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| **Moral, Legal, and Aesthetic Reasoning** | **12** |

**Students will learn to . . .**

**1.Explain the role of value judgment in moral reasoning**

**2.Name and explain the major perspectives in moral reasoning in Western thought**

**3.Explain the elements of moral deliberation**

**4.Explain the principles that underlie legal reasoning and argument**

**5.Explain the principles involved in aesthetic reasoning and judgment**

**L**et’s imagine that you and an acquaintance have the same insurance agent, and you discover that the acquaintance, who lost his job during a recent recession, is involved in an insurance-fraud scam. He is trying to defraud the company out of tens of thousands of dollars. When you visit the agent to check up on your own policy, should you say anything about what your friend is doing?

From time to time, we all face tough moral decisions. A mother must decide whether her daughter’s softball game has a higher priority than her professional responsibility. “Dear Abby” tries to answer a young woman with a serviceman fiancé serving abroad who has fallen in love with someone new. A governor must decide whether to send a convicted criminal to death row on circumstantial evidence. A president faces the decision of whether to take a nation to war.

When people think abstractly, sometimes they believe that moral issues are subjective. You hear them say such things as “When it comes to what you should do, the right thing is what seems right to you. End of story.” However, we asked a class how many thought “Dear Abby” should have told her young correspondent, “Hey, do whatever you feel like”—not a Page 391single hand was raised. When people hear about a real moral dilemma, not to mention confront one for themselves, they usually *don’t* think it’s merely a matter of personal opinion. They discuss the issue with others, seek advice, consider options, and weigh consequences. When they do this, they find that some considerations and arguments carry more weight and are better than others. (You may remember our brief treatment of this topic in [**Chapter 1**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter01/chapter01.xhtml)).

In the first part of this chapter, we look at what actually is involved in moral reasoning and deliberation. Then we will do the same for aspects of legal reasoning and for aesthetic reasoning.

■The “Dear Abby” column is now written by Jeanne Phillips, the original Abby’s daughter. The column often employs moral reasoning, which is discussed in this chapter.

**VALUE JUDGMENTS**

Let’s begin by fine-tuning what we mean when we talk about moral reasoning. Recently, our colleague Becky White debated what to do about a student who had copied parts of someone else’s term paper and was silly enough to think Professor White wouldn’t notice. Many things could be said about the student; what Professor White said was, “He deserves an F.” And that’s what she gave him—for the entire course.

Professor White’s statement is what people call a “value judgment.”[**\***](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/endnotes/endnotes.xhtml#ch12_notes1) A **value judgment** assesses the merit, desirability, or praiseworthiness of someone or something. When our colleague said the student deserved an F, she wasn’t describing him; she was *judging* him. She thought he had done something *wrong.*

Moral reasoning differs from other kinds of reasoning in that it consists mainly of trying to establish moral value judgments. Because moral reasoning is all about moral value judgments, you need to be able to identify one when you run into it.

A difficulty is that not every value judgment expresses a *moral* value judgment. When you say a movie is pretty good, you are judging the movie, but not its morality. When you say Pepsi is better than Coke, you are making a taste value judgment, not a moral value judgment.

See if you understand why, in the table below, the claims in the left column are all moral value judgments and those in the right are value judgments, but not of the moral variety. Exercises on moral reasoning are at the end of the section titled “Moral Deliberation” in this chapter.

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| **Moral Value Judgments** | **Nonmoral Value Judgments** |
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| 1. It was wrong for the senator to withhold information.2. The senator ought not to claim residence in one district when he actually lives in another.3. Abortion is immoral.4. Children should be taught to respect their elders.5. I don’t deserve to be flunked for an honest mistake. | 1. The senator dresses well.2. *Why Him?* is one of the funnier movies of recent years.3. Lorde is not quite good enough to have just one name.4. Frank Zappa was a so-so guitarist.5. Jessie J rocks. |

Page 392Typically, moral value judgments employ such words as “good,” “bad,” “right,” “wrong,” “ought,” “should,” “proper,” and “justified,” “fair,” and so forth, and their opposites. But you need to bear in mind that, although these words often signal a moral evaluation, they do not always do so. Telling someone she should keep her promise is making a moral value judgment; telling her she should keep her knees bent when skiing is assigning a positive value to keeping bent knees, but not a moral value.

It’s also worth noticing that implicit value judgments can be made inside claims that are not themselves value judgments. For example, “David Axelrod, a good man, is a regular contributor to the *New York Times*” is not a value judgment, but the part about Axelrod being a good man is.

**Moral versus Nonmoral**

A source of confusion in discussions that involve moral reasoning is the word “moral.” The word has two separate and distinct meanings. First, “moral” may be used as the opposite of “nonmoral.” This is the sense in which we have been using the term. The claim “Chris Christie weighs more than 200 pounds” is a nonmoral claim, meaning it has nothing to do with morality. “Chris Christie is an evil man,” by contrast, has a lot to do with morality: It is a moral value judgment, a claim that expresses a moral value. The same is true of the claim, “Chris Christie is a good man.”

The second meaning of “moral” is the opposite not of “nonmoral” but of “immoral.” Kicking a cat for the heck of it would be immoral; taking care of it would be moral. In this sense of the word, “moral” is used to mean “good,” “right,” “proper,” and so forth.

To avoid confusion, when we use the word “moral” in this chapter, we always mean moral as opposed to nonmoral; that is, as having to do with morality. Thus, the statements “It was wrong to kick the cat” and “It wasn’t wrong to kick the cat” are both moral judgments.

**Two Principles of Moral Reasoning**

Suppose Moore announces on the first day of class that the final exam will be optional. “Except,” he says, pointing at some person at random, “for the young woman there in the third row. For you,” he says, “the final is mandatory.”

The problem here is that this student is no different from everyone else, yet Moore is treating her differently. And this brings us to the first principle of moral reasoning.

**Moral Reasoning Principle 1**

*If separate cases aren’t different in any relevant way, then they should be treated the same way, and if separate cases are treated the same way, they should not be different in any relevant way.*

For convenience, let’s call this the **consistency principle.** If Moore gives two students the same grade despite the fact that one student did much better than the other, Moore has violated the principle.

It is important to see that this is a principle of *moral reasoning,* not a moral principle. It’s *not* like saying, “You should be kind to animals.” It’s like saying, “If all Xs are Ys, then if this thing is an X, then it is a Y”—“If all students are entitled to an optional final, then if the young woman in the third row is a student, then she is entitled to an optional final.”Page 393

The second principle of moral reasoning is procedural rather than logical:

**Moral Reasoning Principle 2**

*If someone appears to be violating the consistency principle, then the burden of proof is on that person to show that he or she is in fact not violating the principle.*

For example, if Parker says, “Blue-eyed students can take tests with books open, but nobody else can,” he needs to show that he is not violating the consistency principle. He must show that there is something about having blue eyes that should entitle such individuals to take their tests with their books open.

When do separate cases count as the same or different? Fortunately, principle 2 enables us to sidestep having to answer this question in the abstract. If Harlan approved of the war in Afghanistan but opposed the war in Vietnam, and the cases seem to us not to differ in any relevant way, then, if Harlan cannot point to a difference that seems satisfactory to us, we are justified in regarding him as inconsistent. If Carol treats black customers and white customers differently and cannot identify for us some relevant difference between the two, then we are justified in regarding her as inconsistent.

Suppose, however, that Carol thinks that skin color itself is a difference between blacks and whites relevant to how people should be treated, and she charges us with failing to make relevant discriminations. Here, it would be easy for us to point out to Carol that skin color is an immutable characteristic of birth like height or eye color; does Carol adjust her civility to people depending on those characteristics?

It isn’t difficult to perceive the inconsistency on the part of a salesperson who is more polite to customers of one group; but other cases are far tougher, and many are such that reasonable people will disagree about their proper assessment. Is a person inconsistent who approves of abortion but not capital punishment? Is a person inconsistent who, on the one hand, believes that the states should be free to reduce spending on welfare but, on the other, does not think that the states should be able to eliminate ceilings on punitive damages in tort cases? No harm is done in asking, “What’s the difference?” and because much headway can be made in a discussion by doing so, it seems wise to ask.

In [**Chapter 6**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter06/chapter06.xhtml), we talked about the *argumentum* *ad hominem,* a fallacy one version of which we commit when we think we rebut the content of what someone says by pointing out inconsistency on his or her part. Now, let’s say Ramesh tells us it is wrong to hunt, and then we find out Ramesh likes to fish. And let’s say that, when we press Ramesh, he cannot think of any relevant moral difference between the two activities. Then he is being inconsistent. But that does not mean that it is right to hunt, nor does it mean that it is wrong to fish. An *argumentum* *ad hominem* occurs if we say something like “Ramesh, you are mistaken when you say it is wrong to hunt, because you yourself fish.” It is not an *argumentum* *ad hominem* to say, “Ramesh, you are being inconsistent. You must change your position on either hunting or fishing.”

Similarly, let’s suppose Professor Moore gives Howard an A and gives James a C but cannot think of any differences between their performance in his course. It would be committing an *argumentum* *ad hominem* if we said, “Moore, James does not deserve a C, because you gave Howard an A.” Likewise, it would be committing an *argumentum* *ad hominem* if we said, “Moore, Howard does not deserve an A, because you gave James a C.” But it is *not* illogical to say, “Moore, you are being inconsistent. You have misgraded one or the other of these students.”Page 394

**Moral Principles**

Because separate moral cases, if similar, must be given similar treatment, a moral principle is a value judgment that is general in nature. That is, a moral principle refers to what should be done (or is right, proper, etc.) not just in a single case but in all similar cases. “Stealing is wrong” is a moral principle. “It is wrong to steal from Billy Bob” is just a true moral value judgment about a specific case. Likewise, “It is wrong for Billy Bob to steal” is a specific moral value judgment and not a moral principle. To qualify as a moral principle, a moral value judgment must be general in scope. Actually, this follows from the consistency principle. The largest part of everyday moral reasoning takes the form of deducing specific moral value judgments from general moral principles. We’ll look next at how this works.

**Deriving Specific Moral Value Judgments**

From the standpoint of logic, there is something puzzling about deriving a specific moral value judgment from a premise that is not a value judgment. For example, consider this argument:

Elliott’s father depends on Elliott. Therefore, Elliott should take care of him.

