

**FETUSES, PHYSICIANS, FELONS: AN EXPLORATION OF THE ETHICAL
DATIVE**

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The whimsical title and occasionally whimsical tone of this essay belie its serious intent: an intent so serious it can be expressed in Biblical rhetoric. This essay asks, as St. Paul asked the Corinthians, "How should we act in accord with our calling?" By "calling," the great Apostle meant the sudden summons which had pitched him from his horse and which he assumed all Christians in some less dramatic and traumatic fashion had received. Being quite unable to reach or sustain the heights of Pauline mysticism or eloquence, I use "calling" in a more mundane sense: the name whereby we are called as performers of certain tasks, or as an eighteenth century divine elegantly wrote, "the appellation given to all common trades and professions which are termed lawful callings, that is, employments whereunto each particular man is called by the course of nature and fortune, those two ministers of Providence." (Abraham Tucker, *The Light of Nature Pursued*, II, 480, 1768)

The question, "How do we act in accord with our calling?" is, to my mind, both a philosophical one and a practical one. The philosophical one is a modern version of the ancient nominalist question, "How do names refer to things?" I wonder how the name of a profession or calling comes into being and, once in being, shapes the reality and the activity of its bearers. Is the name of a profession merely the word which sums up the variety of actions performed by its bearers or do the variety of actions take their name from some ideal form? To chose the first alternative would lead to a process of definition which would list in detail the operations performed by those who bear the titles "fuller", "cooper", "chandler" or "puddler". To accept the second would lead to a specification of the goal toward which those activities strive and the virtues required to attain that goal.

Most of us, and most of our predecessors, at this edifying table, belong to the professions: the clergy, medicine, the law, the academy. Ancient and honorable traditions, a well

demarcated field of endeavor, a characteristic education and a constant camaraderie with colleagues create the profession into which we fit. Plato believed, and indeed made it a foundation stone of his Republic, that men are fitted by nature to perform certain tasks. But, it does seem rather that each person comes with some little talent and modest motivation to that great and powerful exemplary reality, the profession, and is molded into its likeness. No one is a great physician or a great lawyer except he incarnates within himself the profession, its history, its ideals and its style. Even though he be an innovator, a reformer or a revolutionary, he is always of the tribe and will speak its language and relish its victuals.

Here is where my philosophical inquiry becomes a practical one. I am called an "ethicist." I do not much like the word nor do many of my colleagues. In fact, recently the editors of one of the more significant journals in the field of ethics asked me to eliminate the word from the title of an article of mine, hoping, they said, to expunge it from current usage. Nevertheless, it has gotten some currency and their efforts will probably be futile. The Oxford English Dictionary is quite forthright about the meaning of ethicist (or ethician): "a writer on ethics or one versed in ethics." However, the word is apparently of such little interest to those worthy lexicographers that they embellish that parsimonious definition with but one citation and that one from Harpers Magazine, "between the priest and the theoretical ethician lies the activity in the sphere of sociology and economics of writers like Ruskin." (Waldstein, Harpers 1889) The citation is not very illuminating, but it does cast some light on my practical problem: it seems to tell me that I am not a priest nor a sociologist, nor an economist, nor a social critic, as was Ruskin, but what am I?

There is the practical problem: what does an ethicist do? The English solution to the problem is properly English, of course, one DOES ethics, just as one does mathematics or does the classical languages. Still, I am troubled. I don't quite know what doings one does when one does ethics. Occasionally, when introduced to a medical audience, some hear my title as "an-esthetist" which allows me the pleasantry of saying that my job is to keep people awake, not put them to sleep. The pleasantry is whistling in the dark, for I'm somewhat frightened by uncertainty. More and more people these days seem to be asking for the services of an ethicist. They want them on committees, as lecturers, even as authorities. They even pay money for them. They ask for our services as if they knew what we were supposed to do. How long can we continue to accept these invitations, I wonder, indeed how long will we continue to receive them, until we discover or decide what our particular function is.

