

Law Foundations Final Exam Notes

Chapter 8: Ethics & Law

Introduction

- Ethical and moral beliefs concern our ideas of:
 - What should happen
 - What sorts of things are intrinsically worth striving for
 - What sorts of characteristics make a good person
 - What sorts of duties or commitments we think should be taken most seriously – by ourselves or by others.
- Social ethics are concerned with how society should be organised, what policies should be pursued, what laws should be passed and enforced.
- Ethics is about serious consideration and rational justification of moral decision-making.
- Ethical thinking allows us to clarify, critically assess & possibly revise & improve our moral decision-making.
- Deontology is a philosophical consideration of moral decision making which centres on the idea of moral duty or obligation. This includes:
 - General duties to respect and further the autonomy, dignity & human rights of all people
 - Particular duties to respect & honour the promises & commitments we make to others.
- Legal rights do not have to be moral rights → in the past; laws upheld rights of slave ownership and punished those who sought to help slaves escape servitude.
- Laws can be enacted and enforced that aim to ensure that human rights are respected by making them legal rights → e.g. UNDHR
- Utilitarianism focuses on the ideal of human wellbeing or welfare.
 - The basic idea is to try to maximise the happiness or wellbeing of all those affected by our actions.
 - In any situation we need to consider all the actions available to us and all the people who will be affected by our actions.
- The textbook goes on from page 141 onward about useless stuff.

Metaethics

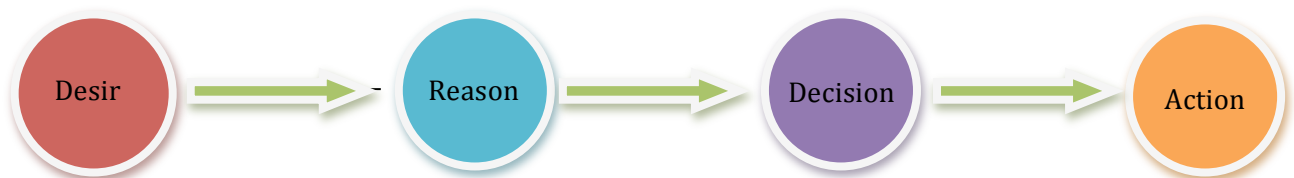
- Philosophers have traditionally distinguished three major divisions within the study of ethics: metaethics, normative ethics and applied ethics.
- Metaethics enquires into the fundamental nature of moral beliefs, judgements & actions, and into the appropriate means available for discovering or establishing the truth or appropriateness of moral ideas, rules & values.

Ethics & Free Will

- Human free will is the capacity of people, not merely to respond directly to external & internal stimuli as causes with particular decisions & actions as

effects, but rather to be able to deliberate about such stimuli as reasons for actions, in the light of numerous different possibilities of decision & actions; to adjudicate between competing or conflicting reasons for action (& the different actions they suggest) & formulate particular decisions or intentions prior to engaging in action, on the basis of such deliberation.

- Desire arises in people as a result of particular perceptual stimuli. But the gap between reason and decision allows us to consider the moral obligations or commitments that might conflict with or override the performance.
- Philosopher, John Searle, says 'the gap' provides a space not just for adjudicating between conflicting reasons for actions, but for rethinking the nature of moral obligation & such rethinking is not just a matter of internal thought processes, but also of discussion and debate with other people.
- There is also a gap between decision and action that allows for a failure of moral will traditionally known as 'weakness of will'



Guilt and Conscience

- The conscience is an internal mental agency that 'assesses' the moral status of thoughts and actions
 - Punishing wickedness with feelings of anxiety, guilt & self loathing
 - Rewarding goodness & reunification of evil with feelings of pride & elevated self-worth
- The conscience is a counterweight to weakness of will & provides the moral strength to carry through moral intentions in action
- Some often identify those without a conscience as psychopaths or sociopaths that exploit others without reference to moral, social or legal rules.
- Sigmund Freud identified conscience with what he called the 'social superego': A young child's image of parental values & parental discipline interjected or internalised as a way to try to come to terms with conflicts.
 - 'The ideals that contribute to the formation of the superego include not just the morals and values that we have learned from our parents, but also the ideas about right & wrong that we acquire from society & the culture in which we live' – www.psychology.com
 - Fear of parental retribution, the young child fantasises taking parental authority into their own mind to monitor & control their thoughts to keep them safe from retribution in the external world
 - A corrupt superego will leave individuals feeling guilty about thinking or doing the morally correct thing & feeling good about thinking or doing the immoral thing.
 - Freud's theory shows that a child's early identification with the loving parents provides a basis for ethical feelings & actions, prior to any social distortion or corruption.

- This provides a foundation for further development of genuinely ethical ideas & actions that can be accessed no matter how deeply it may be repressed in their lifetime.

The Nature of Moral Ideas

- Are moral ideas/judgements:
 - Cognitive: Statements of truth
 - 'true propositions whose truth can be determined through the use of our cognitive faculties of reason & perception'
 - Some argue that this leads to the issue of what particular things in the world render moral statements 'true or false'? If such moral facts are socially perceived then why isn't there greater consensus among people about moral truths?
 - Non-cognitive: Individual feelings
 - 'Expressions of emotion, of our (positive or negative) feelings about particular issues, expressions of our attitudes, choices or decisions, seeking to evoke similar attitudes, choices or decisions in others...' which we universally prescribe or require particular courses of conduct of others in similar circumstances.
 - Some argue that this to undermine all possibility of serious moral deliberation, debate, decision-making or progress.
- The textbook suggests that in order to avoid having to find the truth of moral statements in the ordinary physical world, we have to accept the two-world approach as argued by Plato:
 - The truth of moral ideas isn't to be found in the earthly world, but the heavenly world → which can only be seen after death.
 - In this world, pure objects (unlike physical objects) are accessible only through the exercise of pure reason rather than perception.
 - This pure reason can show us the truth or falsity of moral claims on the basis of its 'pure form'.

Moral Psychology

- How do we gain access to moral facts? There are three answers which are often offered:
 - God reveals the facts to us
 - Our own Human Nature does so through inbuilt faculties of feeling, intuition or logical reasoning
 - Society does so either through universal processes of socialisation or through some social historical dynamic of development, creating the right social circumstances to allow recognition of fundamental moral truths.
- A number of different approaches tend to emphasise either feelings or rational thought as fundamental sources of moral insight.

