ethics, we may have no other choice than to adopt this slow process. Even if we accept moral pluralism, even if we cannot discover moral truth, and even if we cannot develop a perfect ethical theory, we still need rules by which to live. We still need to live with people who have different ideas, without thinking of those people as evil or terrible—and without resorting to force to solve our disagreements.

Delimiting Moral Issues

Mill's Principle of Harm The nineteenth-century political philosopher John Stuart Mill wrote *On Liberty* in 1859. This classic work contains an admirable distinction between private life and public morality—a distinction based on the concept of harm.

Mill believed that a civilized society must promote certain ideas and discourage certain vices. He also believed that a society can do this while granting individuals a sphere of private belief and action immune from interference by government. Mill saw that the power of the nation-state can be dangerous when used against the individual, and he held that governments and their agents—such as the police—should be forbidden to meddle in private life. Equally, he held, the majority should be prevented from becoming tyrannical: It should be forbidden to impose its social or religious beliefs on a dissenting minority.

Where is the line to be drawn between private life and public morality? Mill's rough rule of thumb is called his *harm principle*. According to this principle, private life encompasses those actions of an adult that are purely personal and that do not put other people at risk of harm.

In private life, as defined by this principle of harm, there should be no interference by government—even for a person's own good. For example, consider a certain form of sexual activity between two consenting adults: Even if other people consider this activity immoral, for Mill it will not be a moral question if no one else is affected.

Personal Life, Morality, Public Policy, and Legality Building on Mill's work, this book will make a distinction among four areas: (1) personal life, (2) morality, (3) public policy, (4) legality.

Issues of *personal life* are purely private and affect no one else.

When someone else is affected, issues move from the personal area to the second area, the realm of *morality*.

When society attempts to promote certain values while at the same time tolerating individuals' personal disagreement with those values, issues move into the third area, *public policy*. Actions in the area of public policy—like those in the area of morality—do affect other people's interests. However, negative actions in this area are not necessarily considered immoral; similarly, if some positive action is encouraged by public policy, omitting to perform that action would not be considered immoral. For example, consider alcohol. Though society tends to discourage drinking (as by taxation) and regulate it (alcohol cannot be sold to minors), people may in general drink without being seen as immoral. For another example, consider adoption. Society would like adults to adopt needy children (and may offer

tax incentives to encourage adoption), but no one thinks it immoral for a childless couple not to adopt a baby.

When society decides to promote certain actions and discourage certain other actions without tolerating individual disagreement, issues move into the fourth area, *legality.* In this area, some actions (such as paying taxes) are compulsory and others (theft, murder) are forbidden. Omitting a legally compulsory action or committing a legally forbidden action is punishable by the force of the state. In general, the more harmful an action is considered, the more likely it is to fall into the area of legality.

The effect of these distinctions is to limit the range of morality from two ends: first, by carving out a zone of private, personal life; and second, by allowing society to encourage and discourage behaviors without explicit moral judgment. In summary, then:

- *Personal Life:* Concerns actions that are purely private and affect no other person (or persons).
- *Morality:* Concerns interpersonal actions—situations where one person's actions affect other people.
- *Public Policy:* On the one hand, concerns actions which affect other people negatively, but which society tolerates, though it attempts to discourage such actions (as by education). On the other hand, concerns actions which affect other people positively and which society attempts to encourage (as through incentives).
- *Legality and Illegality:* Concerns positive actions which are, by law, compulsory; and negative actions which are, by law, forbidden. Penalties (such as fines and incarceration) are imposed for omitting compulsory actions or performing forbidden actions.

Here are some further examples: Smoking is a personal issue; smoking in your child's room is a moral issue; taxing tobacco products heavily is a public policy issue; prohibiting the sale of cigarettes to minors is a legal issue. To repeat: According to these distinctions, *not every issue is moral.* An issue such as masturbation, or littering in one's own car, or individual and family religious beliefs, is not a moral issue at all.