We hear such arguments in everyday life and tend to think nothing of them; they certainly do not seem illogical. If facts and statistics are not grounds for making moral decisions, what is? Nevertheless, logically, arguments like this—the basic kind of argument of moral reasoning—are puzzling, because the premise (“Elliott’s father depends on Elliott”) is not a value judgment, whereas the conclusion (“Elliott should take care of him”) is. How, logically, can we get from the “is” premise to the “should” conclusion? How does the “should” get in there?

The answer is that the conclusion of this argument follows logically from the stated premise, only if a *general* moral principle is assumed. In this case, a principle that would work is: Adult children should take care of parents who are dependent on them. Here is the argument with its conclusion:

Premise: Elliott’s father depends on Elliott.

[Unstated general moral principle: Adult children should take care of their parents who are dependent on them.]

Conclusion: Therefore, Elliott should take care of his father.

The result is a valid deductive argument. Likewise, any chain of moral reasoning that starts from a claim about facts and ends up with a moral value judgment assumes a general principle that ties the fact-stating “is” premise to the value-stating “should” conclusion.

So far, this is just a point about the logic of moral reasoning. But there is a practical point to be made here as well. It helps clarify matters to consider our general moral principles when we advance moral arguments. If we agree with the premise that Elliott’s father depends on Elliott but disagree with the conclusion that Elliott should take care of his father, then our quarrel must be with the unstated general principle that adult children should take care of their parents who are dependent on them. For example, should an adult take care of parents even if it means sacrificing Page 395the welfare of his or her spouse? Considering the assumed general moral principle that ties the fact-stating premise with the value-judging conclusion can help clarify the issues involved in a moral decision.

For another example, you sometimes hear this said:

Homosexuality is unnatural. Therefore, it ought not to be practiced.

A general moral principle assumed here might be: Whatever is unnatural ought not to be done. Bringing that principle to light sets the stage for fruitful discussion. What counts as unnatural? Is it unnatural to fly? To wear clothing? To live to 100? To have sex beyond one’s reproductive years? And is it true that unnatural things never should be done? In the natural world, severely disabled offspring are left to fend for themselves; are we wrong to care for our own children who are severely disabled? Scratching oneself in public certainly qualifies as natural, but in our culture doing so is not considered proper.

Earlier, we mentioned our colleague Becky White, who failed a student for copying parts of another student’s paper. As it so happens, Professor White also considered whether to penalize the student who allowed his paper to be *read* by the student who ended up copying parts of it. Was it wrong for Charles (whose name we have changed) to show his work to a classmate who then copied parts of it? Thinking that it was wrong would require a general principle, and one that would work would be: It is wrong to show your work to classmates before they have turned in their own work. This principle would yield a deductively valid argument, and there is something to be said for the principle. For example, showing your exam answers to the classmate sitting next to you is grounds for dismissal in many universities. At the same time, showing a term paper to a classmate to get constructive feedback is a good thing. Careful consideration of the earlier principle might lead to the conclusion that, in fact, Charles did nothing wrong.

After a few exercises, we’ll have a look at the most general and fundamental moral principles assumed in most moral reasoning.

**Deducing the Right Thing to Do**

Nearly any kind of reasoning can appear in a discussion of moral matters. For example, we might need to reason inductively to support a claim about the effect of an action on the general happiness. On the other hand, the claim “You should do X” is ordinarily the conclusion of deductive reasoning. Something like this would be typical:

Everybody who benefited from the program should contribute to its continuance.

Denzil benefited from the program.

Therefore, Denzil should contribute to its continuance.

That such arguments are frequently part of a discussion about what one should do is not surprising, for they reflect the consistency principle—that like cases be treated alike. This principle is embedded in the general claim in the premises regarding Denzil. It groups together everybody who benefited from the program as similar cases.

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Exercise 12-1

Which of the following claims are value judgments?

▲  1.Lizards make fine pets.

 2.You can get a clothes rack at True Value for less than $15.

 3.Melissa gives the best haircuts in this town.

▲  4.It was a great year for regional politics.

 5.Key officials of the Department of Defense are producing their own unverified intelligence reports about an arms buildup.

 6.Texas leads the nation in accidental deaths caused by police chases.

▲  7.Napoleon Bonaparte was the greatest military leader of modern times.

 8.Racial segregation is immoral anytime, anywhere.

 9.The president deployed a “missile defense” that wasn’t adequately tested.

▲ 10.Air consists mainly of nitrogen and oxygen.

Exercise 12-2

Which of the following claims are value judgments?

▲  1.T-shirts made by Fruit of the Loom are soft and luxurious.

 2.Sanders was nearly as detailed as Clinton in reports to the press.

 3.The Pentagon was not nearly as supportive of a war as it should have been.

▲  4.Tens of billions of dollars have been wasted on worthless public transportation schemes.

 5.Atlanta is sultry in the summer.

 6.Religious school teachers are stricter than their nonreligious counterparts.

▲  7.Six Flags has the scariest rides in the state.

 8.The TV host with the most forceful delivery? That would have to be Al Sharpton.

 9.Brandon is not nearly as happy as his wife, Hunter.

10.Hunter is more selfish than she should be.

Exercise 12-3

Which of the following are moral value judgments?

▲  1.Marina’s car puts out horrible smoke; for the sake of us all, she should get it tuned up.

 2.After the surgery, Nicky’s eyesight improved considerably.

 3.Ms. Beeson ought not to have embezzled money from the bank.

▲  4.Violence is always wrong.

 5.Ryder ought to wear that sweater more often; it looks great on him.

 6.Jen, you are one of the laziest people I know!

▲  7.My computer software is really good; it even corrects my grammar.

 8.Elizabeth has been very good tonight, according to the babysitter.

 9.Judge Ramesh is quite well-informed.

▲ 10.Judge Ramesh’s decision gave each party exactly what it deserved.Page 397

11.The editor couldn’t use my illustrations; she said they were boring.

12.Wow. That was a tasty meal!

13.The last set of essays was better than the first.

14.Do unto others as you would have them do unto you.

15.People who live in glass houses shouldn’t throw stones.

16.You really shouldn’t make so much noise when the people upstairs are trying to sleep.

17.It is unfair the way Professor Smith asks questions no normal person can answer.

18.“Allegro” means fast, but not that fast!

19.Being in touch with God gives your life meaning and value.

20.Thou shalt not kill.

**MAJOR PERSPECTIVES IN MORAL REASONING**

Moral reasoning usually takes place within one or more frameworks or perspectives. Here, we consider perspectives that have been especially influential in Western thought.

**Consequentialism**

The perspective known as **consequentialism** is the view that the *consequences* of a decision, deed, or policy determine its moral value. If an action produces better consequences than the alternatives, then it is the better action, morally speaking. One of the most important versions of this view is **utilitarianism,** which says that, if an act will produce more happiness than will alternatives, it is the right thing to do, and if it will produce less happiness, it would be wrong to do it in place of an alternative that would produce more happiness. In short, act so as to produce the most happiness.

Many of us use a pro–con list of consequences as a guideline when considering what course of action to take. Your parents are divorced; should you spend Thanksgiving with your father’s side of the family or with your mother’s? Someone will be disappointed, but there may be more people disappointed on one side. Or the disappointment may be more deeply felt on one side. As a utilitarian, you calculate as best you can how your decision will affect the happiness of people on both sides of the equation. Plus, you must factor in how *certain* the outcomes of each alternative are with respect to happiness, assigning more weight to relatively more certain positive outcomes. Because you can generally be more certain of the effect of an act on your own happiness and on the happiness of others you know well, it is often morally proper to favor the act that best promotes your own or their happiness. Of course, you must not use this as an excuse to be entirely self-serving: Your own happiness isn’t more important morally than another’s. The best course of action morally is not always the one that best promotes your own happiness.

In sum, utilitarians weigh the consequences of the alternatives, pro and con, and then choose the alternative that maximizes happiness. One of the original and most profound intellects behind utilitarianism, Jeremy Bentham (1748–1832), even went so far as to devise a *hedonistic calculus*—a method of assigning actual Page 398numerical values to pleasures and pains based on their intensity, certainty, duration, and so forth. Other utilitarians think that some pleasures are of a higher quality (e.g., reading Shakespeare is of a higher quality than watching *The Quest!*). Although there are other important unresolved issues in utilitarianism, the basic idea involves weighing the consequences of possible actions in terms of happiness. Utilitarianism has considerable popular appeal, and real-life moral reasoning is often utilitarian.

Nevertheless, some aspects of the theory are problematic. Typically, when we deliberate whether or not to do something, we don’t always take into consideration only the effect of the action on happiness. For example, other people have *rights* that we sometimes take into account. We would not make someone in our family a slave, even if the happiness produced for the family by doing so outweighed the unhappiness it created for the slave. We also consider our *duties* and *obligations.* We think it is our duty to return a loan to someone, even if we are still short of cash and the other person doesn’t need the money and doesn’t even remember having loaned it to us. If we make a date and then want to break it because we’ve met the love of our life, we think twice about standing up our original date, even if we believe that our overall happiness will far outweigh the temporary unhappiness of our date. To many, the moral obligation of a promise cannot be ignored for the sake of the overall happiness that might result from breaking it.

In estimating the moral worth of what people do, utilitarianism also seems to discount people’s *intentions.* Suppose a mugger attacks somebody just as a huge flower pot falls from a balcony above. The mugger happens to push the individual the instant before the flower pot lands on the exact spot where the victim had been standing. The mugger has saved the victim’s life, as it turns out. But would we say that the mugger did a morally good deed just because his action had a happy result? According to utilitarianism, we would—assuming the net result of the action was more happiness than would otherwise have been the case. So, utilitarianism doesn’t seem to be the complete story in moral reasoning.

Another important consequentialist theory is **ethical egoism,** the idea that, if an act produces more happiness for *oneself* than will the alternatives, then it is the right thing to do, and if it produces less happiness for oneself than the alternatives, it is wrong to do it. In short, act so as to best promote your own happiness. But any well-thought-out theory of ethical egoism does not prescribe acting purely selfishly, for selfish behavior is not likely to produce the most happiness for oneself in the long run. Still, there is a difference between saying that the reason for doing something is to bring yourself happiness and saying that the reason for doing something is to bring others happiness. The latter doctrine is **ethical altruism,** which discounts one’s own happiness as of lesser value than the happiness of others. From this perspective, utilitarianism is the middle ground, in which one’s own happiness and others’ happiness are treated as equally important.

