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LISA NEWTON

***In Search of the Roots of Professional Ethics:
The New Ethical Imperatives ****

Professional ethics is a new subject, as far as Philosophy is concerned, and it has become quite recently a very important one. Those of us who participated in the initial emergence of medical ethics, the first of the sub-fields to become respectable, in the early part of the 1970s, may have thought we were pursuing a hobby or private bent; I recall some of my colleagues and I, at a conference on medical ethics, talking about how this was all very fascinating, but we “really must get back to the real business” of political philosophy. We never did “get back,” or maybe we did; if my thesis in this paper is correct, we had unconsciously moved to where the subject matter of political philosophy would be in a very few years. The reflections that follow proceed from the insight, which came as a surprise to this political philosopher at least, that the ethics of the professions had become the central focus of normative ethics for our time.

I. Whence the sudden interest in Professional Ethics?

We may start out with the standard opening truism of essays on professional ethics, typified by those on medical ethics (simply because medical ethics was in on the ground floor here), the truism that introduced all of our papers on the subject. As late as the middle years of this century (we would begin by pointing out), “professional ethics” referred to nothing but professional etiquette, rituals, and essentially private economic arrangements to ensure a monopoly of

one sort of service for the profession as a whole, non-competition within the profession, and, in general, the maximization of professional income and the minimization of professional annoyances. But now professional ethics, we would continue, encompasses a wide range of problems of profound philosophical interest, and we would proceed to list a fair sampling. In the case of medical ethics, for instance, these would include the moral dimensions of euthanasia—the significance of taking human life, or prolonging human life, under various conditions and various definitions of “human”; the morality of abortion, which again raised the problem of what shall count as “human,” a “person,” or both, not to mention the problem of the conditions under which a woman may be compelled to put the internal organs of her body at the service of the state for the production of future citizens; and my own favorite problem, the problem of the possibility of patient autonomy in the doctor-patient relationship. The consideration of this heretofore private relationship turned out to involve at least a discussion of the conditions of human liberty in a situation of unequal power, at most the relative places of autonomy and beneficence, liberty and welfare, on a scale of societal values.

It must have struck us at the time that there was a certain presumption involved in sitting down to do a piece on professional ethics — the ethics of the medical profession, to be exact — and coming up with a discussion of the relative places of liberty and welfare in the value scale of the Western World. But the problem was not with us or with the profession. The problem was with the society that, suddenly, was looking to its professions for guidance that it had previously supplied to them.

The situation points to a societal role-reversal of astounding dimensions. These are not “professional” questions that we found ourselves discussing; they are political questions, and the proper location for their asking and answering is the *polis*, the public space of the political association or state. Questions of life, death, and ultimate value are for the body politic itself to debate and decide. Aristotle puts it very firmly in the first book of the *Nicomachean Ethics*: there are many sciences, but the master science is statecraft, or politics, since it is the statesman (acting for the body politic) who

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must decide what science shall be learned and practiced, and according to what policies and within what bounds (*Nicomachean Ethics*, I, 1094 a-b). Of course the professions or applied sciences, practiced within the polis, may adopt codes or laws of their own to regulate their members, but these codes are purely private matters. They shall be assumed to be simply devices to serve the interests of the members of the profession, and insofar as they conflict with public policy, they shall be overridden. Thus, for example, the Hippocratic Oath, revered foundation of the ethics of the medical profession, was as much at odds with public policy and accepted medical practice in its own time as it is now: it dictated exclusivity and secrecy with respect to medical knowledge, when sound public policy counseled freedom of information; it forbade abortion, which was widely practiced and so widely accepted that there were occasions when Aristotle would have made it compulsory (see *Politics*, VII, 1335 b); and it forbade the practice of surgery no matter what the indications for an operation. It is not necessary to point out that Hippocrates has also attributed to him a volume on the subject of surgery; the Oath itself requires that the physician allow specialists in such practices to step in and perform the operation. So a professional ethic did not even pretend to govern the field of practice: it only governed the conduct of the members of its own exclusive club. Public policy and professional ethics were miles apart. What happened to change all this, and leave the discussion of professional ethics in the exact center of the major moral issues of the day?