It should be understood that although these distinctions will be used in this text, they would not be recognized—as Mill's more general distinction might not be recognized—in some evaluative frameworks or worldviews. For example, a fanatical teetotaler might see no reason to tolerate drinking by anyone, even in private; and Roman Catholicism forbids the use of contraceptive devices by married couples (a stand reaffirmed by the Pope in 1993). There are various reasons for such disagreement. In some worldviews, everything in life may be seen as a moral issue: That is, the "personal" area is always the "moral" area. Other frameworks may make a distinction between personal and moral issues but may come to different conclusions about what actually falls into each area; for example, such a framework might consider not only harm to others but also self-harm as a matter of morality. Another framework might assume that there is simply no such thing as

self-harm distinct from harm to others, that when we harm ourselves we also in some sense harm others.

As we shall see, the Quinlan case may have arisen in part because the hospital and the Catholic hierarchy on the one hand and Karen Quinlan's family on the other did not agree on a distinction between personal and moral issues. It is worth pointing out, in this regard, that other religiously affiliated hospitals may reject distinctions assumed by a patient or a patient's family and mandate their own values within their own walls. Patients and families need to be aware of this, since they may not agree with the policies of a hospital to which they have been referred.

PART TWO: ETHICAL THEORIES AND MEDICAL ETHICS: A HISTORICAL OVERVIEW

The Greeks and the Virtues

The teaching of the major ancient Greek philosophers—Socrates, Plato, and Aristotle—as well as the general culture of fifth-century (B.C.E.) Athens—advocated virtue ethics, the ethical theory that emphasizes acquiring good traits of character. Virtue theory applied to medicine emphasizes creating physicians with such traits.

Our English word *ethics* derives from the Greek *ethos*, meaning "disposition" or "character." *Ethos* was an inseparable part of the Greek phrase *ethike aretai* (literally "skills of character"). The Greek word *arete* means at once "excellence," "good," and "skill." Our modern "ethics" builds on, but differs from, *ethike aretai* because two millennia of later theories of ethics built other meanings onto the original concept.

From at least as early as the time of Homer (sometime from eighth- to sixth-century B.C.E.), presocratic Greek ethics emphasized *ethike arete* in performing a role well. That is to say, the scope of ethical inquiry was limited to the roles one fulfilled. If one wanted to know about ethics, one asked about the traits of a good soldier, physician, mother, or ruler. For example, one would ask, "What is the goal of being a soldier?" Answer: "To defend one's country." Then one asks, "What excellences are needed to defend one's country?" Answer: "Physical strength, courage, skill in using weapons, organization in fighting in groups, temperance, and cunning."

Such ethics were teleological. In other words, they assumed that things developed towards a natural goal. In Greek medicine, if we want to know what makes a good physician, we need to know the purpose of medicine. That purpose is to heal the sick. What virtues are needed to do so? Answer: compassion, knowledge of healing, and skill in human relations.

Role-defined ethics remain powerful today and are the basis on which more universal principles build. For example, medical students first try to live by virtues of that role.

Socrates, Plato, and Aristotle, in a combined move of ethical genius, attempted to transcend role-defined ethics and to argue that there were distinctive *ethika aretai* of a good person. What are they? In their view, they were the cardinal (primary) virtues of courage, temperance, wisdom, and justice (in dealing with people). These are the distinctive excellences necessary to function best in human society.

The implication of this view for medical ethics is that moral inquiry must not only ask, "What virtues should a good physician possess?" but also, "What virtues should a good person possess who happens to be a physician?" The narrow questions is, "What should a good physician do?" The broader question is, "What should a *good person* do?"

Not all physicians in ancient times agreed about the role of a good physician, and here looms one of the great divides in medical ethics. Hippocrates and his brethren adopted not only a patient-centered ethics but also a sanctity-of-all-life worldview, holding that physicians should neither perform abortions nor assist in euthanasia of any kind. But most ancient Greek physicians took a *naturalistic* approach that was a precursor to the scientific worldview. In other words, they advocated forming conclusions based on what one could see and feel. These physicians did not practice medicine based on assumptions about gods and goddesses or about an afterlife, so they were more oriented to helping patients in the here-and-now. Accordingly, they often helped terminally ill patients to die. Most such Greek physicians adopted a quality-of-life view, believing that it was futile to maintain a life of pain and suffering that had little chance of amelioration. It is unclear whether their aid was role-defined, or whether it stemmed from compassion. In either case, the majority of naturalistic physicians used their factual knowledge and technical skills for very different evaluative ends than their Hippocratic counterparts.