**Duty Theory/Deontologism**

Immanuel Kant (1724–1804), who witnessed the beginning phases of the utilitarian philosophy, found utilitarianism deficient because of its neglect, among other things, of moral duty. Kant’s theory is a version of what is called **duty theory,** or **deontologism.**

Kant acknowledged that our lives are full of imperatives based on our own situations and our objectives. If we want to advance at work, then it is imperative that we keep our promises; if we are concerned about our friends’ happiness, then Page 399it is imperative that we not talk about them behind their backs. But this type of **hypothetical imperative,** which tells us we ought to do (or ought not to do) something in order to achieve such and such a result, is not a *moral* imperative, Kant argued. Keeping a promise so we’ll get a solid reputation is neither morally praiseworthy nor morally blameworthy, he said. For our act to be *morally* praiseworthy, it must be done, not for the sake of some objective, but simply because *it is right.* Our action of keeping our promise is morally praiseworthy, he said, only if we do it simply because it is right to keep our promises. A moral imperative is unconditional or **categorical;**[**\***](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/endnotes/endnotes.xhtml#ch12_notes2) it prescribes an action, not for the sake of some result, but simply because that action is our moral duty.

**Acts and Rules**

Thinking of cheating on a test? Maybe the sum total of happiness in the world would be increased by this single *act* of cheating. But if the *principle* involved were adopted widely, the sum total of happiness would be decreased.

This raises the question: When calculating happiness outcomes, should we contemplate happiness outcomes of the particular *act* in question? Or should we contemplate happiness outcomes of adoption of the *principle* involved in the act?

Accordingly, some philosophers make a distinction between “act utilitarianism,” which evaluates the moral worth of an act on the happiness it would produce, and “rule utilitarianism,” which evaluates the moral worth of an act on the happiness that would be produced by adoption of the principle it exemplifies.

It follows from this philosophy that, when it comes to evaluating an action morally, what counts is not the result or consequences of the action, as utilitarianism maintains, but the intention from which it is done. And the morally best intention—indeed, in Kant’s opinion the *only* truly morally praiseworthy intention—is that according to which you do something just because it is your moral duty.

But what makes something our moral duty? Some deontologists ground duty in human nature; others ground it in reason; in Western culture, of course, many believe moral duty is set by God. How can we tell what our duty is? Some believe our duty is to be found by consulting conscience; others believe that it is just self-evident or is clear to moral intuition. Those who maintain that human moral duties are established by God usually derive their specific understanding of these duties through interpretations of religious texts such as the Bible, though there is disagreement over what the correct interpretation is as well as who should do the interpreting.

Kant answered the question, How can we tell what our moral duty is? as follows: Suppose you are considering some course of action—say, whether to borrow some money you need very badly. But suppose you know you can’t pay back the loan. Is it morally permissible for you to borrow money under such circumstances? Kant said to do this: First, find the *maxim* (principle of action) involved in what you want to do. In the case in question, the maxim is “When I’m in need of money, I’ll Page 400go to my friends and promise I’ll pay it back, even if I know I can’t.” Next, ask yourself, “Could I want this maxim to be a *universal* law or rule, one that everyone should follow?” This process of *universalization* is the feature that lets you judge whether something would work as a moral law, according to Kant. Could you make it a universal law that it is okay for everybody to lie about paying back loans? Hardly: If everyone adopted this principle, then there would be no such thing as loan making. In short, the universalization of your principle undermines the very principle that is universalized. If everyone adopted the principle, then nobody could possibly follow it. The universalization of your principle is illogical, so it is your duty to pay back loans.

As you can see, the results of acting according to Kant’s theory can be radically different from the results of acting according to utilitarianism. Utilitarianism would condone borrowing money with no intention of repaying it, assuming that doing so would produce more happiness than would be produced by not doing so. But Kant’s theory would not condone it.

Kant also noted that, if you were to borrow a friend’s money with no intention of repaying it, you would be treating your friend merely as a means to an end. If you examine cases like this, in which you use other people as mere tools for your own objectives, then, Kant said, you will find in each case a transgression of moral duty, a principle of action that cannot be universalized. Thus, he warned us, it is our moral duty never to treat someone else *merely*as a tool, as means to an end. Of course, Kant did not mean that Moore cannot ask Parker for help on some project; doing so would not be a case of Moore’s using Parker *merely* as a tool.

Kant’s theory of the moral necessity of never treating other people as mere tools can be modified to support the ideas that people have rights and that treatment of others must always involve fair play. Regardless of whether you subscribe to Kant’s version of duty theory, the chances are that your own moral deliberations are more than just strictly utilitarian and may well involve considerations of what you take to be other moral requirements, including your duties and the rights of others.

**Moral Relativism**

One popular view of ethics, especially perhaps among undergraduates taking a first course in philosophy, is **moral relativism,** the idea that what is right and wrong depends on and is determined by one’s group or culture.

A mistake sometimes made in moral reasoning is to confuse the following two claims:

1.What is *believed* to be right and wrong may differ from group to group, society to society, or culture to culture.

2.What *is* right and wrong may differ from group to group, society to society, or culture to culture.

The second claim, but not the first, is moral relativism. Please go back and read the two claims carefully. They are so similar that it takes a moment to see they are actually quite different. But they are different. The first claim is incontestable; the second claim is controversial and problematic. It may well have been the majority belief in ancient Greece that there was nothing wrong with slavery. But that does not mean that at that time there was nothing wrong with slavery.Page 401

It is worth noting that moral relativism suffers from three potential difficulties. First, exactly what counts as a group, society, or culture, and what are the criteria for membership in one? How many groups, societies, or cultures do you belong to? You probably find it hard to say. This makes it difficult to specify which set of general principles apply to a person.

The second difficulty is that conflicting views about moral principles are to be found within all but the very smallest groups. For example, even within small communities, people may disagree about gay marriage or abortion.

**Mill’s Fallacies**

The founders of utilitarianism (discussed in the text) are the English philosophers Jeremy Bentham (1748–1832), John Stuart Mill (1806–1873), and Harriet Taylor Mill (1807–1858). After he died Bentham was paid the rare tribute of having his skeleton (dressed in his clothes) displayed at the University College in London. Apparently it still attends meetings of the College Council where Bentham is listed as “present but not voting.”

Mill, Bentham godson, was a precocious young scholar who read Greek by the time he was 3. His book, *A System of Logic*, was a best seller in England, and not just among philosophers but among the general public. YouTube was not available. Harriet Taylor was a woman's rights advocate, and collaborated with John Stuart Mill on many books.

Every student of logic and philosophy should know that Mill gave the following infamous argument for utilitarianism, in the fourth chapter of his treatise that went by that name:

The only proof capable of being given that an object is visible, is that people actually see it. The only proof that a sound is audible, is that people hear it . . . In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it . . . No reason can be given why the general happiness is desirable, except that each person, so far as he believes it to be attainable, desires his own happiness . . . we have not only all the proof which the case admits of, but all which it is possible to require, that happiness is a good: that each person’s happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons.

Now Mill said that this was not a proof in the ordinary sense. That’s just as well, because in the ordinary sense it contains three fallacies:

1.*Deriving an ought from an is*—deriving what people ought to do from what they actually do. We discussed this earlier, on pages 394–395, when we said that arguments that derive an ought-statement from an is-statement assume a general moral principle.

2.*Equivocation*—the argument moves from “desirable” in the sense of being sought after, to “desirable” in the sense of being something that should be sought after. (See [**Chapter 8**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter08/chapter08.xhtml) for a discussion of equivocation.)

3.*Composition*—the argument moves from the fact that individual happiness is a good thing, to the conclusion that the collective happiness is a good thing. (See [**Chapter 8**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter08/chapter08.xhtml) for a discussion of composition.)

Eminent philosophers have defended Mill by trying to show that he didn’t really commit these mistakes. That he has defenders suggests they think he needs defending.

Our own view is that Mill knew what he was doing and that is why he said that this was not a proof in the ordinary sense. We agree that it is not a proof in the ordinary sense. Not knowing any other sense, we regard it as a piece of rhetoric ([**Chapter 4**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter04/chapter04.xhtml)).

Page 402A third difficulty is perhaps less obvious. To understand the problem, if someone belongs to a society that believes it is permissible to kill Americans, then you, as a moral relativist, must concede it is permissible for that person to kill Americans. But if Americans in general agree on anything, it is that nobody should kill another person simply because of his or her national status. Therefore, if you are an American, you must also say it is *not* permissible for that person to kill Americans. Subscribing to moral relativism has placed you in a self-contradictory position.

Another popular moral perspective is **moral subjectivism,** the idea that what is right and wrong is merely a matter of subjective opinion, that thinking that something is right or wrong makes it right or wrong for that individual. We considered subjectivism in [**Chapter 1**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter01/chapter01.xhtml) and saw there the mistake in thinking that all value judgments are subjective.

**Religious Relativism**

As you might expect, **religious relativism** is the belief that what is right and wrong is whatever one’s religious culture or society deems. The problems attending this view are the same as those for other versions of relativism. First, what counts as a religious culture or society and as membership within one? Are Baptists and Catholics part of the same culture? Are you a Christian even if you never attend church? Second, even within a single culture, conflicting moral views are likely to be found. When the Presbyterian Church voted in 2015 to recognize same-sex marriage, the vote was not unanimous.

Third, those who belong to one religion might well consider practices of other religions to be sinful. For example, members of the first religion may think it is sinful to worship a false god. Thus, according to religious relativism, if you belong to the first religion, then you must say that those who worship the other god are doing something sinful, because that is the view of your religion. But as a religious relativist, you must also say that those who worship the other god are *not* doing something sinful.

I’m not guilty of murder. I’m guilty of obeying the laws of the Creator.

—B**enjamin** M**atthew** W**illiams,** who committed suicide while awaiting sentencing for having murdered a gay couple

**Religious Absolutism**

One way out of this difficulty might be to subscribe to **religious absolutism,** which maintains that the correct moral principles are those accepted by the “correct” religion. A problem, of course, we cannot say which, if any, religion is the correct one.

**Virtue Ethics**

Up to this point, the ethical perspectives discussed have focused on the question of what is the right or proper act, decision, practice, or policy. For that reason, these perspectives are referred to as “ethics of conduct.” However, another approach, one predominant in classical Greek thinking, has regained popularity among some contemporary moral philosophers. This approach, known as **virtue ethics,** focuses not on what to do but on how to be.

