# Chapter 2
# Normative Theories of Practical Philosophy


While the outcome sometimes might be the same, it is the way of reasoning which distinguishes these three theories.[1] In the following, these theories will be addressed by displaying some key characteristics, without going into all possible details, as it is beyond the scope of this book.[2]

## 2.1 Deontology

The word 'deontological' is derived from the Greek word '*deon*', which means 'the (moral) necessity'[3] and relates to an obligation or duty.[4] Hence, 'deontology' is sometimes referred to as the 'science of duty'.[5] Deontology refers to the form of normative ethics according to which the commitment and quality of moral actions and judgments derive from the obligation to certain behaviours or maxims of action.[6]

According to different deontological approaches, a moral obligation may result from rules defined by a religious community (church), or from personal or collective values, or be found in some objective order of duties. Thus, it can be understood in a secular, or in a religious way.

Well-known representatives of deontology are the German philosopher Immanuel Kant and William David Ross.

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[1] Parfit (2011) addresses the interesting question, whether different theories (Kantianism, contractualism, consequentialism) in the end 'climb the same mountain' and whether they can be combined.

[2] The author would like to thank Bruno Niederbacher for valuable feedback on this chapter. The usual disclaimer applies.

[3] Literally, 'the necessary', and in a practical context, the 'moral necessity'.

[4] Spinello (2002, p. 219).

[5] Hallgarth (2012, p. 602).

[6] Fahrenbach (1972, p. 114).



M. Frischhut, *The Ethical Spirit of EU Law*,
https://doi.org/10.1007/978-3-030-10582-2_2

Deontology can be seen as being opposed to any form of teleological or consequentialist ethics,[7] or in other words, according to deontology, "[a]ctions are *intrinsically* right or wrong, regardless of the consequences they produce".[8] An example, which clearly follows a deontological (torture is intrinsically wrong) and not a consequentialist (even if torture would result in saving the kidnapped child's life) approach, is the famous Gäfgen[9] case of the European Court of Human Rights (ECtHR).[10] From a legal perspective, this concerns the discussions in the context of human rights on absolute versus relative rights, where the first are rights, which are not subject to exceptions (e.g. there is no possibility to torture a kidnapper in order to get the information necessary to safe the kidnapped child).[11] Otherwise, we refer to relative rights. It is worth clarifying that although often associated with deontology, deontological ethical theories can recognize absolute rights, but does not necessarily do so.[12]

In addition to types of action that are morally good or bad in themselves, one also has to address the question of good will. This good will "must be autonomous and thus rationally generated, because it is reason alone that enables the human person to overcome myriad variations of inclination and desire".[13]

We can distinguish between a hypothetical (e.g. if you want to be fit, do some sports) and a categorical imperative, where the first does not imply an absolute moral duty, whereas a categorical imperative is without option.[14] In order to determine whether, besides the good will, an action corresponds to a duty (i.e. whether it is intrinsically right) it has to follow a 'maxim'. According to Kant, reason communicates to the mind things it should do according to certain rules, which he refers to as 'maxims'.[15] "A *maxim* is the subjective principle for acting, and must be distinguished from the *objective principle*, namely the practical law."[16] The way in which a person can then test whether a maxim is of supreme moral worth is the 'categorical imperative'. As Kant is a representative of deontology, his way for determining whether a maxim for action is a genuine universal moral principle, "must be grounded in a priori principles", i.e. principles which can be justified before we can evaluate their consequences.[17]

Kant describes the categorical imperative as follows:

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[7] See Footnote 6.

[8] Spinello (2002, p. 219); no emphasis added.

[9] ECtHR judgment of 1 June 2010, *Gäfgen vs. Germany*, 22978/05.

[10] For a case that raises similar questions (small vs. big number of victims), see Bundesverfassungsgericht (BVerfG) judgment from 15 February 2006, *Shooting down terror plane*, 1 BvR 357/05.

[11] ECtHR *Gäfgen vs. Germany*, 22978/05, para 87.

[12] Birnbacher (2013, p. 133).

[13] Hallgarth (2012, p. 608).

[14] Hallgarth (2012, p. 609).

[15] See Footnote 13.

[16] Kant (2014, p. 69 (IV 420)); no emphasis added.

[17] See Footnote 14.