Christian Ethics, Christian Virtues

By the fourth century C.E., Christianity had added its theological virtues of faith, hope, and charity to the list of human virtues. The paradigmatic virtue of compassion (charity) that many today associate with a good physician comes in part from Christianity's emphasis on helping others. The etymological root of "compassion" means to "to suffer with," as Jesus of Nazareth is held by Christians to have suffered with, and for, humans on the cross.

Here we have two differences of emphasis that later came to be fused. Where naturalistic physicians emphasized technical competence in curing disease, religious physicians emphasized compassion in *being with* patients. When the limits of technical competence had been reached—as they were often reached very soon during these centuries—compassion became the supreme virtue. Both traditions contributed to today's definition of good physicians: Every patient wants a physician who is both knowledgeable and merciful.

Virtue ethics in medicine also underlies the apprentice system of medical education, in which young medical students gradually assume more responsibility by assisting older physicians in treating patients. The attending physician teaches the resident, who teaches the intern, who teaches the third-year student. What is taught, theoretically, is not only how to perform a procedure but also how to be compassionate, wise, courageous, and patient-centered.

What would virtue ethics say about a particular issue in medical ethics? The general answer is that with every new case, the physician-in-training should imitate the reasoning and empathy of good physicians. Thus confronted with a 14-year-old patient who refuses to eat after being partially paralyzed after an auto

accident, most experienced physicians are likely to say, "Let's work with him until he's of legal age, then he can decide for himself. By that time, he'll probably find a reason to live."

It should be emphasized that Socratic virtues also celebrated an elitist, antidemocratic ethics that scorned the ordinary person and his worth. The Greeks believed themselves superior to all the peoples they had conquered. Aristotle's student, Alexander the Great, attempted to instill Greek values, culture, and language in everyone, and he had no tolerance for the cultures of other, "inferior" peoples. The Greek ethics that Alexander inherited was perfectionistic, aristocratic, and meritocratic. In this sense, the quality-of-life attitude of ancient Greek physicians was elitist and perfectionistic, whereas the sanctity-of-life ethic of Hippocratic physicians was much less so.

In contrast to Greek elitism, the three great religions of the West emphasize duties to the poor and sick: The rabbinic ethics of Bar Hillel stress acts that help one's fellow man; Jesus says that as you treat the poor, so you treat Him; and Mohammed made the *zakat*, the tax on property for the poor, one of the pillars of Islam. So for a Jew, Christian, or Moslem, a good physician is first a Jew, Christian, or Moslem, and second a physician.

As such, a good Christian physician must care for the poor as part of his duties as a physician. To put this point in more religious terms, the physician's license, knowledge, and wisdom is not a proprietary right to make money but an instrument of a higher calling from God. In the movie, *Chariots of Fire*, the Presbyterian Olympic runner says, "I run not for me but to glorify the Lord" and for this reason refuses to compete on the sabbath. Similarly, to use a medical degree only to make money is to abase a degree given in trust for a higher cause.

One area in which the contrast between religious and nonreligious ethics in medicine becomes salient is in thinking about genetics. Greek ethics advocated eugenics ("good birth"). Plato advocated mystery-shrouded mating festivals where those men judged to be "most perfect" would impregnate similar females. For Plato, breeding would be arranged to perfect humanity, not by choice or for love. Just as the Greeks improved the stock of their animals by selective breeding, so Plato wanted to improve humans. Just as the young Greek gentleman should try to perfect his body and life as a work of art, so human society should try to perfect itself by creating better children.

In contrast, the three western religious traditions have preached for centuries that the goal of human life has been either to create a God-based society on earth or to save the most souls for the afterlife. Accordingly, western religions have resisted attempts to tamper with the genes of humans, asserting that humans were created in the image of God and denying that humans should try to perfect themselves through genetics. (In modern times, however, some liberal believers have argued that eliminating genetic disease is not sinful.)