To find an excellent example of virtue ethics, one need look no further than the Boy Scout pledge. A Boy Scout doesn’t pledge to do or to refrain from doing this or that particular action; instead, he pledges to *be* a certain kind of person. He pledges to *be* trustworthy, loyal, helpful, friendly, courteous, kind, brave, and so forth. This is a list of “virtues,” or traits of character. A person who has them is Page 403disposed by habit to act in certain ways and not to act in others.

The ancient Greeks believed it was supremely important for a person to achieve psychological and physical balance; and to do that, the person needed to develop a consistently good character. A person out of balance will not be able to assess a situation properly and will tend to overreact or to not react strongly enough; moreover, such a person will not know his or her proper limits. People who recognize their own qualifications and limitations and who are capable of reacting to the right degree, at the right time, toward the right person, and for the right reason are virtuous persons. They understand the value of the idea of moderation: not too much and not too little, but in each case a response that is just right.

Aristotle (384–322 **b.c.e.**) regarded virtue as a trait, like having wisdom, being just, or being courageous, that we acquire when we use our capacity to reason to moderate our impulses and appetites. The largest part of Aristotle’s major ethical writing, the *Nicomachean Ethics,* is devoted to analysis of specific moral virtues as means between extremes (e.g., being courageous is the mean between fearing everything and fearing nothing). He also emphasized that virtue is a matter of habit; it is a trait, a way of living.

Virtue ethics is not an abstruse ethical theory. Many of us (fortunately) wish to be (or to become) persons of good character. And as a practical matter, when we are deliberating a course of action, our approach often is to consider what someone whose character we admire would do in the circumstances.

Still, it is possible that virtue theory alone cannot answer all moral questions. Each of us may face moral dilemmas of such a nature that it simply isn’t clear what course of action is required by someone of good character.

■The Ten Commandments represent the perspective of religious absolutism.

Exercise 12-4

Determine which ethical perspective is primarily reflected in each of the following statements. Choose from

A = consequentialism

B = duty ethics/deontology

C = virtue ethics

D = moral relativism

E = religious absolutismPage 404

▲  1.Yes, innocent civilians have been killed in Syria. But in the long run, the world will be a safer place if Syria becomes a democracy.

 2.Although many cultures have practiced human sacrifice, within the culture it was not thought to be wrong. So, human sacrifice within those cultures wasn’t really immoral.

 3.*(Note: “Preferential treatment” refers to the practice of some universities and professional schools of lowering entrance requirements for women and ethnic minorities.)* Preferential treatment is wrong, period. You shouldn’t discriminate against anyone, no matter how much society benefits from it.

▲  4.Sure, we might benefit from expanding Highway 99. But seizing a person’s property against his or her wishes is just wrong, period.

 5.Sure, we might benefit from expanding Highway 99. But it’s wrong to seize someone’s property, at least in this country. In our society, property rights are fundamental.

 6.Sure, we might benefit from expanding Highway 99. But it’s wrong to seize someone’s property! You have a God-given right to own property.

▲  7.If a company doesn’t want to hire a woman, nobody should force it to. A company has a right to hire whomever it wants!

 8.You have to balance a person’s rights against the common good. Pornography isn’t good for a society, and we should get rid of it.

 9.Gay marriage? I think it is only fair! The right to happiness is a basic human right.

▲ 10.Gay marriage? I am against it. Once gays start marrying, the next thing you know, brothers and sisters will get married. Then moms and sons. Society will come apart at the seams.

Exercise 12-5

In each of the following passages, a general moral principle must be added as an extra premise to make the argument valid. Supply such a principle.

**Example**

Mrs. Montez’s new refrigerator was delivered yesterday, and it stopped working altogether. She has followed the directions carefully but still can’t make it work. The people she bought it from should either come out and make it work or replace it with another one.

**Principle**

People should make certain the things they sell work.

 1.After borrowing Jacob’s car, Mason had an accident and crumpled a fender. So, Mason ought to pay whatever expenses were involved in getting Jacob’s car fixed.

▲  2.When Sarah bought the lawn mower from Jean, she promised to pay another fifty dollars on the first of the month. Since it is now the first, Sarah should pay Jean the money.

 3.Jayden worked on his sister’s car all weekend. The least she could do is let him borrow the car for his job interview next Thursday.Page 405

 4.Noah is obligated to supply ten cords of firewood to the lodge by the beginning of October, since he signed a contract guaranteeing delivery of the wood by that date.

▲  5.Since it was revealed yesterday on the 11:00 news that Mayor Ahearn has been taking bribes, he should step down any day now.

 6.As a political candidate, Havenhurst promised to put an end to crime in the inner city. Now that she is in office, we’d like to see results.

▲  7.Since he has committed his third felony, he should automatically go to prison for twenty-five years.

▲  8.Laura’s priest has advised Laura and her husband not to sign up for the in vitro fertilization program at the hospital, because such treatments are unnatural.

 9.Ali has been working overtime a lot lately, so he should receive a bonus.

10.It is true there are more voters in the northern part of the state. But that shouldn’t allow the north to dictate to the south.

**MORAL DELIBERATION**

Before you began this chapter, you may have assumed that moral discussion is merely an exchange of personal opinion or feeling, one that reserves no place for reason or critical thinking. But moral discussion usually assumes some sort of perspective like those we have mentioned here. Actually, in real life, moral reasoning is often a mixture of perspectives, a blend of utilitarian considerations weighted somewhat toward one’s own happiness, modified by ideas about duties, rights, and obligations, and mixed often with a thought, perhaps guilty, about what the ideally virtuous person (a parent, a teacher) would do in similar circumstances. It also sometimes involves mistakes—value judgments may be confused with other types of claims, inconsistencies may occur, inductive arguments may be weak or deductive arguments invalid, fallacious reasoning may be present, and so forth.

We can make headway in our own thinking about moral issues by trying to get clear on what perspective, if any, we are assuming. For example, suppose we are thinking about the death penalty. Our first thought might be that society is much better off if murderers are executed. Are we then assuming a utilitarian perspective? Asking ourselves this question might lead us to consider whether there are *limits* to what we would do for the common good—for example, would we be willing to risk sacrificing an innocent person? It might also lead us to consider how we might *establish* whether society is better off if murderers are executed—if we are utilitarians, then ultimately we will have to establish this if our reasoning is to be compelling.

Or suppose we have seen a friend cheating on an exam. Should we report it to the teacher? Whatever our inclination, it may be helpful to consider our perspective. Are we viewing things from a utilitarian perspective? That is, are we assuming that it would promote the most happiness overall to report our friend? Or do we simply believe that it is our duty to report him or her, come what may? Would a virtuous person report his or her friend? Each of these questions will tend to focus our attention on a particular set of considerations—those that are the most relevant to our way of thinking.Page 406

**Why Moral Problems Seem Unresolvable**

Ethical differences sometimes seem irreconcilable. Often the problem comes down to a difference in moral perspective. Proponents of affirmative action often speak of it as promising a greater good. Opponents regard it as treating people unequally. Those who favor gun control think public safety will be improved if more restrictions are placed on gun ownership. Those who oppose restrictions speak of gun control as violating Constitutional rights.

This is not to say that ethical differences always come down to different moral perspectives. Pro-life and pro-choice adherents share a rights-based perspective; they disagree over which right is more basic, a woman’s right to choose, or the rights of the unborn. Both parties presumably agree that in the absence of a compelling justification it is wrong to take a human life. They seem to disagree, however, as to when life as a human begins.

It may occur to you to wonder at this point if there is any reason for choosing among perspectives. The answer to this question is yes: Adherents of these positions, philosophers such as those we mentioned, offer grounding or support for their perspectives in theories about human nature, the natural universe, the nature of morality, and other things. In other words, they have *arguments* to support their views. If you are interested, we recommend a course in ethics.

Exercise 12-6

Identify each of the following questions as A, B, or C.

A = moral value judgment

B = nonmoral value judgment

C = not a value judgment

▲  1.You should avoid making such a large down payment.

 2.You can’t go wrong taking Professor Anderson’s class.

 3.Misdemeanors are punished less severely than felonies.

▲  4.Anyone who would do a thing like that to another human being is beneath contempt.

 5.Anthony thought about homeschooling his kids.

 6.Anthony should have thought about homeschooling his kids.

▲  7.Anthony thought about whether he should homeschool his kids.

 8.Did Anthony think about homeschooling his kids? Apparently.

▲  9.It was a darn good thing Anthony thought about homeschooling his kids.

10.You should have left a note when you dented that car.

Exercise 12-7

Identify each of the following statements as A, B, or C.

A = moral value judgment

B = nonmoral value judgment

C = not a value judgmentPage 407

▲  1.The employees deserve health care benefits.

 2.Last year, the employees may have deserved health care benefits, but they don’t now.

 3.The employees’ health care benefits consumed 40 percent of our operating costs.

▲  4.The health care benefits we gave the employees last year were excessive.

 5.The health care benefits we gave the employees were generous, but not excessive.

 6.Sophia is the best photographer in the department.

▲  7.Susan should not have used a filter when she made those photographs.

 8.Olivia upset that man when she photographed him; she shouldn’t have done that.

 9.Madison’s photographs are exquisite in their realism and detail.

▲ 10.Be more careful mowing the lawn! You could hurt yourself.

11.Be more tactful dealing with people! You could hurt them.

12.Use more fertilizer! You’ll get better plants.

13.Use more deodorant! Your kids will thank you for it.

14.Avery works harder than anyone else in the office.

15.It was not right of Ava to dump Logan without giving him a chance to explain what happened.

Exercise 12-8

Answer the question or respond to the statement that concludes each item.

▲  1.Tory thinks women should have the same rights as men. However, he also thinks that, although a man should have the right to marry a woman, a woman should not have the right to marry a woman. Is Tory being consistent in his views?

▲  2.At Shelley’s university, the minimum GPA requirement for admission is relaxed for 6 percent of incoming students. Half of those admitted under this program are women and minorities, and the other half are athletes, children of alumni, and talented art and music students. Shelley is opposed to special admissions programs for women and minority students; she is not opposed to special admission programs for art and music students, athletes, or children of alumni. Is she consistent?

▲  3.Marin does not approve of abortion because the Bible says explicitly, “Thou shalt not kill.” “‘Thou shalt not kill’ means thou shalt not kill,” he says. Marin does, however, approve of capital punishment. Is Marin consistent?

 4.Koko believes that adults should have the unrestricted right to read whatever material they want to read, but she does not believe that her seventeen-year-old daughter Gina should have the unrestricted right to read whatever she wants to read. Is Koko consistent?

