical perspectives. I tried to establish first that the

answers we give to our moral dilemmas are theory-dependent, and that in western cultures like Canada we tend to rely on two basic ethical traditions to solve our moral problems. I called these traditions 'utilitarian' and 'Kantian', because the names were associated with the most sophisticated ethical theories which had been developed by contemporary moral philosophers.

In the series I made no attempt to provide definitive answers to the dilemmas. I assumed that it was not the job of a practical ethicist to dictate answers to the audience. As I said in the introductory programme:

> It's not the job of the moral philosopher to tell anyone else what they ought to do. It's important to distinguish between the moralist and the moral philosopher. A moralist is someone who's trying to convert others to his moral principles. And this may sometimes be the appropriate thing to do. Being a moralist is not intrinsically bad. But in this project that we're doing preaching has no place.[2]

I accepted the principle of freedom of thought and conscience as a necessary presupposition of any project in practical ethics. As I remarked in the discussion guide which I prepared, with Margaret's help, for the series:

> Unless moral philosophers address their audiences as if they were rational moral agents who are capable of making up their own minds about right and wrong, any project in practical ethics is bound to fail. To do otherwise is to try to persuade others to accept values that are not their own and to deny the autonomy which makes rational discussion of moral questions possible.[3]

I assumed that ultimately everyone has to decide for themselves what is right or wrong, to act in accordance with their decisions and to accept the consequences of their conduct. The primacy of moral autonomy was a moral absolute for the project, and indeed ought to be for any valid form of moral education.

Many of the dilemmas used in the series were ones I had employed for some time in my lectures in moral philosophy at York University. Others were developed specifically for the series. Because of the success of the series, I continued to use that set of dilemmas in my lectures in practical ethics and ethical theory at York University, from then till now. During that time the dilemmas evolved, in dialogue with my classes and colleagues, until they reached the form in which they are discussed in this book. Some changed more than others; some barely at

all. Many of the changes were related to making the contrast between the Kantian and utilitarian perspectives more distinct. Others were changed to bring them closer to the real situations on which they were based or to the real experiences of the students who attended my lectures. In most cases the dilemma grew in size and changed from the curt description of an abstract logical puzzle into something more like a concrete detailed parable.

One of the things I discovered in working with moral dilemmas is that they have both an objective and subjective side. What appeared to be a dilemma for one person or group did not appear to be a dilemma to other persons or groups. Logically, a moral dilemma is a situation in which moral principles yield conflicting prescriptions. This is the objective side of the dilemma. In the introductory programme I defined a moral dilemma as follows:

> The simplest definition of a moral dilemma is that it is a conflict between two moral principles to which we feel equally committed. You know we often find ourselves in situations where we have to choose between two alternative courses of action, each of which is morally questionable.[4]

In order for a dilemma to be real for a particular individual he or she had to accept both of the conflicting values. If both alternatives did not have an equally strong claim for someone, he or she would not see the situation as a moral dilemma. Often there was an emotive component to an individual's response which strongly affected the way a dilemma was perceived and resolved. This is the subjective side of the dilemma.

As one would expect, there was no consensus on any of the dilemmas, either in the classroom or among the radio audiences. In some cases the majority of the participants looked at the dilemma in similar ways and reached similar conclusions. But there was always one, and usually more, who approached the dilemma from a different perspective and arrived at an opposing answer. In other cases people wanted to alter the dilemma, to add material to make the episode more realistic or more lively or more complete. In one, someone thought the problem lay not in the dilemma but in why anyone would get themselves involved in such moral perplexity in the first place. No systematic empirical study of the participants' responses to the dilemmas was done. Still it was clear that the way they responded depended heavily on the ethical systems which controlled their thinking, and the systems most often appealed to were versions of utilitarianism or Kantianism. To encourage the reader to respond

personally to the dilemmas I have appended the original Open College dilemmas, and attached a set of questions which should help in their analysis, at the end of this book.[5]