Applying virtue ethics to medical ethics has several limitations. One is that it has little to say about how to make particular, ethical decisions, aside from the injunction to imitate good physicians. Another limitation is that as ethics becomes more role-defined, the less it meets universal standards. Finally, both religious and nonreligious theories of the virtues tend to emphasize the status quo over fundamental, social change. One outcome is that physicians adopting a traditional

role tend to be paternalistic, treating patients as children and overruling their decisions.

Natural Law Theory

It has become a truism that when the Romans conquered Greece (in the second century B.C.E.), they themselves were conquered by many aspects of Greek culture. The Stoic philosophers of Roman times elevated one aspect of the Greek worldview to a higher level. Rules for human beings, the Stoics argued, were so embedded in the texture of the world that they were "law" for humans. These came to be known as "natural laws." They were apprehended by unaided reason, in other words, without Scripture or divine revelation.

Behind the notion of a natural law, of course, is that of a hidden law-giver. In the thirteenth century, Thomas Aquinas synthesized many aspects of Aristotelianism with what had become orthodox teachings of the Christian church. Aquinas made explicit the connection between God and the natural laws of the world: A rational god made the world work rationally and gave humans reason to discover his rational, natural laws. Studying ethical theory was a rational process of discovery about the world that revealed rules about how humans should act. Correct *descriptions* of the world would yield correct *prescriptions* about how to act. To act rationally was to act morally, which in turn was to act in accordance with natural law.

One thing that these rules commanded was to go against one's natural feelings. St. Augustine taught in the fourth century C.E. that human nature was contaminated by sin and, as such, human feelings were mired in lust, sloth, avarice, and the other deadly sins. In stunning contrast to modern times, Aquinas held that thinking about ethics was emphatically *not* about examining one's feelings. Instead, it was a matter of following rules laid down by God and his agents, the clergy and theologians of the Church.

An example of natural law theory in medical ethics concerns homosexuality. Aquinas believed that God made two sexes for procreation and that it was natural and rational for a man and woman to mate to have children. On the other hand, for two people of the same gender to have sex (or form a lifelong union) was contrary to natural law, and hence, immoral.

One problem with natural law theory is seen in the above example in that what is considered "against natural law" may vary over the centuries. Many rational people today do not consider homosexuality to be unnatural, especially because it has been practiced since the beginning of human history and because some great cultures, such as the ancient Greeks, celebrated it as ideal.

As another example of problems of natural law theory, consider sex in marriage. Augustine held that the *only* permissible justification for sexual relations between a man and a wife was to produce children. Modern Catholic teaching is very different, and regards loving sexual relations between man and wife as natural and good, even when there is no desire to have children. Indeed, the Catholic Church today holds *in vitro* fertilization to be immoral precisely *because* no act of loving sex is involved between man and woman.

Natural law theory bequeathed to medical ethics the famous *doctrine of double effect*. This doctrine held that if an action had two effects, one good and the other

evil, the action was morally permitted: (1) if the action was good in itself or not evil, (2) if the good followed as immediately from the cause as did the evil effect, (3) if only the good effect was intended, and (4) if there was as important a reason for performing the action as for allowing the evil effect. For example, exceptions could be made to the rule banning abortions in cases of an ectopic pregnancy (an embryo growing in a fallopian tube) and a cancerous uterus (where uterus and fetus had to be removed together). In both cases, this doctrine would allow abortions if the direct intention was to save the life of the mother. Similarly, the doctrine of double effect would not allow physicians to assist in executions, since it would not allow a direct intention to assist in the taking of a life, although it might allow a physician to be present to ease the suffering of a prisoner in the event of a botched execution.

Also derived from the natural law tradition is the *principle of totality*, which covers what kinds of changes may be made to the human body: Changes are permitted only to ensure the proper functioning of the total body. The underlying idea is that one's body is not something that one owns, but that one holds in trust for God: "The body is the temple of the Lord." So a gangrenous leg may be amputated or a cancerous breast removed, because the fundamental health of the body is at risk from these threats. According to this principle, we are given our bodies as they are for a reason and we should not change our bodies for frivolous reasons. Thus the principle of totality rules out all forms of sterilization to prevent pregnancy—vasectomy, tubal ligation, and hysterectomy—because producing pregnancy is a natural function of the bodies of men and women. The principle also forbids cosmetic surgery solely to change one's appearance, such as breast reduction, breast augmentation, rhinoplasty, and liposuction.