 5.Jackson maintains that the purpose of marriage is procreation. On these grounds, he opposes same-sex marriages. “Gays can’t create children,” he explains. However, he does not oppose marriages between heterosexual partners who cannot have children due to age or medical reasons. “It’s not the same,” he says. Is Jackson being consistent?Page 408

 6.Zoey thinks the idea of outlawing cigarettes is ridiculous. “Give me a break,” she says. “If you want to screw up your health with cigarettes, that’s your own business.” However, Zoey does not approve of the legalization of marijuana. “Hel-loh-o,” she says. “Marijuana is a *drug,* and the last thing we need is more druggies.” Is Zoey being consistent?

 7.California’s Proposition 209 amends the California state constitution to prohibit “discrimination or preferential treatment” in state hiring based on race, gender, or ethnicity. Opponents say that Proposition 209 singles out women and members of racial and ethnic minorities for unequal treatment. Their argument is that Proposition 209 makes it impossible for members of these groups to obtain redress for past discrimination through preferential treatment, whereas members of other groups who may have suffered past discrimination (gays, for example, or members of religious groups) are not similarly restricted from seeking redress. Evaluate this argument.

▲  8.Harold prides himself on being a liberal. He is delighted when a federal court issues a preliminary ruling that California’s Proposition 209 (see previous item) is unconstitutional. “It makes no difference that a majority of California voters approved the measure,” Harold argues. “If it is unconstitutional, then it is unconstitutional.” However, California voters also recently passed an initiative that permits physicians to prescribe marijuana, and Harold is livid when the U.S. attorney general says that the federal government will ignore the California statute and will use federal law to prosecute any physician who prescribes marijuana. Is Harold consistent?

 9.Dylan is of the opinion that we should not perform medical experiments on people against their will, but he has no problem with medical experiments being done on dogs. Chloe disagrees. She sees no relevant difference between the two cases.

“What, no difference between people and dogs?” Dylan asks.

“There are differences, but no differences that are relevant to the issue,” Chloe responds. “Dogs feel pain and experience fear just as much as people.”

Is Chloe’s position correct?

10.Mr. Bork is startled when a friend tells him he should contribute to the welfare of others’ children as much as to his own.

“Why on earth should I do that?” Mr. Bork asks his friend.

“Because,” his friend responds, “there is no relevant difference between the two cases. The fact that your children are yours does not mean that there is something different about them that gives them a greater entitlement to happiness than anyone else’s children.”

How should Mr. Bork respond?

11.The university wants to raise the requirements for tenure. Professor Peterson, who doesn’t have tenure, says that doing so is unfair to her. She argues that those who received tenure before she did weren’t required to meet such exacting standards; therefore, neither should she. Is she correct?

12.Reverend Heinz has no objection to same-sex marriages but is opposed to polygamous marriages. Is there a relevant difference between the two cases, or is Reverend Heinz being inconsistent?

Exercise 12-9

 1.Daniel needs to sell his car, but he doesn’t have money to spend on repairs. He plans to sell the vehicle to a private party without mentioning that the rear Page 409brakes are worn. Evaluate Daniel’s plan of action from a deontological perspective—that is, can the maxim of Daniel’s plan be universalized?

 2.Defend affirmative action from a utilitarian perspective.

 3.Criticize affirmative action from a deontological perspective. (*Hint:* Consider Kant’s theory that people must never be treated as means only.)

 4.Criticize or defend medical experimentation on animals from a utilitarian perspective.

 5.Criticize or defend medical experimentation on animals from a religious absolutist perspective.

 6.A company has the policy of not promoting women to be vice presidents. What might be said about this policy from the perspective of virtue ethics?

 7.What might be said about the policy mentioned in item 6 from the perspective of utilitarianism?

 8.Evaluate embryonic stem cell research from a utilitarian perspective.

 9.In your opinion, would the virtuous person, the person of the best moral character, condemn, approve or be indifferent to bisexuality?

10.“We can’t condemn the founding fathers for owning slaves; people didn’t think there was anything wrong with it at the time.” Comment on this remark from the standpoint of deontologism.

11.“Let’s have some fun and see how your parrot looks without feathers.” (The example is from philosopher Joseph Grcic.) Which of the following perspectives seems best equipped to condemn this suggestion?

a.utilitarianism

b.deontologism

c.religious absolutism

d.virtue ethics

e.moral relativism

12.“Might makes right.” Could a utilitarian accept this? Could a virtue ethicist? Could Kant? Could a moral relativist? Could someone who subscribes to divine command theory?

Exercise 12-10

This is Darwin’s natural selection at its very best. The highest bidder gets youth and beauty.

These are the words of fashion photographer Ron Harris, who auctioned the ova of fashion models via the Internet. The model got the full bid price, and the website took a commission of an additional 20 percent. The bid price included no medical costs, though it listed specialists who were willing to perform the procedure. Harris, who created the video “The 20 Minute Workout,” said the egg auction gave people the chance to reproduce beautiful children who would have an advantage in society. Critics, however, were numerous. “It screams of unethical behavior,” one said. “It is acceptable for an infertile couple to choose an egg donor and compensate her for her time, inconvenience, and discomfort,” he said. “But this is something else entirely. Among other things, what happens to the child if he or she turns out to be unattractive?”

Discuss the (moral) pros and cons of this issue for five or ten minutes in groups. Then take a written stand on the question “Should human eggs be auctioned to the highest bidder?” When you are finished, discuss which moral perspective seems to be the one in which you are operating.

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**LEGAL REASONING**

When we think about arguments and disputes, the first image to come to most minds is probably that of an attorney arguing a case in a court of law. Although it’s true that lawyers require a solid understanding of factual matters related to their cases and of psychological considerations as well, especially where juries are involved, it is still safe to say that a lawyer’s stock-in-trade is argument. Lawyers are successful—in large part—to the extent that they can produce evidence in support of the conclusion that most benefits their clients—in other words, their success depends on how well they can put premises and conclusions together into convincing arguments (This does not mean we discount the use of rhetorical devices and persuasive techniques of all sorts in courtrooms. Many cases have been decided on the basis of bad arguments accompanied by some powerful rhetoric.)

When one thinks of the many varieties of law—administrative law, commercial law, criminal law, international law, tax law, and so on—one is apt to think that there may be no distinctive common ground that one might call “uniquely legal reasoning.” This conclusion is absolutely correct. Still, we can distinguish broadly between questions of *interpreting and applying the law in specific instances* and questions related to *what the law should be.*Typically, jurists and practicing attorneys are more interested in the former type of question and legal philosophers in the latter.

Reasoning used by jurists and attorneys in applying the law is both deductive and inductive; if deductive, the reasoning can be sound, valid, or invalid; and if inductive, it can range from strong to weak. Deductive reasoning, of course, includes categorical and hypothetical reasoning; and inductive reasoning includes generalizing, reasoning by analogy, and reasoning about cause and effect. Reasoning by analogy and reasoning about cause and effect deserve special mention in connection with applying the law.

One kind of argument occupies a special place in applying the law: the **appeal to precedent.** This is the practice of using a case that has already been decided as an authoritative guide in deciding a new case that is similar. The appeal to precedent is none other than an argument by analogy, in which the current case is argued to be sufficiently like the previous case to warrant deciding it in the same way. Appeal to precedent also assumes the consistency principle that is found in moral reasoning: Cases that aren’t relevantly different must be treated the same way. To treat similar cases differently would be illogical; it would also be unjust.

■John Roberts, Chief Justice of the U.S. Supreme Court, which decides the constitutionality of legislation, actions of public officials, lower court decisions, and other public matters. This power, known as “judicial review,” is not explicit in the U.S. Constitution but was established in Marbury v. Madison (1803), a landmark decision of the Supreme Court.

The Latin name for the principle of appeal to precedent is ***stare decisis*** (“Don’t change settled decisions,” more or less). In the terminology of [**Chapter 11**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter11/chapter11.xhtml), the “analogues” are the earlier, settled cases on one hand and the current case on the other. The important question is whether the analogues are so similar that treating them differently would violate *stare decisis.* Apart from their significance to the parties involved, legal reasoning by analogy is not different in principle from reasoning by analogy in any other context.

The appeal to precedent is embodied in what is usually called the “common law.” Originally Page 411developed in England over a thousand years ago, common law is the reliance on precedent as the determining factor in present decisions. Its logical basis is the principle just described of treating similar cases similarly. Common law legal systems are distinguished from civil law systems, where the greater reliance is on statutory enactments. It is usual for modern legal systems to make use of a combination of these two influences, with English influence causing an emphasis on common law and Roman influence an emphasis on civil law. Anyhow, that similar cases must be decided according to consistently applied rules is, as Wikipedia puts it, at the heart of all common law systems. And that conforms to our principle of justice.

Also especially important when it comes to applying the law is reasoning about cause and effect. Causation is the foundation of legal liability. In some contexts, that a party is legally liable for something may mean more than simply that he or she caused it; but having caused it is normally a necessary condition for being legally liable for it. In [**Chapter 11**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter11/chapter11.xhtml), we discussed causation in the law.

**Justifying Laws: Four Perspectives**

The reasoning employed to justify or defend specific laws is similar to moral reasoning, discussed in the previous section. Both types of reasoning involve applying general principles to specific cases, and both refer ultimately to one or more of a handful of basic perspectives within which the reasoning takes place. Indeed, the moral perspectives already discussed can and are used to justify and defend specific laws. For example, the utilitarian idea that it is desirable to increase the sum total of happiness is used to defend eminent domain (by which a state seizes a person’s property without his or her consent). And the deontological principle that others should not be used as the means to some end is used to argue against it. The harm principle, discussed below, which holds that only what harms others should be legally forbidden, is an extension of deontological ethics (although its most eloquent exponent was the utilitarian John Stuart Mill).

Of course, we are often most interested in the justification of laws that would forbid us to do something we might otherwise want to do or would require us to do something we would prefer not to do. Consider, then, whether a law that forbids doing X should be enacted by your state legislature.[**\***](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/endnotes/endnotes.xhtml#ch12_notes3)Typically, there are four main grounds, or “perspectives,” on which a supporter of a law can base his or her justification. The first is simply that doing X is immoral. The claim that the law should make illegal anything that is immoral is the basis of the position known as **legal moralism.** One might use such a basis to justify laws forbidding murder, assault, or unorthodox sexual practices. For a legal moralist, the kinds of arguments designed to show that an action is immoral are directly relevant to the question of whether the action should be illegal.