Of course, I knew what I was trained to do. I was trained before the word "ethicist" was current, to be a moral philosopher and moral theologian. These are professions with a long lineage and large literature. I was trained to read that literature carefully and to explain it clearly to students. The authors of moral philosophy and moral theology had no doubts about what they were doing. Plato and Aristotle, Hume and Kant, even when being skeptical, were certain that their comments cut beneath the follies and foibles of human behavior to the deep wellsprings of human freedom and rationality. Augustine, Aquinas, Ligouri and the teams of strong minded, nineteenth century Jesuits,

Redemptorists and Dominicans created a moral theology which was anything but wavering. It shaped, firmly and finely, the morality of an entire Church universal. I was trained in these traditions. With them behind me, I shouldn't be so dubious about my identity. But I am.

If an ethicist were like a priest, or a counselor or a crusader, I would be much less ambiguous. I was a priest for more than a decade. I know that, even if a priest doesn't have an answer for a penitent's question, he does have something definite to offer, the sacramental absolution. Many believe that priestly acts bear a validity far beyond their verbal and physical manifestations. They are, as Catholic theology states, valid *ex opere operato*, simply by being performed. But ethicist's acts have no such guarantee. They are human words and gestures, nothing more.

I've been a counselor. I knew that, from time to time, I can analyze a personal problem and offer helpful advice. But, more importantly, I know that a sympathetic silence is often the best counsel. The person seeking counsel slowly finds it within himself, as he tells his tale to one who attends with interest, patience, and a rare, but right, question. The ethicist will sometimes play counselors role. This may be just what is needed, but, if that is all, why call oneself an ethicist?

I have not often been a crusader, for that is not my nature. But I have followed the crusades for causes I considered important. The crusader speaks with conviction. He can rally people around slogans that take on the color of moral principles. He can inspire courage, tenacity, and self-sacrifice. The crusader is the architect of morality. But even if I could do this, I wouldn't be satisfied that I was being an ethicist. The ethicist is sometimes impelled, not to lead a crusade, but to dissolve one by caustic criticism or to give to one ideas to match its enthusiasm.

Finally, I think to myself, an ethicist may only have to be a wise person. Thoughtful reflection, profound insight, cogent argument, succinct statement: these make the ethicist. But these are not acquired with the Ph.D. They are born in a person, bred by experience, nourished by love, by pain, by care. So while the ethicist should be a wise person, this wisdom is a grace, not often given.

So what should I be doing? I read my classic authors, give some counsel, as much bad as good, pretend an authority that dimly imitates the priestly, encourage one crusade and discourage another. I await, amid the banalities of my thoughts, the wise conception which I can utter eloquently. It is usually a long wait, and, before it's over, someone else, without ethicists' credentials, says it, often less pretentiously. Except for the first occupation, reading the classics with familiarity, what I do can be done by anyone. Good persons, with intelligence and concern, can substitute for me anytime.

Yet, I am assigned to committees, appointed to Commissions, invited to lecture and to write "as an ethicist." I've got to find out how to be an ethicist, or I'll be out of a job. An additional complication: if I do find out and start doing it, I may also be out of a job, because many expect the ethicist to be priest, counselor, crusader and wise man.

One reasonable, though infallible way, to discern what one ought to do is to inspect what one does. The medieval scholastics affirmed the Aristotelian dictum, “agere sequitur esse”...action follows upon being, but added “esse per agere cognoscitur,”...being is known through action. Thus, I review what I have in fact done as ethicist in hopes of discovering what ethicalistic essence is. My recent doings have dealt with fetuses, physicians and felons.

The question has been put to me, and to my fellow Commissioners on the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research: should physician researchers have access to fetuses and to imprisoned felons as subjects of research? The question arose out of two quite different public concerns: on the one hand, certain citizens, outraged by abortion decision of the Supreme Court, suspected that biomedical research would provide an eager market for abortuses. Indeed, a British Parliamentarian, Norman St. John Stevas, had exposed just such nefarious conduct in England. On the other hand, civil libertarians decried the use of prisoners as volunteers precisely because, they asserted, the coercive atmosphere of prisons obliterated voluntariness. That abrasively perceptive lady, Jessica Mitford, was able to catalogue more than a few horror stories of prisoner abuse. However, the physician researchers made their plea. While admitting and deploring the horror stories, the possibility of abuse and the grisly prospect of a trade in abortuses, they maintain that much needed research would be precluded if all access to fetuses and felons were prohibited and that this loss would be to the public detriment. Here, then, was the ethical question: “Is it right or wrong for a physician to employ as a research subject a being totally incapable of consent or whose consent is presumably compromised?” Reasonable arguments were proffered for all interested parties, with the exception of the fetuses, who being speechless, were represented by vociferous advocates.