This principle is more deeply embedded in our thinking than we may at first think. When a news photograph in 1996 showed a mouse whose genetic system had been altered to grow a human ear on its back, many people felt disgust at seeing this mouse-with-human-ear. This disgust arose from a sense that the creation of this being had violated the bodily integrity of both humans and mice.

Social Contract Theories

Social contract theory, or contractarianism, is essentially secular, independent of belief in God. Contractarians assume that people are fundamentally self-interested and that moral rules have evolved for humans to get along with one another. It is rational for humans to agree to such rules because otherwise, everyone will pick up the sword and be worse off.

Social contract theory does not separate ethics from politics. Indeed, hypothetical political bargaining is viewed as the foundation of the kind of behavior that is allowed as ethical. (*Hypothetical* because contractarians do not believe people ever came together to make the basic social contract.) Plato described one early kind of hypothetical social contract in the *The Republic*, but the philosopher who really gave this theory weight was the Englishman, Thomas Hobbes (1588–1679).

Hobbes believed that the most detestable condition for humans was the state of nature, a premoral agglomeration of self-interested individuals for whom life

was (he said, famously) "solitary, poor, nasty, brutish, and short." By the use of their reason, people realize that each is better off in a society of moral and legal rules backed by the force of opinion and law. They therefore form a social contract to create "society" to better themselves.

Contractarianism can support both minimal and maximal government. To oversimplify, let us contrast two extreme champions of contractarianism: Libertarians and Rawlsians.

Libertarians favor government for defense and for very limited public works, perhaps not even including national parks or a public interstate road system (we could have private, toll roads). They disfavor government programs such as Medicare, Medicaid, disability insurance, food stamps, and welfare. Libertarians oppose forced taxation by the government, especially when it redistributes property and income from rich to poor. They champion the property rights of the status quo, but tend to be silent about how those enjoying the status quo acquired their property. Libertarian philosophers such as Harvard's Robert Nozick see forced taxation as equivalent to forced labor, that is, to slavery.

Accordingly, Libertarians oppose mandatory F.I.C.A. taxes on all workers' pay for Medicare and for the Hospital Insurance Trust Fund. Even though federal programs such as Medicare have made American physicians rich, libertarian physicians would rather have no government control over their business. Presumably, in a libertarian society, physicians would be reimbursed only in cash.

Critics say that in such a system, fewer hospitals would be built, elderly patients would frequently forgo procedures for lack of money (as never happens under Medicare), and physicians would earn far less money. It is also true that in such a system physicians would be controlled by no federal regulations.

Rawlsians are named for John Rawls, a Harvard colleague of Nozick. Rawls believes that the social contract should have moral restraints imposed on it. The most important restraint is what Rawls called the "veil of ignorance," meaning that in the hypothetical social contract, no one would know his or her age, gender, race, health, number of children, income, wealth, or other arbitrary personal information. Rawls' theory is contractarian in that it assumes that people are self-interested and are forced to form a social contract to choose the basic institutions of their society; on the other hand, it is Kantian (as we shall see in the next section) in that it imposes impartiality on the choosers.

Rawls argues, controversially, that the only rational way to choose under the veil of ignorance is as if one might be the least well-off person in society (because a person doesn't know anything personal under the veil, he doesn't know what place in society he occupies). This justifies the choice of his famous *difference principle:* Choosers should opt for institutions creating equality unless a difference favors the least well-off group. Everyone should be trained in medicine unless training only a few is better for the least well-off. The choice of the difference principle, as the archprinciple of this theory of justice, can be seen as the imposition of the golden rule on the choice of the structure of society.

Rawlsian justice entails that every citizen should have equal access to medical care unless unequal access favored the poor (an unlikely prospect!). Rawlsian justice attempts to reduce the natural inequalities of fate; hence, it is especially important that children and those with genetic disease have good medical care. Let