I think the change can be attributed to the convergence in our time of three developments within the professions and the society in which we happen to live (the only society under consideration in this paper). First there was, and is, the undercurrent of ethical seriousness in all professions. The perpetual tendency is to attempt to see oneself and one's confreres as useful and moral people, an outgrowth, no doubt, of that instinct in virtue of which we call mankind a social animal. I do not wish to take this tendency more seriously than it deserves, but it would be foolhardy to ignore it: there simply are occasions when we take our duty to each other and to the public at large seriously enough to act upon it, and all moral philosophers must allow for that fact in their theories. In the interstices of the Hippocratic Oath — between the ritual rules, the provisions for

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group loyalty, and the promises not to rape or poison the patients (which tell us volumes about the general moral standards of medical practitioners at the time and rather little about how medicine should be practiced) — there is a genuine concern for the welfare of the patient, a commitment to do nothing that is not for his benefit, that will inform the course of medicine's history from that time on. This commitment to public service, never the only motivation at work in professional practice, is available to be called upon if other circumstances warrant it.

Second, there is the rise of the technological society. Enough has been written on this matter to make it a waste of my time to prepare another sermon on it, and a waste of your time to read one. Suffice it to say that the explosion of technical (as opposed to moral) knowledge in the last century and a half has produced an enormous increase in the complexity of public issues. As a result the public is baffled, is unable to act, withdraws from the public space in humiliation and frustration, and relies on experts to exercise the power of the public weal that properly belongs to the electorate. Specialized education slowly emerged as a qualification for speaking on public issues where any science or technology was involved at all, and that came to mean every issue that came up.

Third and most recently, in the pluralism of the Western democracies the notion of the public interest, the moral consensus that governed the entire people, dissolved in individualism and a naively tolerant version of cultural and sub-cultural relativism. We are no longer able to achieve a consensus that we feel enough confidence in to impose on the experts (whom we have spent a century, recall, learning to respect). So we abandon, one by one, the issues that seem to have something to do with their fields of expertise, to them to resolve.

Our first move in the search for experts was to call on the scholars, the theorists, college professor types, to give us the information we needed. The American people flirted with college professors at the heart of the government in the 1930s and the 1960s, both times coming away disillusioned. Scholars make terrible moral authorities, and moral authorities were what was required. Scholars disagree (witness the economists in recent months), they fight among

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themselves; scholars seem aloof, disdainful, remote, not like ourselves. For these reasons they were not immediately attractive as authorities. But the major objections to the scholars were first, that they violate the American preference for the practical over the theoretical — they seemed to have no grounding, no hands-on experience to test their incomprehensible theories, hence no responsibility for the outcome of putting them into practice — and second, that not even in theory, not even in remote history, did these pointy-headed intellectuals seem to have any commitment to serve anyone but themselves. On both these scores, the intellectuals had no fund of trust to draw upon with the electorate, and rapidly faded from the scene of governance.

On precisely these measures, the practicing professional found themselves at an advantage. In the professional — prototypically the physician, but also the lawyer, the engineer, the clergyman, and the soldier — we found the combination of expert knowledge and moral commitment, theory and action, that reassured us that we had found leaders competent to handle the modern complexities, yet worthy of our trust. Enter the professional as moral arbiter of the nation.

The resultant of these converging tendencies is the emergence of *the professions as the leaders of — possibly the sole members of — the national moral community*. This leadership can be put in a variety of perspectives. From the economic perspective, the professions become, as characterized by Paul Ylvisaker, Dean of Harvard's Graduate School of Education, "the emerging elite of a service society."¹ In a society where we no longer measure progress and success by quantity or quality of tangible products, but by the importance of the service rendered, the professions are the highest of the services.

From the perspective of political power, the collapse of the polis has resulted in the virtual cession of power and control, of any areas of policy on which expert knowledge might have some bearing, to the professionals who are assumed to have that knowledge. Thus we have physicians now testifying to Congress on "when human life really begins," with an eye to influencing legislation to regulate reproduction! I give a lot of credit to Yale's Dr. Leon Rosenberg for

having the courage, in this climate of opinion, to point out to the legislators that the question simply is not a medical question: we are unable, by now, to conceive of it being anything else² Just as we feel helpless before the professionals we encounter in the course of their practice, so we have become accustomed to submitting to the opinions of professionals in the public realm: they seem to know what they are doing, and we are very sure that we do not.

From the perspective of public morality, the collapse of the church and the locality as moral communities has left a vacuum which any organized group might fill, a slot into which occupational groups fit very easily. With the failure of the local community to provide the kind of moral reinforcement, guidance, and support that individuals need to stay healthy — and sometimes, to stay alive — the French sociologist Emile Durkheim suggested that the corporations, the large firms, that serve as employers to such large numbers of our citizens, might fill the gap and become moral communities on their own.³ Japanese corporations seem to be able to behave as the Frenchman required; Western European and above all American corporations seem constitutionally unfitted for the task. The market system is too deeply ingrained in our business community; it will be a long time before we persuade our corporate decision-makers that they should consider the welfare of the employees — let alone their trust, hope, feeling of loyalty and community in the workplace — before shutting down an unprofitable branch of the business. The natural bond of loyalty in our society seems to move not vertically, from the boardroom to the shop floor of a single corporation, but laterally, to those with training similar to our own, in similar employment statuses, no matter who the employer.

