A REPLY TO BERNARD GERT

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In teaching ethics, I have found it important to correctly describe a moral problem as it most naturally presents itself to a person in a situation of moral choice. We can call this attempt to correctly describe the structure of a moral problem an attempt to achieve phenomenological accuracy. Enumerating some of the ways in which moral problems can present themselves will provide the context for my understanding of the usefulness of moral theories.

1. IN PURSUIT OF PHENOMENOLOGICAL ACCURACY

One mode in which a moral problem presents itself is as what I call an application problem, that is, a problem as to whether a morally significant term applies to a particular situation. A paradigmatic application of a term is usually uncontroversial, but individuals may well disagree about non-paradigmatic applications. Since my recent teaching has been primarily in engineering ethics, most of my examples will come from this area. Thus, it is uncontroversial that giving an engineer a large sum of money to specify a product in her design that is both the lowest in quality and the highest in price is a bribe. This is in fact a paradigmatic instance of a bribe. It may not be as clear, however, about the status of an offer by a vendor to send several employees once a year to a technical forum in Hawaii if his product is purchased. On the one hand, the forum will provide the latest technical information on the operation and maintenance of the product, and this may be of considerable value and might be considered simply outstanding service. On the other hand, the trips might seem like an excessive inducement to purchase the product and therefore constitute a bribe.

Consider another example. Suppose Engineer Joe is conducting business in Country X and he must import certain products for business reasons. The customs official demands a “fee” to import the items,
Joe wonders whether the fee should be considered extortion, because the product can in fact be imported legally, or a bribe, because importing the product is in fact illegal. He may believe that paying extortion is (at least sometimes) morally permissible, but that paying a bribe is always wrong. Joe must then look very carefully at the laws in Country X, at the characteristics of his product, and at the definitions of “extortion” and “bribery” to determine whether he would be paying extortion or a bribe.

Or, suppose Engineer Jane has done considerable work on a computer program for a process at Company X and then moves to Company Y where she wants to use much of the same program for an entirely different process. Even if there are no legal impediments, she may still wonder whether she would be engaged in theft. Or suppose Firm Y pays young women $0.80/do make garments in a clean, safe working environment in Country X. The young women come from rural villages, are happy to work there, and are paid more than anyone else in their family. Engineer Sally is asked to design some new equipment for the plant that will make it more efficient and safer. Nevertheless, some of her colleagues tell her that if she designs the equipment she will be participating in exploitation. Would this claim be valid?

A second mode of presentation is as a *conflict problem*, that is, a conflict between two values or obligations, usually expressed in what I have called moral principles. Conflict problems arise because of a quandary about the “weight” or importance that should be assigned to the competing values or obligations. Engineer Mike is a pacifist. He made his objection to working on military projects known to his employer (Company X) when he was hired, and he was promised that he would only be assigned to non-military projects. However, Company X has fallen upon hard times and has only one project to which Mike can be assigned, namely designing a device that has both military and non-military applications. If Mike determines that the project on which he has been asked to work is indeed a military project (an application problem), he must then balance his obligation to his pacifism (expressed in the principle “One should not engage in military activities”) against his obligation to provide for his family (expressed in the principle “Parents should provide for the material well-being of their families”).

The third way in which moral issues can present themselves is in the form of a *RP/utilitarian problem*. These problems are a type of conflict problem, except that the conflict is between two very general ways of evaluating moral options, namely in terms of respect for the moral
agency of persons and promoting the general well-being of those affected by the action. Here is an example. In 1993, it was publicly revealed that Germany’s Heidelberg University conducted automobile crash tests, using more than 200 corpses, including more than eight children. The public controversy that followed included a statement from a spokesman for the Roman Catholic German Bishop’s Conference, who argued that “even the dead possess human dignity.” On the other side, advocates for the tests argued that relatives of the deceased had given permission and that the test data could result in the saving of many lives.¹

The public controversy took the form of a contest between those who believed that priority should be given to respecting human dignity (including the derivative dignity that should be ascribed to corpses), and those who believed that the promise of the tests to save lives and thus promote the general good was the most important consideration. Both perspectives are partial and inadequate for appreciating the full dimensions of the case. Thus, in order to appreciate the issue in its full complexity, one must consider both perspectives and take into account the limitations of each.