- "*act only according to that maxim through which you can at the same time will that it become a universal law*"[18] (basic formula);
- "*so act as if the maxim of your action were to become by your will a* UNIVERSAL LAW OF NATURE"[19] (formula of the universal law of nature);
- "*So act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means*"[20] (formula of humanity);
- "to do no action on a maxim other than in such a way, that it would be consistent with it that it be a universal law, and thus only in such a way *that the will could through its maxim consider itself as at the same time universally legislating*"[21] (formula of autonomy);
- "every rational being must so act as if through its maxims it were at all times a legislating member of the universal kingdom of ends"[22] (kingdom of ends).

As we can already imagine at this stage, Kant's view is one, which can be seen to respect contemporary notions of human rights.[23] Likewise, the understanding of the concept of human dignity is very much attributable to Kant.[24] As he pointed out, "what constitutes the condition under which alone something can be an end in itself does not merely have a relative worth, i.e. a price, but an inner worth, i.e. dignity".[25] Hence, humans should be treated as subjects, not as objects.

## 2.2 Consequentialism

Consequentialism is described as "[a]ny ethical theory that argues fundamentally that right action is an action that produces good results or avoids bad results".[26] Consequentialist theories assume that the judgement about the moral correctness and wrongness of actions depends exclusively on the quality of the consequences of action.[27] One example in this regard are impact assessments. However, they are not required in any case, but are limited to decisions with far-reaching consequences, as in the case of national or supranational legislators.[28] Also risk assessment deals with consequences, either from a legal or from an ethical perspective.

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[18] Kant (2014, p. 71); no emphasis added.

[19] See Footnote 18.

[20] Kant (2014, p. 87); no emphasis added.

[21] Kant (2014, p. 97); no emphasis added.

[22] Kant (2014, p. 105).

[23] Hallgarth (2014, p. 611).

[24] On Kant and human dignity, see Knoepffler (2017).

[25] Kant (2014, p. 99); no emphasis added.

[26] Hallgarth (2012, p. 602).

[27] Birnbacher (2013, p. 173).

[28] Birnbacher (2013, pp. 194–195).

To a greater extent than deontological ethics, consequentialist theories allow adjustments of moral judgement to social and scientific-technical change.[29] The effects of current action on future generations are often considered to have the same weight as the effects on the current living.[30]

The most famous form of consequentialist is 'utilitarianism'. As for every normative ethical theory, there are different variations, which due to limited space cannot be covered in the following. The axiology of utilitarianism has only one non-moral value, called 'utility', where utility is the extent of well-being brought about by an action.[31] Hence, utilitarianism is a decision procedure that is intended to promote the general welfare,[32] "according to which the rightness and wrongness of acts depends entirely on facts about the maximization of overall well-being".[33]

Well-known representatives of utilitarianism are Jeremy Bentham and John Stuart Mill. The distinction between primary and secondary principles is based on Mill, where primary principles are located at the level of ethical theory, secondary principles at the level of moral practice; the relationship between the two is the following: the primary ethical principles determine which secondary principles should apply at the level of social morality.[34] Secondary principles must then be formulated in such a way that they avoid any shortcomings of primary principles.[35]

Secondary principles must not cognitively overload the average actor and that is why he cannot be required to include future world conditions in his reasons for action; however, a responsibility for precaution is nevertheless demanded in the case of new land and risk technologies.[36] One factor to be considered when choosing secondary principles is the extent to which the obligated actor himself causally contributed to the evil (polluter pays principle).[37]

Utilitarianism is egalitarian as the well-being of each person is of equal value, and even the feelings of animals can be taken into account.[38] Characteristic of utilitarianism is a pronounced future orientation and thinking in long-term development tendencies; thus, in addition to sustainability, utilitarianism can call for present precautions for future generations.[39]

[29] Birnbacher (2013, p. 174).
[30] Birnbacher (2013, p. 195).
[31] Birnbacher (2013, p. 218).
[32] Habibi (2002, p. 894).
[33] Eggleston (2012, p. 452).
[34] Birnbacher (2013, p. 194).
[35] Birnbacher (2013, p. 197).
[36] Birnbacher (2013, p. 200).
[37] Birnbacher (2013, p. 203).
[38] Habibi (2002, p. 895).
[39] Birnbacher (2013, pp. 220–221).

Utilitarianism is an ethical theory, which stands for a secular, rational and scientific moral system,[40] which can almost be calculated in a mathematical way (the slogan 'the greatest good for the greatest number'). Bentham's desire was "to devise a system that would be objective and scientific".[41] The simplicity of utilitarian ethics, however, applies only in theory and not in concrete application.[42]

## 2.3 Virtue Ethics

Virtue ethics is described as "[a]n approach to both understanding and living the good life that is based on virtue",[43] where virtue[44] is referred to as "moral excellence of behaviour and [!] character".[45] Proponents of virtue ethics try to construct the morality demanded by normative standards from the concepts of virtue that are valid in morality; thus, values or norms are not the starting point of the analysis or construction, but virtue concepts and virtue catalogues.[46] The key question of virtue ethics obviously is what kind of traits should we develop, and, in which way does this help us in assessing the moral correctness of actions?