Professions, then, occupational groupings of all kinds but especially the most highly educated and well organized of them, are the saving remnant of moral authority in a morally disintegrated polity. At the least, they are the currently accepted leaders in a bewildering set of circumstances; at the most, they may be what Alasdair MacIntyre calls the “local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us.”⁴

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II. Philosophical Grounds of the Enterprise

If the professions are to be in the forefront of the moral life of the society, at least until the political association rediscovers its moral fiber, what could, or should, be the form of the ethics they will adopt? A limited number of possibilities present themselves. We may rule out in advance the possibility of agreement on any revealed religion or religious orientation: the obvious plurality of extant religions in this pluralistic society will suffice for that. We may rule out also the possibility of various relativistic or intuitionist ethical stances, as repugnant to the applied ethical presuppositions with which the professions are accustomed to work, and insufficient in any case to provide the kind of guidance that is being requested. What kinds of ethics are realistically available and adequate for the job? Three possibilities suggest themselves:

(1) An ethic of the Common Good. The task of the professions, on this understanding, would be to articulate a notion of the common good, or a desirable end-state for the society as a whole, and coordinate all policy advice within their separate areas to bring about this desired state. Is this possible? Would that it were. Just such a shared vision is inaccessible to the morally fragmented society. If we did have such a vision or if one could be found, the problem would not arise; it would be the shared vision of the society as a whole, the polity itself. The first and major sign of the recovery of the public realm will be the articulation of such a shared vision. When that happens, the professions will, willy-nilly, subordinate any opinions they may have on the good society to those of the society of which they form a part, and will work for them; any energy they have left over can be put at the service of the time-honored activity of protecting their own economic interests in that society. Their moral force in a society with a strong moral consensus is minimal, and that is as it should be. But that is not the case at present.

(2) A code embodying the Moral Law. Each profession has a "code of ethics" for its members, sometimes several of them, one for each specialty in the profession. On this understanding of the kind of ethics needed for the whole society, the task of the professions would

be to combine their codes into one overarching code which would set forth the rules appropriate for ethical behavior in all public action. To the extent that specific rules could not be spelled out in advance, some moral decision procedure (appeal, say, to a Categorical Imperative) would be available to determine the uniquely right action in any case. Is this possible? Hardly likely. Agreement on a moral law is even more remote than agreement on desired end-states of the society. Our experience of moral conflict is sufficient to indicate the barrenness of this attempt. What we need are moral guides. Recognizing the pluralist nature of this society, we must reject the possibility of a single moral guide: plural guides will be enough, if we can find guides adequate to account for moral justifications and provide moral directions without pretending that they are adequate to come up with clear-cut solutions in every case.

(3) A flexible set of accepted moral principles from which *prima facie* duties can be derived, for simple application to simple cases and for partial guidance in complex ones. This suggestion, probably the most fruitful, echoes W.D. Ross, as the first follows J.S. Mill and the second follows Immanuel Kant.⁵ This course, rather than seeking rules for action or ends for policy, retreats to finding principles for the agent to keep in mind as he ponders his action. It is more an ethic of the virtuous agent than of the right action or the good result. As such, it is more in keeping with the thoroughgoing uncertainty of contemporary moral man: it grounds few claims to know for sure what duty might be in any particular case; it even fails to ground claims to know when an action came out well or badly. All it does is set forth the considerations that should inform the conscience of the moral man as he attempts to live a dutiful life. And such partial, general considerations may be the best we can find.

On the other hand, they may be adequate to the task of guidance, especially (and this is the advantage of a focus on professional practice) as continuously interpreted, disciplined, given meaning by, an ongoing structured activity. As a concrete example of the use of such general principles in the regulation of a field of practice, and partial confirmation of their usefulness, we might take the conclusions of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.⁶ The