The next ground on which a law can be justified is probably the one that most people think of first. It is very closely associated with John Stuart Mill (1806–1873) and is known as the **harm principle:** The only legitimate basis for forbidding X is Page 412that doing X causes harm to others. Notice that the harm principle states not just that harm to others is a good ground for forbidding an activity but that it is the *only* ground. (In terms of the way we formulated such claims in [**Chapter 10**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter10/chapter10.xhtml), on propositional logic, the principle would be stated, “It is legitimate to forbid doing X *if and only if* doing X causes harm to others.”) A person who defends this principle and who wants to enact a law forbidding X will present evidence that doing X does indeed cause harm to others. Her arguments could resemble any of the types covered in earlier chapters.

**Stand Your Ground**

More than half the states in the United States have adopted the “Castle doctrine”—the legal position that a person does not have an obligation to retreat from a threat in his or her own home, and further that the person may use deadly force in order to thwart an attacker in such circumstances. In Florida, as in several other states, a further law was passed in 2005 that extended the right to use deadly force in self-defense to any place the defender has a legal right to be. Such laws have come to be known as “stand your ground” (SYG) laws.[**\***](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/endnotes/endnotes.xhtml#ch12_notes4)

Whether the SYG laws have reduced or increased violence is not clear. Proponents and opponents have both cited evidence, and there have been studies that interested parties can check before making up their minds.

These laws came into sharp focus in February 2012, when George Zimmerman, a 28-year-old “multiracial” Hispanic, shot and killed Trayvon Martin, a 17-year-old black youth during a much-disputed confrontation. Martin was walking home from a convenience store to the house where his father’s fiancée lived and where he was staying. Zimmerman, the neighborhood watch coordinator, was in his vehicle when he spotted Martin, and he called police to report him as behaving suspiciously. Zimmerman left his car during the call, and soon after a violent encounter ensued, the only account of which is Zimmerman’s, since Martin was shot dead in the fight. Zimmerman claimed Martin, who was unarmed, attacked him and that he fired in self-defense.

The Sanford, Florida, police were subjected to criticism for delaying bringing charges against the shooter. The cause of the delay, according to the police and local prosecutors, was the stand your ground law, which provides not only a defense in a criminal trial but also immunity from civil suits and from a criminal trial under the right circumstances.

Zimmerman went to trial in June 2013 on charges of second-degree murder and manslaughter. On July 13, 2013, a jury acquitted him of both charges. Although Florida’s SYG law was clearly relevant to the case, Zimmerman’s lawyers made scant reference to it during their defense. The extent to which it influenced the jury is not known.

A third ground on which our hypothetical law might be based is legal paternalism. **Legal paternalism** is the view that laws can be justified if they prevent people from doing harm to themselves; that is, they forbid or make it impossible to do X, *for a person’s own good.* Examples include laws that require that seat belts be worn while riding in automobiles and that helmets be worn while riding on motorcycles. Many laws prohibiting or limiting the use of drugs also fall into this category.Page 413

The last of the usual bases for justifying criminal laws is that some behavior is generally found offensive. The **offense principle** says that a law forbidding X can be justifiable if X causes great offense to others. Laws forbidding public urination and burning of the flag are often justified on this ground.

What is the law, and how should it be applied? These questions are perhaps somewhat easier than the question, What should the law be? But they are still complicated. An example will provide an indication. Back in [**Chapter 3**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter03/chapter03.xhtml), we discussed vague concepts, and we found that it is impossible to rid our talk entirely of vagueness. Here’s an example from the law. Let’s suppose that a city ordinance forbids vehicles on the paths in the city park. Clearly, a person violates the law if he or she drives a truck or a car down the paths. But what about a motorbike? A bicycle? A go-cart? A child’s pedal car? Just what counts as a vehicle and what does not? This is the kind of issue that must often be decided in court because—not surprisingly—the governing body writing the law could not foresee all the possible items that might, in somebody’s mind, count as a vehicle.

The process of narrowing down when a law applies and when it does not, then, is another kind of reasoning problem that occurs in connection with the law.

Exercise 12-11

For each of the following kinds of laws, pick at least one of the four grounds for justification discussed in the text—legal moralism, the harm principle, legal paternalism, and the offense principle—and construct an argument designed to justify the law. You may not agree either with the law or with the argument; the exercise is to see if you can connect the law to a justifying principle. For many laws, more than one kind of justification is possible, so there can be more than one good answer for many of these.

▲  1.Laws against shoplifting

▲  2.Laws against forgery

 3.Laws against suicide

▲  4.Laws against spitting on the sidewalk

 5.Laws against driving under the influence of drugs or alcohol

▲  6.Laws against adultery

 7.Laws against marriage between two people of the same sex

 8.Laws that require people to have licenses before they practice medicine

 9.Laws that require drivers of cars to have driver’s licenses

▲ 10.Laws against desecrating a corpse

11.Laws against trespassing

12.Laws against torturing your pet (even though it may be legal to kill your pet, if it is done humanely)

Exercise 12-12

This exercise is for class discussion or a short writing assignment. In the text, “Vehicles are prohibited on the paths in the park” was used as an example of a law that might require clarification. Decide whether the law should be interpreted to forbid motorcycles, bicycles, children’s pedal cars, and battery-powered remote-control cars. On what grounds are you deciding each of these cases?Page 414

Exercise 12-13

The U.S. Supreme Court came to a decision some years ago about the proper application of the word “use.” Briefly, the case in point was about a man named John Angus Smith, who traded a handgun for cocaine. The law under which Smith was charged provided for a much more severe penalty—known as an enhanced penalty—if a gun was used in a drug-related crime than if no gun was involved. (In this case, the enhanced penalty was a mandatory thirty-year sentence; the “unenhanced” penalty was five years.) Justice Antonin Scalia argued that Smith’s penalty should not be enhanced because he did not use the gun in the way the writers of the law had in mind; he did not use it *as a gun.* Justice Sandra Day O’Connor argued that the law requires only the *use* of a gun, not any particular *kind* of use. If you were a judge, would you vote with Scalia or with O’Connor? Construct an argument in support of your position. (The decision of the Court is given in the answer section at the back of the book.)

**AESTHETIC REASONING**

Like moral and legal thinking, aesthetic thinking relies on a conceptual framework that integrates fact and value. Judgments about beauty and art—even judgments about whether something is a work of art or just an everyday object—appeal to principles that identify sources of aesthetic or artistic value. So, when you make such a judgment, you are invoking aesthetic concepts, even if you have not made them explicit to yourself or to others.

**Eight Aesthetic Principles**

Here are some of the aesthetic principles that most commonly support or influence artistic creation and critical judgment about art. The first three identify value in art with an object’s ability to fulfill certain cultural or social functions.

1. *Objects are aesthetically valuable if they are meaningful or teach us truths.* For example, Aristotle says that tragic plays teach us general truths about the human condition in a dramatic way that cannot be matched by real-life experience. Many people believe art shows us truths that are usually hidden from us by the practical concerns of daily life.

2. *Objects are aesthetically valuable if they have the capacity to convey values or beliefs that are central to the cultures or traditions in which they originate or that are important to the artists who made them.* For example, John Milton’s poem *Paradise Lost* expresses the seventeenth-century Puritan view of the relationship between human beings and God.

3. *Objects are aesthetically valuable if they have the capacity to help bring about social or political change.* For instance, Abraham Lincoln commented that Harriet Beecher Stowe’s *Uncle Tom’s Cabin* contributed to the antislavery movement.

Another group of principles identifies aesthetic value with objects’ capacities to produce certain subjective—that is, psychological—states in persons who experience or appreciate them. Here are some of the most common or influential principles of the second group:

4. *Objects are aesthetically valuable if they have the capacity to produce pleasure in those who experience or appreciate them.* For instance, the nineteenth-century Page 415German philosopher Friedrich Nietzsche identifies one kind of aesthetic value with the capacity to create a feeling of ecstatic bonding in audiences.

■Christo, The Gates. This particular art work occupied 23 miles of pathways in New York City's Central Park. Public reaction varied from lavish praise to outright ridicule. This section of the book considers principles on which artistic creation is commonly judged.

5. *Objects are aesthetically valuable if they have the capacity to produce certain emotions we value, at least when the emotion is brought about by art rather than life.* In the *Poetics,* Aristotle observes that we welcome the feelings of fear created in us by frightening dramas, whereas in everyday life fear is an experience we would rather avoid. The psychoanalyst Sigmund Freud offers another version of this principle: While we enjoy art, we permit ourselves to have feelings so subversive that we have to repress them to function in everyday life.

6. *Objects are aesthetically valuable if they have the capacity to produce special nonemotional experiences, such as a feeling of autonomy or the willing suspension of disbelief.* This principle is the proposal of the nineteenth-century English poet Samuel Taylor Coleridge. One of art’s values, he believes, is its ability to stimulate our power to exercise our imaginations and consequently to free ourselves from thinking that is too narrowly practical.

Notice that principles 4 through 6 resemble the first three in that they identify aesthetic value with the capacity to fulfill a function. According to these last three, the specified function is to create some kind of subjective or inner state in audiences; according to the first three, however, art’s function is to achieve such objective outcomes as conveying information or knowledge or preserving or changing culture or Page 416society. But there are yet other influential aesthetic principles that do not characterize art in terms of capacities for performing functions. According to one commonly held principle, art objects attain aesthetic value by virtue of their possessing a certain special aesthetic property or certain special formal configurations.

■The watercolor by Alicia Alvarez on this page, and the pen and ink by Julia Ross on the next page: are lighthearted portrayals of the feminine, although they accomplish this in very different ways.

7. *Objects are aesthetically valuable if they possess a special aesthetic property or exhibit a special aesthetic form.* Sometimes this aesthetic property is called “beauty,” and sometimes it is given another name. For instance, the early-twentieth-century art critic Clive Bell insists that good art is valuable for its own sake, not because it fulfills any function. To know whether a work is good aesthetically, he urges, one need only look at it or listen to it to see or hear whether it has “significant form.” “Significant form” is valuable for itself, not for any function it performs.

Finally, one familiar principle insists that no reasons can be given to support judgments about art. Properly speaking, those who adhere to this principle think that to approve or disapprove of art is to express an unreasoned preference rather than to render judgment. This principle may be stated as follows:

8. *No reasoned argument can conclude that objects are aesthetically valuable or valueless.* This principle is expressed in the Latin saying *“De gustibus non est disputandum,”* or “Tastes can’t be disputed.”