The notion of honesty, for instance, does not only designate the motive of wanting to be honest, but it also includes certain judgments of correctness such as the judgement that it is morally correct not to lie, etc.[47] Hence, instead of considering the requirements of morality in detail, it is often enough to describe the examples of perfect virtue.[48]

As a prominent example, we have already seen the 'cardinal virtues' of temperance (*temperantia*), courage (*fortitudo*), practical wisdom (*prudentia*), and justice (*iustitia*).[49] Together with the theological virtues of faith (*fides*), hope (*spes*) and love (*caritas*), they form the so-called seven virtues.[50] As mentioned above, virtues (character traits) can be understood in a secular, or in a religious way.[51] Hence, different cultures and religions have different catalogues of virtues,[52] which sometimes overlap (e.g. justice), while others might be more specific; for instance, love might

[40] See Footnote 32.
[41] See Footnote 38.
[42] Birnbacher (2013, p. 219).
[43] Kollar (2002, p. 915).
[44] On the notion of virtue, see also *supra* Sect. 1.5.
[45] Chara (2002, p. 912).
[46] Birnbacher (2013, p. 302).
[47] Birnbacher (2013, p. 302).
[48] See Footnote 47.
[49] Klein (1971–2007, p. 695).
[50] Chara (2002, pp. 912–914).
[51] Chara (2002).
[52] See Footnote 50.

rather occur in a religious context.[53] In terms of applied virtue ethics, virtues can also be tailored to specific needs, for instance in the fields of medical ethics,[54] business ethics, professional ethics, etc.[55] It remains to be seen, which approach EU law takes in this regard.[56]

However, sometimes even virtue ethics cannot avoid establishing principles. In this context, Birnbacher provides the following example: the virtue of justice may require principles of justice, whereas this might not be the case for virtues such as solidarity, helpfulness, or generosity.[57] Given the most controversial debate on solidarity in the context of the current migration and refugee debate, according to the author also solidarity might require a reference to principles, which provide further clarification with regard to the substance.[58]

Without going into further details, in literature virtue ethics is sometimes seen rather as a supplement, than as a basis of normative ethics.[59] In the words of Louden, "[v]irtue ethics is not competing for quite the same turf as modern consequentialist and deontological theories but is rather an attempt to return moral theory to more realistic possibilities".[60]

## 2.4 Excursus

As mentioned in Fig. 1.4, deontology, consequentialism and virtue ethics are the three normative theories concerning ethics. Besides these just covered theories, there are three other approaches, which deserve attention.

Although different in details, both the 'minimal ethics' approach and 'principlism' of Beauchamp and Childress do not cover the whole of morality, but only its baselines. Instead of tracing the controversial ramifications of moral views in detail, both conceptions are limited to the rough outlines of morality and reconstruct only that core set of principles which is so uncontroversial that it can be recognized by all.[61]

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[53] On the proliferation of virtues, see Halbig (2013, pp. 142–146).

[54] Beauchamp and Childress (2013, pp. 37–44) address "five focal virtues" for health professionals: compassion, discernment, trustworthiness, integrity, and conscientiousness.

[55] Louden (2012, p. 507).

[56] See *infra* Chap. 4.

[57] Birnbacher (2013, p. 304).

[58] See *infra* Chap. 6.

[59] Birnbacher (2013, p. 305).

[60] Louden (2012, p. 509).

[61] Birnbacher (2013, p. 77).