The second thing I have learned from teaching practical ethics over the years is that the function of the dilemma in our moral experience and in education is more complicated than I had first supposed. The dilemma is a type of case study and hypothetical cases have always been used by philosophers to illustrate or develop ethical theories. The cases used by philosophers are often contrived and unrealistic, yet they can be valuable analytic tools. Take Nozick's example of the 'experience machine', which he uses to demonstrate the inadequacy of utilitarianism:

> Suppose there were an experience machine that would give you any experience you desired. Superduper neuropsychologists could stimulate your brain so that you would think and feel that you were writing a great novel, or making a friend, or reading an interesting book. All the time you would be floating in a tank, with electrodes attached to your brain. Should you plug into this machine for life, preprogramming your life's experiences?[6]

If we believe that happiness/enjoyment is the sole intrinsic good, as the utilitarians do, then it would seem that we ought to hook ourselves up to the experience machine for life. Intuitively, however, we sense that there is something wrong with doing this. If we had the opportunity to do so, most of us would not hook up to the machine for life, although many might want to try it out for a brief period for kicks. We do not want to exchange reality for contentment, because we would no longer be able to tell when our desires were irrational. Real fears and phobias would be indistinguishable. Also we want to live active and not simply passive existences, and the machine prevents us from doing this. The machine also limits our experience by cutting us off from other human beings. If we stayed on it for life we would soon lose our personal identity because of our lack of interaction with others. Since there are no 'experience machines', as they are the stuff of science fiction, not science, this doesn't prove a great deal. However, if the argument does not refute utilitarianism it shows that theory is out of touch with our ordinary moral values, many of which are clearly non-utilitarian. Even if unrealistic hypothetical examples cannot be used to test or validate a theory, they could, as Jonathan Glover suggests, help us to discover what our deep values, the things we really cherish, are. Glover's philosophical thought experiments enlighten but they cannot prove:

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> On the conventional view, nothing is more damning than the criticism that some issue being discussed is based on assumptions that are 'unrealistic'. On this view, the way to think about issues like behaviour control is to avoid far out science fiction cases, and confine our thinking to the developments that, from the present perspective, seem likely. I hold the opposite view. In thinking about the desirability of various developments, it is often best deliberately to confront the most extreme possibility. Why is this? Thinking about the desirability of different futures cannot be separated from thinking about present values. And our values often become clearer when we consider imaginary cases where conflicts can be made sharp.[7]

In practical ethics, case studies have been put to a different use. There they are often employed to further a moral argument. Suppose, to use one of Glover's thought experiments, that we possessed a machine which could read minds. Wouldn't such a thought machine pose so serious a threat to human privacy that it ought to be banned?[8] This is an interesting question, but what relevance does it have for our ordinary lives as we are not likely to produce such a machine in the foreseeable future? An artificial example like this might illuminate our moral experience, but how could it test the validity of a moral judgement when there is such a lack of correspondence between the hypothetical and the real situation? As John T. Noonan Jr has pointed out:

> One way to reach the nub of a moral issue is to construct a hypothetical situation endowed with precisely the characteristics you believe are crucial in the real issue you are seeking to resolve. Isolated from the clutter of detail in the real situation, these characteristics point to the proper solution. The risk is that features you believe crucial you will enlarge to the point of creating a caricature. The pedagogy of your illustration will be blunted by the uneasiness caused by the lack of correspondence between the fantasized situation and the real situation to be judged.[9]

Noonan uses Michael Tooley's arguments justifying abortion to illustrate the problem with artificial cases. Tooley had argued that the foetus cannot be given a right to life simply because it will develop into an adult human being who will have a right to life, thus abortion is morally permissible. He uses the following hypothetical example to establish his thesis that potentiality for rational adulthood is not

sufficient to support a right-to-life claim.[10] Suppose a chemical could be injected into a kitten which would enable it to develop into a cat possessed of the brain and the psychological capabilities of an adult human being. Would it be wrong to kill a kitten which had been so injected, when to do so would be to prevent the development of a rational adult? Tooley argues again that, intuitively, as it would not be wrong to kill the kitten, thus neither would it be wrong to abort a foetus. But as Noonan points out, the analogy is questionable because we do not have the experience to tell us how we would decide if we were actually faced by the hypothetical kitten.