principles the Commission adopted, as appropriate to govern the conduct of such research, are respect for persons, beneficence, and justice. "Respect for persons" attends especially to the liberty, the autonomy, of the subject of the research, requiring that he be fully informed of the nature, risks, and benefits of the contemplated procedures and that his consent to participate be fully voluntary. "Beneficence" attends especially to his welfare, limiting those occasions on which he will be requested to participate to those where an acceptable ratio of risks to benefits has been determined to obtain. "Justice" is a distributive virtue, which attends to the allotment of the burdens and benefits of research across the population. These three principles in particular have a fair amount going for them: they are mutually independent (and can in fact conflict in practice), and they capture three irreducibly important aspects of the moral life as found in the experience of the human race — the requirements of respect for the free moral agency of every person, of consideration for the possibility of doing injury to another, and of the equality before the moral law that distinguishes the human association from that of other social animals. These are not the only principles relevant to moral action, of course. Ross points out others — gratitude, contractual responsibility and other forms of promise-keeping, honesty, and prudence, to mention a few.⁷ But they are illustrative of the type of consideration which we would ask professionals to take very seriously in the course of their practice, to apply them simply if possible, to balance them if not. And professionals, if they are able to be the sort of people who can shoulder the burdens put on them by the present confusion, must be the type of people who will do this conscientiously.

It would be incorrect to conclude from all the above that we are off to the dark age of the utter collapse of the state, although some have predicted just that. The government will continue, and will continue to pass laws, and some of these may be, while we are at it, laws regulating professional conduct, and professionals will be bound to obey such laws. But such law will not represent the moral consensus of a body politic, for that is just what we cannot achieve right now. It will be the bare minimum required to keep order in the land. As such it will be valuable enough. But new directions for the law, as well as directives for the moral interstices of the law, will have

to emerge from the ethical practice of the organized professions.

Please note, in closing, what a truly reactionary proposal I have put before you. Jonsen and Hellegers, writing in 1973, traced the history of medical ethics from the really old-fashioned “ethic of virtue” to the relatively more recent “ethic of duty” (the Codes), and predicted that in order to make further progress, professional ethics in medicine would have to move forward to encompass an “ethic of justice” including a notion of the common good.⁸ I have declared the third to be presumptuous and in no way to be considered, the second to be merely impossible, and have ended up back in the Middle Ages with the first. Sometimes progress just is not in the cards.

III. Agenda

Where do we go from here? If clear directions were to be found anywhere, I would not need to write this paper. Let me suggest, tentatively, three areas where activity can be expected, may be encouraged, and certainly should be watched.

First of all, in the effort to develop a unified professional ethics to provide moral guidance for the nation through a very difficult period, we will need all the help we can get. We will need each profession as integrated as it can be to carry the responsibility for moral direction in an era when the larger society is unable to supply it. Efforts on the part of nursing, engineering, and other professions to attain “full professional status” should be encouraged, as should efforts on the part of other occupations to engage in the long process of professionalization. Second, established professions should continue earnest efforts to refine their codes. Code development is a limited activity, if we take its objectives to be the production of good behavior on the part of the professional. But if its purpose is properly understood, as a device for engaging in intra-professional dialogue on the nature of ethical behavior, most especially for raising awareness of ethical issues, it can be enormously useful for all participants and should be encouraged. And third, education toward moral thinking

should be included in professional education, both at the preparatory levels, through humanities programs in professional schools, and at mid-career continuing education levels. The objective, again, is not “teaching people to be moral.” The purpose here is the creation of an ongoing dialogue on the ethical aspects of professional life — which turn out to be, at present, the ethical aspects of public life in general.

ENDNOTES

¹From a talk at Yale University, October 21, 1981.

²A summary of this dispute — quoting, of course, three physicians — can be found in an article on abortion in *Life*, November 21, 1981, p. 52.

³Durkheim, *Suicide*, tr. J.A. Spaulding and G. Simpson (New York: Free Press of Glencoe, 1951).

⁴MacIntyre, *After Virtue* (Notre Dame, Indiana: Notre Dame Univ. Press, 1981), p. 245.

⁵Ross, *The Right and the Good* (Oxford: Clarendon Press, 1939); Mill, *Utilitarianism and Other Writings*, ed. Mary Warnock (New York: World Publishing Co., 1962); Kant, *Foundations of the Metaphysics of Morals*, ed. Lewis W. Beck (New York: Bobbs Merrill Co., 1959).

⁶Robert J. Levine, *Ethics and Regulation of Clinical Research* (Baltimore: Urban & Schwarzenberg, 1981), pp. 8-12.

⁷Ross, pp. 16-47, esp. p. 21.

⁸Albert R. Jonsen and Andre E. Hellegers, “Conceptual Foundations of an Ethics of Medical Care,” in *Ethics of Health Care*, ed. Laurence Tancredi (Washington, D.C.: National Academy of Sciences, 1974), pp. 3-20.

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