The story is told of the American tourist in Paris who told Pablo Picasso that he didn’t like modern paintings because they weren’t realistic. Picasso made no immediate reply. A few minutes later the tourist showed him a snapshot of his house.

“My goodness,” said Picasso, “is it really *as small as that?*”

—J**acob** B**raude**

The principles summarized here by no means exhaust the important views about aesthetic value, nor are they complete expositions of the views they represent. Historically, views about the nature of art have proven relatively fluid, for they must be responsive to the dynamics of technological and cultural change. Moreover, even though the number of familiar conceptions of aesthetic value is limited, there are many alternative ways of stating these that combine the thoughts behind them in somewhat different ways.

Consequently, to attempt to label each principle with a name invites confusion. For example, let’s consider whether any of the principles might be designated Page 417*formalism,* which is an important school or style of art. Although the seventh principle explicitly ascribes aesthetic value to a work’s form as opposed to its function, the formal properties of artworks also figure as valuable, although only as means to more valuable ends, in certain formulations of the first six principles. For instance, some scholars, critics, and artists think certain formal patterns in works of art can evoke corresponding emotions, social patterns, or pleasures in audiences—for example, slow music full of minor chords is commonly said to make people feel sad. On the other hand, the art works on this and the preceding page would generally be seen as having a contrary effect.

You should understand that all of the principles presented here merely serve as a basic framework within which you can explore critical thinking about art. If you are interested in the arts, you will very likely want to develop a more complex and sophisticated conceptual framework to enrich your thinking about this subject.

**Using Aesthetic Principles to Judge Aesthetic Value**

The first thing to notice about the aesthetic principles we’ve just discussed is that some are compatible with each other. Thus, a reasonable thinker can appeal to more than one in reaching a verdict about the aesthetic value of an object. For instance, a consistent thinker can use both the first and the fifth principle in evaluating a tragic drama. Aristotle does just this in his *Poetics.* He tells us that tragedies are good art when they both convey general truths about the human condition and help their audiences purge themselves of the pity and fear they feel when they face the truth about human limitations. A play that presents a general truth without eliciting the proper catharsis (release of emotion) in the audience or a play that provokes tragic emotions unaccompanied by recognition of a general truth is not as valuable as a play that does both.Page 418

However, some of these principles cannot be used together consistently to judge aesthetic value. These bear the same relationship to each other as do contrary claims (recall the square of opposition in [**Chapter 8**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter08/chapter08.xhtml)). They cannot both be true, although both might be false. For instance, the principle that art is valuable in itself by virtue of its form or formal configuration (not because it serves some function), and the principle that art is valuable because it serves a social or political function cannot be used consistently together. You might have noticed, also, that the eighth principle contradicts the others; that is, the first seven principles all specify kinds of reasons for guiding and supporting our appreciation of art, but the last principle denies that there can be any such good reasons.

Finally, it is important to understand that the same principle can generate both positive and negative evaluations, depending on whether the work in question meets or fails to meet the standard expressed in the principle. For example, the fourth principle, which we might call “aesthetic hedonism,” generates positive evaluations of works that produce pleasure but negative evaluations of works that leave their audiences in pain or displeased.

Exercise 12-14

Suppose that the two statements in each of the following pairs both appear in a review of the same work of art. Identify which of the eight aesthetic principles each statement in the pair appeals to. Then state whether the principles are compatible (i.e., they are not contrary to each other) and thus form the basis for a consistent critical review.

▲  1.a. Last weekend’s performance of the Wagnerian operatic cycle was superb; the music surged through the audience, forging a joyous communal bond.

b.Smith’s forceful singing and acting in the role of Siegfried left no doubt why Wagner’s vision of heroic morality was attractive to his Teutonic contemporaries.

 2.a. Leni Riefenstahl’s film *Triumph of the Will* proved to be effective art because it convinced its audiences that the Nazi Party would improve the German way of life.

b.Despite its overtly racist message, *Triumph of the Will* is great art, for films should be judged on the basis of their internal coherence and not in terms of their moral impact.

 3.a. All lovers of art should condemn Jackson Pollock’s meaningless abstract expressionist splatter paintings.

b.These paintings create neither sadness nor joy; those who view them feel nothing, neither love nor hate nor any of the other passions that great art evokes.

▲  4.a. Laurence Olivier’s film production of *Hamlet* has merit because he allows us to experience the impact of the incestuous love that a son can feel for his mother.

b.Nevertheless, Olivier’s *Hamlet* is flawed because it introduces a dimension inconceivable to an Elizabethan playwright.

 5.a. There is no point arguing about or giving reasons for verdicts about art, because each person’s tastes or responses are so personal.

b.Those who condemn sexually explicit performance art do not recognize that art is valuable to the extent it permits us to feel liberated and free of convention.Page 419

**Evaluating Aesthetic Criticism: Relevance and Truth**

Is any evaluation of a work of art as good as any other in creating a critical treatment of that work? The answer is no, for two reasons: (1) the principles of art that one adopts function as a conceptual framework that distinguishes relevant from irrelevant reasons; (2) even a relevant reason is useless if it is not true of the work to which it is applied.

The aim of art is to represent not the outward appearance of things, but their inward significance.

—A**ristotle**

Let’s consider the first reason. What would convince you of the value of a work if you accepted principles 4 through 6—all of which maintain that aesthetic value resides in the subjective responses art evokes in its audiences? In this case, you are likely to be drawn to see Picasso’s *Guernica* if you are told that it has the power to make its viewers experience the horrors of war;[**\***](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/endnotes/endnotes.xhtml#ch12_notes5) but you would not be attracted by learning, instead, that *Guernica* explores the relationship of two- and three-dimensional spatial concepts. (In your website search engine, enter “Picasso Guernica” to view this famous painting.) Suppose you reject principles 1 through 3, which conceive of aesthetic value in terms of the work’s capacity to perform an objective, cognitive, moral, social, or political function. The fact that Picasso was a communist will strike you as irrelevant to appreciating *Guernica* unless you accept one or more of the first three principles.

To illustrate the second reason, look at the reproduction of *Guernica.* Suppose a critic writes, “By giving his figures fishlike appearances and showing them serenely floating through a watery environment, Picasso makes us feel that humans will survive under any conditions.” But no figures in *Guernica*look anything like fish; moreover, they are surrounded by fire, not water, and they are twisted with anguish rather than serene. So, this critic’s reasons are no good. Because they are not true of the work, they cannot guide us in perceiving features that enhance our appreciation. A similar problem occurs if reasons are implausible. For instance, an interpretation of *Guernica* as a depiction of the Last Supper is implausible, because we cannot recognize the usual signs of this theme, the twelve disciples and Jesus at a table (or at least at a meal), in the far fewer figures of the painting.

Exercise 12-15

State whether each of the reasons below is relevant according to any one of the aesthetic principles. If the reason is relevant, identify the principle that makes it so. If no principle makes the reason relevant, state that it is irrelevant.

▲  1.Raphael’s carefully balanced pyramidal compositions give his paintings of the Madonna such beautiful form that they have aesthetic value for Christian and atheist alike.

 2.By grouping his figures so that they compose a triangle or pyramid, Raphael directs the viewer’s eye upward to heaven and thereby teaches us about the close connection between motherhood and God.

 3.The melody from the chorus “For unto Us a Child Is Born” in Handel’s *Messiah* was originally composed by Handel for an erotic love song. Consequently, it evokes erotic responses that distract and detract from the devotional feeling audiences are supposed to experience when they hear *Messiah* performed.Page 420

▲  4.Vincent van Gogh tells us that he uses clashing reds and greens in *The Night Café* to help us see his vision of “the terrible passions of humanity”; it is the intensity with which he conveys his views of the ugliness of human life that makes his work so illuminating.

 5.The critics who ignored van Gogh’s painting during his lifetime were seriously mistaken; by damaging his self-esteem, they drove him to suicide.

 6.Moreover, these critics misjudged the aesthetic value of his art, as evidenced by the fact that his paintings now sell for as much as $80 million.

▲  7.By showing a naked woman picnicking with fully clothed men in *Déjeuner sur l’herbe,* Édouard Manet treats women as objects and impedes their efforts to throw off patriarchal domination.

Exercise 12-16

▲Asuka, a three-year-old chimpanzee in Japan, was sad and lonely, so the zoo director gave her paper, paints, and brushes to keep her busy. Look at the photograph of Asuka and her painting on the next page. Does the painting have aesthetic value? Use each of the eight aesthetic principles to formulate one reason for or against the aesthetic value of Asuka’s work. You should end up with eight reasons, one appealing to each principle.

**Why Reason Aesthetically?**

■Asuka the chimpanzee.

The various aesthetic principles we’ve introduced are among those most commonly found, either explicitly or implicitly, in discussions about art. Moreover, they have influenced both the creation of art and the selection of art for both private and public enjoyment. But where do these principles come from? There is much debate about this; to understand it, we can draw on notions about definition (introduced in [**Chapter 3**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter03/chapter03.xhtml)) as well as the discussion of generalizations ([**Chapter 11**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter11/chapter11.xhtml)).

Some people think that aesthetic principles are simply elaborate definitions of our concepts of art or aesthetic value. Let’s explain this point. We use definitions to identify things; for example, by definition we look for three sides and three angles to identify a geometric figure as a triangle. Similarly, we can say that aesthetic principles are definitions; that is, these principles provide an aesthetic vocabulary to direct us in recognizing an object’s aesthetic value.

If aesthetic principles are true by definition, then learning to judge art is learning the language of art. But because artists strive for originality, we are constantly faced with talking about innovative objects to which the critic’s familiar vocabulary does not quite do justice. This aspect of art challenges even the most sophisticated critic to continually extend the aesthetic vocabulary.

Others think that aesthetic principles are generalizations that summarize what is true of objects Page 421treated as valuable art. Here, the argument is by analogy from a sample class to a target population. Thus, someone might hold that all or most of the tragic plays we know that are aesthetically valuable have had something important to say about the human condition; for this reason, we can expect this to be true of any member of the class of tragic plays we have not yet evaluated. Or, also by inductive analogy, musical compositions that are valued so highly that they continue to be performed throughout the centuries all make us feel some specific emotion, such as joy or sadness; so we can predict that a newly composed piece will be similarly highly valued if it also evokes a strong, clear emotion. Of course, such arguments are weakened to the extent that the target object differs from the objects in the sample class. Because there is a drive for originality in art, newly created works may diverge so sharply from previous samples that arguments by analogy sometimes prove too weak.