Whether or not Noonan has fairly described Tooley's analogy, his main point is worth attention. Real moral dilemmas cannot be properly captured by lifeless abstractions, no matter how ingenious. If moral dilemmas are to be fruitful in practical ethics they must at least reflect reality. The element of realism must always be there whether we are trying to verify a substantive moral claim, validate an ethical theory or clarify our moral experience. This is why all the hypothetical dilemmas I use are always based on real experiences. We must have at least one foot in reality when doing moral philosophy.

The third thing I learned from teaching practical ethics is the need to develop a unified theory of ethics.[11] Since there is no agreement among philosophers or the general public as to which ethical system is best, philosophy has no real contribution to make in solving contemporary moral problems. Everyone approaches moral dilemmas from different and seemingly incommensurable theoretical perspectives, making public consensus not merely difficult but logically impossible. To be fruitful, practical ethics clearly requires the development of a unified theory of ethics. This still seems to me to be the central project which modern moral philosophy should direct its energies towards, but I now think that this can only be achieved if we shift our attention from prescriptive to descriptive ethical theories. Prescriptive ethical theories are designed, like prescriptive logic, to tell us exactly how to arrive at correct and indisputable answers to our logical or moral problems. Descriptive ethical theories are designed, like descriptive logic, to help us explain and understand our intellectual and moral worlds.

For example, moral dilemmas have been used by philosophers like F.H. Bradley to help us understand the dynamics of moral development.[12] Genuine moral dilemmas always contain a theoretical as well as a practical contradiction at their core. They all have, as I discovered, an objective as well as a subjective side. These inherent

inconsistencies naturally disconcert the moral agent and the public, and a desire to resolve the dilemma, to return harmony to the soul and the community, naturally arises. It is the moral dilemma, and similar problems, which fuel moral development at both the personal and social levels. As we shall see in what follows, understanding the dynamics of moral growth will certainly help us in our search for solutions to moral problems. Theoretical ethics does have important contributions to make to practical ethics, but only if it is developed descriptively. Moral progress requires that we try to understand the moral world we inhabit. Our moral experience can be used to test as well as to clarify theoretical ethics. Theoretical and practical ethics are mutually dependent. Moral philosophy is an invitation to explore our moral universe with the same kind of theoretical creativity and intellectual objectivity which science uses to explore the natural universe.

Chapter 1

Private spaces

In our lives we often encounter moral dilemmas. We find ourselves in situations where we have to choose between two alternative courses of action, both of which we find morally questionable. Suppose someone believes in a moral system which respects privacy and recognizes the right to confidentiality. Then the person becomes involved in a situation where the public good appears to require invasions of privacy and breaches of confidentiality. Consider the following hypothetical example, which is based on a real life situation. The Royal Canadian Mounted Police (RCMP) have been trying for a long time to identify and locate the mastermind behind a criminal ring that recruits teenagers into drug peddling and prostitution. The criminal has adopted an assumed identity and as a result is extremely difficult to locate and so more dangerous. The RCMP finally have one lead. They learn from an undercover police agent that the drug king-pin sprained his ankle sometime in August 1977 and had it attended to in a small town Ontario hospital. They go to the appropriate Ontario Health Insurance Plan (OHIP) official and ask to see the patient treatment records for the month of August. Since only a few people will have had sprained ankles attended to during this period, the police think they might be able to get a name or names they can investigate. They plan to photo-copy the information and use it in follow-up investigations. They inform the OHIP official of the urgency and seriousness of their request. The records actually show that 82 people were treated for sprained ankles at the right time and places. This seems a lot, but since one of these must be the criminal the RCMP drug squad is after it gives them something solid to work on. Although the official knows it is standard practice for OHIP to release confidential information to the police in the course of carrying out their legitimate duties, he refuses to release the records to the RCMP. He recognizes that the RCMP are

acting in the public interest, but still thinks that releasing information to them would be wrong because it violates patients' privacy and their right to confidentiality of medical information. To do so would be a breach of the general legal obligation of confidentiality which is imposed on all OHIP employees. The police cannot persuade the official to help them and they are unable to pursue their only lead. The drug king-pin continues to elude the police and carries on his vicious trade. Did the OHIP official do the morally right thing?