As I said in my original paper, many issues, especially in the public policy arena, take the form of an RP/utilitarian conflict. Consider the debate over the legal protection that should be accorded to intellectual property. On the one hand, some argue that the creator of the intellectual property, by virtue of being the creator, has a right to any profit resulting from the sale of the property. Otherwise, the creator has been exploited and his or her dignity violated. On the other hand, some argue that the major criterion should be the promotion of intellectual creativity for the good of society at large. Using this criterion, if strict protection of intellectual property best promotes intellectual creativity by providing a profit incentive to creators, then strict protection should be enforced. If looser protection of intellectual property best promotes intellectual creativity by accommodating a freer transmission of new ideas, then less strict protections should be enacted. Thus, from the utilitarian perspective, the argument might go either way, depending on one’s assessment of the effects of more restrictive or less restrictive protections of intellectual property. In the broadest sense, however, the contest is between respecting individuals and promoting the public good, and adequate moral analysis must take account of the strengths and limitations of each perspective.

In addition to the three structures of moral problems discussed above, resolving moral issues often requires carefully defining crucial
terms, such as “bribery” and “extortion,” and answering many questions of fact. Often what appears to be moral disagreement turns out to be something different. In any case, Gert appears to have no interest in phenomenological accuracy, but is rather resolved to look at every moral issue in terms of his own system, a system which I believe is sometimes helpful and sometimes not. By contrast, I am more pluralistic, less systematic, and more skeptical of the ability of ethicists to completely summarize common morality, whether in terms of one moral standard, two moral standards, or ten rules.

2. SLOGANS

Gert is sharply critical of my attempt to analyze or resolve some moral problems in applied or practical ethics by reference to moral theory. He makes much of my supposed mistake in believing that common morality can be in any sense reduced to a “slogan,” by which he apparently means an intuitively powerful statement that provides a touchstone or test for moral reasoning and serves in some sense to summarize important moral insights. In an earlier talk on “Morality Versus Slogans,” Gert listed as candidates for such slogans the Golden Rule, the Ten Commandments, and the first version of Kant’s Categorical Imperative.

I am not entirely clear how Gert believes I use slogans. At one point he writes: “That everyone knows and understands the common moral system does not mean that it is so simple that it can be adequately summarized by any slogan, even a single powerful one.” (p. 6) At other times he makes the more limited claim that, “Harris’ discussion seems to regard much of the value of moral theories to depend on their ability to be summarized by a single powerful slogan.” (p. 1) Now, of course it is one thing to claim that a moral theory can be summarized in a “single powerful slogan” and quite another thing to claim that all of common morality can be summarized by a “single powerful slogan.” Although I do believe that the two “moral standards” as I call them of utilitarianism and RP theory can, within limits, serve as useful summary statements of the theories, I do not believe that all of common morality can be summarized by a “single powerful slogan.”

I make two points of clarification here. First, I consider two moral theories, not one. This means that I cannot claim that a single moral standard would adequately summarize all of common morality. But even the two theories, taken together, may not encompass all of common morality.
morality. Certainly partisans of the two theories claim that they can generate all of the legitimate moral judgments of common morality, but sometimes the derivations are forced. I am not willing to say that the two theories, even taken together, can summarize all of common morality. Second, the claim that the two moral standards summarize a theory must be understood with qualification. Both theories offer more in the way of elaboration of the theory—in particular, tests by which it can be determined whether the moral standard has been fulfilled. For utilitarianism, rule utilitarianism, act utilitarianism and even in some situations cost-benefit analysis are important adjuncts to applying the moral standard. For RP theory, the Golden Rule, what I call the “Rights Test,” and what I call the “Self-Defeating Test” are important elaborations of the standards. The Rights Test comprises a series of rights which a moral agent should have and which should not be violated without reason, and the Self-Defeating Test asks whether the action, if universalized, would undermine one’s ability to perform the action itself.

Moral standards—or what we call in our textbook “organizing principles”—also provide an account of the nature or function of morality, according to that theory. Gert holds that “neither theory he [Harris] discusses says anything about the nature of morality.” (p.3) Gert’s account of morality is that it “seeks to protect people from each other and also seeks to minimize the harm suffered by these people....” (p. 3) But this account is very similar to, if not identical with, what I would understand to be the purpose of morality according to RP theory, namely to respect and protect the moral agency of individuals. Utilitarian theory provides a different account of the function or purpose of morality, namely to promote human well-being. Both accounts point to important features of common morality.

3. Evaluating Historical Moral Claims

Evaluating historical moral claims is an important part of teaching ethics, and I have found the concepts developed earlier in this paper useful in doing this. Consider first the issue of holding slaves, which was held to be morally permissible until the eighteenth century in the West. Despite this history, all contemporary advocates of common morality that I know now conclude that holding slaves is morally impermissible. Alan Donagan, for example, formulates common morality in terms of a “first principle” (“It is impermissible not to respect every human being, oneself or any other, as a rational creature”), which Gert would
presumably call a “slogan,” along with a vast array of moral principles and precepts. An example of a principle is “It is impermissible for anybody at will to use force upon another.” Donagan derives various precepts from the principle, such as “no man may at will kill another,” “no man may at will inflict bodily injury on or hurt another,” and “no man may hold another in slavery.” I formulate common morality in terms of moral standards or organizing principles, moral rules, and moral principles, and Gert’s formulation is primarily in terms of moral rules. We would all conclude, however, that holding slaves is morally impermissible.