### 2.4.1 Minimal Ethics

Minimal ethics claims moral realism and the possibility of moral knowledge only for a core set of moral norms, while it renounces a claim to truth and knowledge for all norms that are not part of the core set. Minimal ethics combines the programme of descriptive inventory with the ambitious programme of an unassailable justification of intersubjectively valid standards. In doing so, it asserts a par excellence objective validity for the minimum set of moral norms that it has highlighted.[62] Well-known representatives are Thomas Hobbes and Bernard Gert.[63] Gert has defined ten moral rules, all of which are formulated negatively, which remind us of the 'Ten Commandments', and can be subject to exceptions.[64]

Such ethical theories, which focus on the description of the functional principles of current morality, can be assigned to the model of 'reconstructive' ethics, while an 'establishing' ethics not only describes moral principles, but also attempts to justify them.[65]

### 2.4.2 Principlism

Besides ethical minimalism, there is another well-known contemporary reconstructive ethical approach. Determining what is 'the right thing to do' can also be done in a substantive way, as elaborated by Beauchamp and Childress[66] in the field of medical ethics. Their 'principlism' is a system of ethics, which is based on four moral principles: autonomy (free will), nonmaleficence (do no harm), beneficence (do good), and justice (social distribution of benefits and burdens). According to Brännmark, "bioethicists like Beauchamp and Childress do not think that they have to make a choice between Kantianism and utilitarianism, because irrespective of which fundamental normative approach one adopts, one can still understand their four-principle framework as a reasonable framework in bioethics".[67] Such an approach might have the advantage of being more 'user-friendly', but a possible disadvantage can be seen in the sectoral approach, in the case of this prominent example, medical ethics 'only'.[68] As principlism is a rather new approach, to some extent on a timeline it

[62] Birnbacher (2013, pp. 398–399).
[63] Birnbacher (2013, p. 399).
[64] Birnbacher (2013, 82–83, 399–401).
[65] Birnbacher (2013, p. 64).
[66] Beauchamp and Childress (2013).
[67] Brännmark (2017, p. 174).
[68] On 'disunitarianism', see *infra* Chap. 6.

cannot have had a causal influence on the 'ethical spirit' of EU law. Nevertheless, it might proof useful for this book.

### 2.4.3 Communitarianism

Besides universalist ethical theories, which claim to be universally valid, there are also particularistic approaches. According to a particularistic moral understanding, the claim of morality can also be limited to the members of certain cultures, members of certain religious communities and ethnic groups, in extreme even to a single individual.[69]

One example is 'communitarianism',[70] which has recently emerged in political philosophy since the 1980's, and which emphasizes the rootedness of morality in the specific history and culture of a community or nation and rejects the sharp separation of moral and other cultural norms that characterizes the universalist understanding of morality.[71] Well-known representatives are Alasdair MacIntyre and Michael Sandel. MacIntyre's book 'After Virtue' was at the beginning of this "new ethic that repudiated both modern individualist liberalism and the rejuvenated conservatism of the Reagan era".[72] As described elsewhere, in this book, "MacIntyre analyzes theories of morality with regard to culture and states that virtue is found within the community, in its *ethos*, or character, and not in the individual alone".[73]

Communitarianism, a theory mainly associated with American philosophers, has been developed against the background of multiple crises, where society is "in a state of emergency", where morality has become "a virtual impossibility", and where communities, institutions and social relationships, which should make morality possible, "are quickly succumbing to a pervasive individualism".[74] One major point of criticism is that society is nothing more than a collection of individuals "with nothing in common but self-interest and the fear of death".[75] That is why communitarianism can also be opposed to liberalism, according to which "each person is to determine the good individually".[76]

Communitarianism rejects "Western culture's one-sided emphasis on individual rights and seeks to balance rights with responsibilities".[77] Thus, the community-based ethics stresses the 'common good', shared common values and emphasises

[69] Birnbacher (2013, p. 27).
[70] Not to be confused with 'communism'.
[71] Birnbacher (2013, p. 28).
[72] Paul (2002, p. 172).
[73] N.N. (2002, p. 519); no emphasis added.
[74] See Footnote 72.
[75] Paul (2002, p. 172).
[76] Etzioni (2012, p. 516).
[77] See Footnote 75.

individual's obligations towards society. As Etzioni has pointed out: "This is in contrast to focusing on maximizing the utility of each person, the autonomy of the self and individual rights".[78]

Communitarianism also suggests that the good should be defined by society. In the words of one well-known representative, Michael Sandel, "[a] just society can't be achieved simply by maximizing utility or be securing freedom of choice. To achieve a just society we have to reason together about the meaning of the good life, and to create a public culture hospitable to the disagreements that will inevitably arise."[79] He also points out that "[a] more robust public engagement with our moral disagreements could provide a stronger, not a weaker, basis for mutual respect",[80] which is of utmost importance for democracy.[81] To sum it up, according to Paul, "communitarianism remains one of the most promising contemporary moral philosophies".[82]

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[78] See Footnote 76.

[79] Sandel (2010, p. 261).

[80] Sandel (2010, p. 268).

[81] See Frick (2017).

[82] Paul (2002, p. 173).

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