The OHIP official faces a classic moral dilemma, a problem which puts us into a no-win situation. Whatever the OHIP official does he seems to be doing something wrong. If he refuses to help the police investigation, as he does, then he allows an evil criminal organization to continue to flourish. If he caves in to the police pressure to release the information, he would violate his obligation to protect the privacy and the right to confidentiality of the medical patients who use OHIP. The hypothetical example is based on a real life situation. In the real case the RCMP were actually looking for a deep cover agent of a foreign power, not the leader of a narcotics drug ring.[1] The case was changed from spying to drug dealing because the original case, in which the OHIP official actually released the confidential information to the RCMP, wasn't always regarded as a dilemma. Most thought intuitively that it would be wrong to release the information to the police to catch a spy, but releasing confidential medical records to catch a drug dealer endangering innocent children might be morally acceptable. The spy case seemed to me to be a real dilemma, as it did to many of my students with whom I discussed it. What is a moral dilemma for one person is not always a dilemma for another person. To have a real dilemma requires an equally serious commitment to the conflicting values.

The presence of moral dilemmas in our lives indicates that the moral systems controlling our thought and conduct have broken down and are no longer capable of guiding us. Unless we have an adequate way of resolving dilemmas, our moral systems will remain incoherent and will continue to fail us. Sometimes we resolve conflicts between obligations by ranking them in priority order. If we decide, as the OHIP official did, that protecting patients' rights is morally more important than protecting the public good, then we will refuse to release the confidential medical records to the RCMP. At other times we appeal to more general obligations. Suppose I assent to the principle of social utility, and believe that the most moral act is the one which produces the greatest amount of happiness for the greatest number. I could

perhaps justify releasing the information to the police because this appears to produce the most happiness and the least harm.

Both these methods of resolving moral dilemmas depend on making appeals to developed ethical theories. This is obvious in the latter case because of the reference to the principle of social utility. But ranking obligations also presupposes an appeal to theory because there must be some standard against which the obligations are compared and weighed, otherwise the ranking would be arbitrary. In any case, rational answers to moral dilemmas appear to be theory-dependent; they all have an intellectual frame of reference, in terms of which they make sense.

The way in which a moral dilemma is resolved then often depends on the ethical theory which is directly or tacitly appealed to. Generally in western cultures we appeal to one of two main ethical traditions, which I call the conservative Kantian and the liberal utilitarian traditions. These traditions differ from each other in many significant ways, and because they do they often, although not always, arrive at conflicting answers to the same moral problems. These theories have been developed in different ways in western philosophical thought and recent moral philosophy, but there is no agreement among professional philosophers as to which form of either theory is the best. To discuss this dilemma I will develop the theories in ways which emphasize their differences rather than their similarities.[2]

The theories differ from each other both epistemologically and morally. Some epistemological differences first. For example, the methods the two systems use to justify moral judgements are basically different. The utilitarian holds that the rightness or wrongness of actions is determined by the actual consequences. Kantians, on the other hand, hold that the rightness or wrongness of actions is determined by the motive of duty or conscientiousness. They are non-consequentialists, who hold that an action is right if it conforms to a rationally acceptable moral rule. The actual consequences are irrelevant. It is the intent of the moral agent which is important. A moral rule is shown to be acceptable if it can be made into a universal natural law, valid for all rational agents.

The theories also view the function of rules in moral reasoning quite differently. The utilitarians are particularists, who believe that the rightness or wrongness of an action depends on the context or situation. For the utilitarian, particular experience always takes epistemological priority over moral rules. A well-established particular case always overrides a useful moral rule, hence all moral rules are likely to have

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