It is sometimes suggested that these two accounts of the source of aesthetic principles really reinforce each other: Our definitions reflect to some extent our past experience of the properties or capacities typical of valuable art, and our past experience is constrained to some extent by our definitions. But if art changes, of what use are principles, whether analytic or inductive, in guiding us to make aesthetic judgments and—even more difficult—in fostering agreement about these judgments?

At the very least, these principles have an emotive force that guides us in perceiving art. You will remember that emotive force (discussed briefly in [**Chapter 5**](https://jigsaw.vitalsource.com/books/1260393410/epub/OPS/s9ml/chapter05/chapter05.xhtml)) is a dimension of language that permits the words we use to do something more than convey information. In discussion about art, the words that constitute reasons can have an emotive force directing our attention to particular aspects of a work. If the critic can describe these aspects accurately and persuasively, it is thought, the audience will focus on these aspects and experience a favorable (or unfavorable) response similar to the critic’s. If a critic’s reasons are too vague or are not true of the work to which they are applied, they are unlikely to bring the audience into agreement with the critic.

The principles of art, then, serve as guides for identifying appropriate categories of favorable or unfavorable response, but the reasons falling into these categories are what bring about agreement. They are useful both in developing our own appreciation of a work of art and in persuading others. The reasons must be accurately and informatively descriptive of the objects to which they are applied. The reasons enable us (1) to select a particular way of viewing, listening, reading, or otherwise perceiving the object and (2) to recommend, guide, or prescribe that the object be viewed, heard, or read in this way.

So, aesthetic reasons contain descriptions that prompt ways of perceiving aspects of an object. These prescribed ways of seeing evoke favorable (or unfavorable) responses or experiences. For instance, suppose a critic states that van Gogh’s brush strokes in *Starry Night* are dynamic and his colors intense. This positive critical reason prescribes that people focus on these features when they look at the painting. The expectation is that persons whose vision is swept into the movement of van Gogh’s painted sky and pierced by the presence of his painted stars will, by virtue of focusing on these formal properties, enjoy a positive response to the painting.

To learn to give reasons and form assessments about art, practice applying these principles as you look, listen, or read. Consider what aspects of a painting, musical performance, poem, or other work each principle directs you to contemplate. It is also important to expand your aesthetic vocabulary so that you have words to describe what you see, hear, or otherwise sense in a work. As you do so, you will be developing your own aesthetic expertise. And, because your reasons will be structured by aesthetic principles others also accept, you will find that rational reflection on art tends to expand both the scope and volume of your agreement with others about aesthetic judgments.Page 422

**Recap**

The key points in this chapter are as follows:

■Value judgments are claims that express values.

■Moral value judgments express moral values.

■Certain words, especially “ought,” “should,” “right,” “wrong,” and their opposites, are used in moral value judgments, though they can also be used in a nonmoral sense.

■Reasoning about morality is distinguished from other types of reasoning in that the conclusions it tries to establish are moral value judgments.

■Conclusions containing a value judgment cannot be reached solely from premises that do not contain a value judgment (“you cannot get an ‘ought’ from an ‘is’ ”). A general moral principle must be supplied to tie together the fact-stating premise and the value-judgment conclusion.

■In a case in which we disagree with a value-judgment conclusion but not with the fact-stating premise, we can point to this general moral principle as the source of disagreement.

■People are sometimes inconsistent in their moral views: They treat similar cases as if they were different, even when they cannot tell us what is importantly different about them.

■When two or more cases that are being treated differently seem similar, the burden of proof is on the person who is treating them differently to explain what is different about them.

■Moral reasoning is usually conducted within a perspective or framework. Influential Western perspectives include consequentialism, utilitarianism, ethical egoism, deontologism, moral relativism, religious absolutism, religious relativism, and virtue ethics.

■Often, different perspectives converge to produce similar solutions to a moral issue.

■Keeping in mind our own perspective can help focus our own moral deliberations on relevant considerations.

■Legal reasoning, like moral reasoning, is often prescriptive.

■Legal studies are devoted to such problems as justifying laws that prescribe conduct.

■Legal moralism, the harm principle, legal paternalism, and the offense principle are grounds for justifying laws that prescribe conduct.

■Determining just when and where a law applies often requires making vague claims specific.

■Precedent is a kind of analogical argument by means of which current cases are settled in accordance with guidelines set by cases decided previously.

■Whether a precedent governs in a given case is decided on grounds similar to those of any other analogical argument.

■To reason aesthetically is to make judgments within a conceptual framework that integrates facts and values.

■Aesthetic value is often identified as the capacity to fulfill a function, such as to create pleasure or promote social change.Page 423

■Alternatively, aesthetic value is defined in terms of a special aesthetic property or form found in works of art.

■Still another view treats aesthetic judgments as expressions of tastes.

■Reasoned argument about aesthetic value helps us to see, hear, or otherwise perceive art in changed or expanded ways and to enhance our appreciation of art.

■A critic who gives reasons in support of an aesthetic verdict forges agreement by getting others to share perceptions of the work. The greater the extent to which we share such aesthetic perceptions, the more we can reach agreement about aesthetic value.

**Additional Exercises**

Exercise 12-17

State whether the following reasons are (a) helpful in focusing perception to elicit a favorable response, (b) helpful in focusing perception to elicit an unfavorable response, (c) too vague to focus perception, (d) false or implausible and therefore unable to focus perception, or (e) irrelevant to focusing perception. The information you need is contained in the reasons, so try to visualize or imagine what the work is like from what is said. All of these are paraphrases of testimony given at a hearing in 1985 about a proposal to remove *Tilted Arc,* an immense abstract sculpture, from a plaza in front of a federal office building. You can find pictures of this sculpture online. Enter “Serra Tilted Arc” in your search engine.

▲  1.Richard Serra’s *Tilted Arc* is a curved slab of welded steel 12 feet high, 120 feet long, weighing over 73 tons, and covered completely with a natural oxide coating. The sculpture arcs through the plaza. By coming to terms with its harshly intrusive disruption of space, we can learn much about how the nature of the spaces we inhabit affects our social relations.

 2.Richard Serra is one of our leading artists, and his work commands very high prices. The government has a responsibility to the financial community. It is bad business to destroy this work because you would be destroying property.

 3.*Tilted Arc*’s very tilt and rust remind us that the gleaming and heartless steel and glass structures of the state apparatus can one day pass away. It therefore creates an unconscious sense of freedom and hope.

▲  4.*Tilted Arc* looks like a discarded piece of crooked or bent metal; there’s no more meaning in having it in the middle of the plaza than in putting an old bicycle that got run over by a car there.

 5.*Tilted Arc* launches through space in a thrilling and powerful acutely arched curve.

 6.*Tilted Arc* is big and rusty.

 7.Because of its size, thrusting shape, and implacably uniform rusting surface, *Tilted Arc* makes us feel hopeless, trapped, and sad. This sculpture would be interesting if we could visit it when we had time to explore these feelings, but it is too depressing to face every day on our way to work.Page 424

 8.Serra’s erotically realistic, precise rendering of the female figure in *Tilted Arc* exhibits how appealingly he can portray the soft circularity of a woman’s breast.

 9.*Tilted Arc* is sort of red; it probably isn’t blue.

Exercise 12-18

The artist Artemisia Gentileschi (ca. 1597–after 1651) was very successful in her own time. Success came despite the trauma of her early life, when she figured as the victim in a notorious rape trial. But after she died, her work fell into obscurity; it was neither shown in major museums nor written about in art history books. Recently, feminist scholars have revived interest in her work by connecting the style and/or theme of such paintings as her *Judith* with her rape and with feelings or issues of importance to women. But other scholars have pointed out that both her subject matter and her treatment of it are conventionally found as well in the work of male painters of the Caravaggist school, with which she is identified. Based on this information, and using one or more of the aesthetic principles described in this chapter, write an essay arguing either that the painting *Judith* has aesthetic value worthy of our attention or that it should continue to be ignored.

■Artemisia Gentileschi's *Judith*.

Writing Exercises

1.In the movie *Priest*, the father of a young girl admits to the local priest—in the confessional—that he has molested his daughter. However, the man lacks remorse and gives every indication that he will continue to abuse the girl. For the priest to inform the girl’s mother or the authorities would be to violate the sanctity of the confessional, but to not inform anyone would subject the girl to further abuse. What should the priest do? Take about fifteen minutes to do the following:

a.List the probable consequences of the courses of action available to the priest.

b.List any duties or rights or other considerations that bear on the issue.

When fifteen minutes are up, share your ideas with the class.

Now, take about twenty minutes to write an essay in which you do the following:

a.State the issue.

b.Take a stand on the issue.

c.Defend your stand.

d.Rebut counterarguments to your position.

When you are finished, write down on a separate piece of paper a number between 1 and 10 that indicates how strong you think your argument is (1 = very weak; 10 = very strong). Write your name on the back of your paper.Page 425

When everyone is finished, the instructor will collect the papers and redistribute them to the class. In groups of four or five, read the papers and assign a number from 1 to 10 to each one (1 = very weak; 10 = very strong). When all groups are finished, return the papers to their authors. When you get your paper back, compare the number you assigned to your work with the number the group assigned it. The instructor may ask volunteers to defend their own judgment of their work against the judgment of the group. Do you think there is as much evidence for your position as you did at the beginning of the period?

2.Follow the same procedure as previously used to address one of the following issues:

a.A friend cheats in the classes he has with you. You know he’d just laugh if you voiced any concern. Should you mention it to your instructor?

b.You see a friend stealing something valuable. Even though you tell your friend that you don’t approve, she keeps the item. What should you do?

c.Your best friend’s fiancé has just propositioned you for sex. Should you tell your friend?

d.Your parents think you should major in marketing or some other practical field. You want to major in literature. Your parents pay the bills. What should you do?

3.Before a stand your ground (SYG) law such as that found in Florida (see the box on page 412), there was a presumed common-law requirement that a person attempt to retreat from a threat of bodily harm everywhere outside one’s own home. Under this common-law requirement, only when retreat was impossible or unreasonable could one respond with deadly force. Under the Florida SYG law, one has the right to use deadly force in self-defense wherever he or she has a legal right to be. Under what circumstances do you think the Florida law should come into play? That is, what would one have to know about the confrontation between Zimmerman and Martin before applying the statute?

4.Generally speaking, do you think stand your ground laws are a good idea? Why, or why not?

5.Which of the four types of justification described in the chapter best apply to stand your ground laws? Is the justification successful?