How is the voice of the ethicist heard in this debate? At first, it is not heard at all. Studied silence must be the first position of the ethicist, for he must listen for the two intertwined strands of all moral argument: sensibility and rationality. The classical authors whom he has read tell him morality is always, in some sense, an amalgam of passion and of reason: a “deliberated desire” as Aristotle says. Each of the great authors relates and ranks these elements differently (the permutation may be followed in our brother Chauncey’s own treatise on ethics entitled, “What Are We Living For?”)

The ethicist hopes, through assiduous attention, to unravel the strands of reason and passion, to dissolve the bonding which holds together what one modern ethicist, seduced by the contemporary passion for neologisms, calls the “phrastic” or factual element and the “nustic” or assenting element. Nut, if he does succeed, what use? What does he do with the loose ends in his hands? He inspects this stuff of morality with disinterest, not in the sense of unconcern, but in the sense of impartiality. He is vividly aware that his own judgments and feelings are partial and prejudiced, yet, in examining the case at hand, he is not one of the actors whose interests are directly at stake. His interest is indirect. He is a living example of what the ancient grammarians, for some obscure reason, called the “ethical dative,” the use, in Latin and Greek and in the Romantic languages, of the dative

case to imply that a person, other than the subject or the object, has an indirect interest in the fact stated. Horace wrote, "quid mihi Celsus agit?" Literally, this is rendered, "What is Celsus to me?" but means "How is Celsus" or "Is there anything about old Celsus that might be of interest to me?"

The indirection, however, is purposeful. It involves the effort to raise one's eyes from the case at hand in order to focus on certain ideals or patterns which the classic authors have made familiar to him. These patterns are the moral ideas or principles: justice, respect, veracity, fidelity. They are, as it were, master patterns; every moral artist weaves his own quite personal copy. But, there is a constancy and coherence, however general, which allows us to say, "here is a problem of injustice," or "that was the truthful thing to do."

Turning back to the problem, with these templates of principle, the claims of fetuses, physicians and felons can be set forth as problems of justice and respect. Our western culture is familiar with these problems and has developed certain ways of dealing with them. I shall not detail the actual definition of the problem nor the proposed solution; I shall merely say that, in our tradition, claims to possession or to protection have come to have certain priorities and some such claims can be overridden only by offering quite persuasive reasons. In the case at hand, the Commission of ethicists recommends that access both to the fetuses and to felons be permitted but under certain definite limitations. Physician researchers may offer, for public consideration, their reasons for seeking access.

The ethical dative leaves neither the claim of fetus nor felon to protection as absolute, though it ranks it high. The claim of the physician to possession is severely circumscribed, although it is cautiously admitted in the public interest. The burdens of research are not permitted to fall only on those who will receive little benefit from the data which they have contributed. The autonomy of the vulnerable and the captive is acknowledged, although with qualification. A debate over claims has been turned into a colloquy over justice and respect. Its resolution may be fragile and indeed disputable, but the very fact that the colloquy has superseded the debate is the achievement.

We, as a civilization, must continually speak about justice, respect, veracity, and fidelity. As we become more litigious and disputatious, the smog of competing interests obscures the clear air of ideals. It is the task of the ethicist to exercise some environmental control. It is a modest task with meager effects, yet it is indispensable. If the smoke of claim and counterclaim can occasionally thin so that the majestic mountains of principle and value can be glimpsed by all, a good work has been done. The ethicist does not create those mountains: this is done by the moral giants of a culture and, some believe, even by the divinity who dwells beyond the peaks. The ethicist cannot force men to gaze upon the peaks or even assure that when they do, they will find them fascinating. But he has let them be seen and invited men to settle disputes, as the Athenians did in the agora, with Mt. Parnis and Immitos behind them and the Olympic Pelion and Ossa out of sight but ever present to the inner eye. If my words and my work can evoke such a vision from time to time, I am satisfied enough. "To speak of ethics," said John Dewey, "is to speak of men at their best when they are acting at their worst."