How, then, could advocates of common morality have believed for so long that holding slaves is permissible? The tradition gives various answers, of course. Augustine believed that slavery was punishment for sin, but this account is implausible, because the punishment seems to have been distributed arbitrarily. The more interesting answer is that some individuals, despite appearances, are not really human persons in the full sense. Here we have an application problem of momentous importance, whose resolution requires careful definition of “person,” as well as determination of the facts about such individuals. All modern theorists have concluded that the resolution of the application problem will result in the rejection of the permissibility of holding slaves.

To take another example, historical morality contained prohibitions against such practices as homosexual acts, contraception, and masturbation. I see no way of understanding or evaluating these prohibitions apart from reference to a moral standard or organizing principle—again, what Gert would call a “slogan”—such as “Those actions are permissible which are according to natural human inclinations and impermissible if they are not.” Reject this standard, along with the definitions of “natural inclination” and other crucial terms, and the prohibitions are invalid. It is pedagogically useful to show that a substantial block of prohibitions which were an important part of common morality as traditionally formulated depend on this organizing principle or standard, which must be critically evaluated. Since Gert appears not to endorse any use of such standards or organizing principles, he would presumably reject this useful pedagogical device.

4. DO THEORIES HAVE TO BE FLAWLESS IN ORDER TO BE USEFUL?

Here is another issue where Gert and I appear to differ sharply. The major claim of my paper is that the two currently dominant moral
theories, utilitarianism and the ethics of respect for persons (RP), can be useful in practical ethics, even though they have well-recognized limitations. In criticizing this claim, Gert writes that “no teacher of engineering would teach his students to use an engineering theory that he knew to be inadequate, nor would he use such a theory himself when trying to solve an engineering problem.” (p. 2) My email conversation with an engineering colleague and queries of engineering students in my engineering ethics classes indicate that this claim is false. In posing the question whether engineers use models or theories known to be inadequate, one engineering student replied, “Every model is inadequate.” My engineering colleague affirmed and amplified this comment. In an email from Dr. Paolo Gardoni of the civil engineering department at Texas A&M, dated 18 November 2010, which I have permission to cite, Dr. Gardoni said, “I definitely disagree with the reviewer.” He went on to say that “in engineering we often have a multitude of models or assumptions we can use, and there is uncertainty about which one gives us the most accurate results....” Elaborating further, Dr. Gardoni said, “a theory used by engineers is not wrong (i.e. inadequate) but rather not perfect (i.e. not fully adequate.) So I agree with the reviewer that an engineer would not use a wrong model if he/she knew it was so. But your point seems to be rather than given that there is no perfect theory or models we need to use more than one theory or model (each with some merits) to have a more complete assessment.”

I have quoted Dr. Gardoni at length because his account of how a theory or model is used in engineering is essentially identical to my understanding of how a moral theory can be used in practical ethics. Utilitarianism and RP theory are imperfect in ways similar those described by Dr. Gardoni. If an engineering model or theory (and I am using the terms synonymously, as my engineering colleague appeared to do) is applied without appreciation of its special characteristics and known limitations, the results can be either incorrect or at least not useful in achieving engineering solutions. Similarly, if we rely on utilitarian theory in disregard of its well-known defects with regard to issues of justice or intention or supererogatory actions, for example, or RP theory in disregard of its tendency to emphasize individual rights without regard for larger social goods, we may come up with answers that overlook important moral considerations. But a theory can be practically useful in engineering, even though it has known defects, and the same is the case in moral thinking.
5. IS THERE A COMPREHENSIVE THEORY?

This brings us to another of Gert’s criticisms: “I would have thought that once Harris acknowledged the conflicting strains of our common morality he would have held that an adequate moral theory must incorporate the insights of both utilitarianism and RP theory. However, Harris does not even consider such a moral theory, for it cannot be summarized by a single powerful slogan.” (pp. 2-3) No doubt Gert has in mind his own theory, but instead I want to consider a proposal that attempts a direct reconciliation of RP and utilitarian theories, namely the “utilitarian Kantian principle” of Cornman, Lehrer and Pappas—a principle that Gert would presumably call a “slogan.” The authors formulate the principle thus:

An action ought to be done in a situation if and only if:

1. doing the action, (a) treats as mere means as few people as possible in the situation, and (b) treats as ends as many people as is consistent with (a), and

2. doing the action is prescribed by any utilitarian rule that (a) does not violate condition (1) in the situation, and (b) is not overridden by another utilitarian rule that does not violate condition (1) in the situation.3

The authors explain how the principle would deal with the following situation. Suppose you are the captain of a ship that has just sunk. You are in charge of the only remaining lifeboat, and there is no room for all of the survivors. The utilitarian Kantian principle requires you to sacrifice some people in order to save the rest. However, you must sacrifice as few as possible, thus treating as few as possible as mere means and as many as possible as ends in this situation. In deciding whom to sacrifice, the Kantian requirement expressed in the first condition provides no method for choice, but a choice must nevertheless be made. So we must turn to the second condition. Suppose five people in the boat have publicly volunteered to be sacrificed. Then we can consider the following rule: “Whenever it is required that some people be sacrificed to save others, and some people have publicly volunteered to be sacrificed, then there is a prima facie obligation to sacrifice the volunteers.” This rule, they aver, would maximize utility when generally followed, and, moreover, it does apply in this case. So the volunteers are sacrificed, as opposed, for example, to drawing straws.

My objection to the utilitarian Kantian principle is that it is not so much a comprehensive principle that overcomes the fundamental
opposition between utilitarian and RP ways of thinking, as it is a method for reconciling them when they conflict. It may often be a useful for that purpose, but I hold that, especially in teaching ethics, it is more useful to consider the two ways of thinking as distinct and then to employ methods of reconciliation, rather than to claim or even look for a master theory.

6. RESOLVING CONFLICTS

The final issue I want to consider is Gert’s criticisms of my method (or what he appears to think is a lack of a method) for resolving moral conflicts. Here Gert says the following:

“Harris does seem to tell his students that the moral theories he discusses are inadequate and he does not make any moral decision or judgment based on any of these moral theories. Rather, only insofar as a theory comes up with an answer with which Harris agrees, does he accept what the theory says. When both theories come up with the same answer which Harris agrees he regards that as confirmation of his view that his theory is correct. When the theories disagree, Harris picks the one that agrees with his judgment about the correct answer.” (p, 2)

It is difficult for me to understand the basis of this astonishing quotation. Is Gert maintaining that I explicitly claim that I do not “make any moral decision or judgment based on any of these moral theories”? Of course my claim has been from the beginning that, while not basing a decision on any one of the theories, I do find the theories, taken together, enormously helpful in some situations. Or is his claim rather, that I or anyone else employing my approach would necessarily be innocent of so much as a trace of intellectual honesty? Given the latter part of the quotation, I assume the second claim is the one he intends to make. In any case, I offer two responses.

First, Aristotle’s caveat about the limits of ethical reasoning is appropriate:

…the discussion of particular problems in ethics admits of no exactitude. For they do not fall under any science or professional tradition, but those who are following some line of conduct are forced in every collocation of circumstances to think out for themselves what is suited to these circumstances,
just as doctors and navigators have to do in their different métiers. We can do no more than give our arguments, inexact as they necessarily are, such support as is available.⁴

Second, in adopting this more modest approach, help is available. First, consider a conflict situation between individual rights and the requirements of general social utility. Here, it is useful to ascertain the effects of the options on social utility, the rights involved, the importance of the rights, and whether the rights have been violated (wholly nullified) or merely infringed (limited in some way). Suppose a plant in Smallville is considering manufacturing a new product that will require the hiring of 100 new employees in the small town where employment opportunities are limited. In order for the new process to be economically viable, the plant must emit a compound that increases the risk of cancer in a small portion of the population. In this case, we would say that the social utility is considerable, but the right to life (a right of primary importance) will be infringed. That is, the right will not be directly violated, as it would be in a fatal stabbing, but the risk of loss of life is increased.

In order to evaluate the RP considerations, considerable factual knowledge is required. To assess the nature and degree of a rights infringement, one must have substantial information about the precise nature and probability of the possible harms inflicted, whether there is in fact no feasible way to eliminate the harmful effects, whether the harms are inflicted equally on all residents of Smallville or disproportionally on the poorer elements of the population (thus raising the problem of justice), and so forth. Similarly, in order to get any purchase on the effect on the well-being of the citizens of Smallville, considerable factual knowledge is also required, such as how many jobs will be created, how much they will pay, how much the citizens of Smallville need the jobs, and of course the other effects, both good and bad, that the new process will have on the environment, people, economy and culture of the area. Putting all of these considerations together and arbitrating the conflicts to arrive at a conclusion does not supply us with an algorithmic solution, but it is also a basis for giving considerably more than a merely arbitrary opinion.
ENDNOTES


2 For the first principle, see Alan Donagan, The Theory of Morality (Chicago: The University of Chicago Press, 1977), p. 66. For the moral principle and derivative precepts, see p. 82.

