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APPLICATION OR CONSTRUCTION?

Two types of public policy ethics

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This chapter offers a conceptual map of the field of public policy ethics as currently practised. I argue that most prominent accounts of public policy ethics (EPP) fall under two general types or styles of theorising. These two types differ in the way they deal with the phenomenon of moral disagreement that punctuates or permeates public policy questions. In the attempt to decide what to make of morally controversial policies one can expect to come across ethical theories that belong to either two of the following salient types. According to the first type, one’s moral stance on morally controversial policies needs to be ultimately derived from or constrained by a foundational ethical theory that solves the problem of moral disagreement. According to the second type, one’s moral position on policy matters can (and sometimes ought to) be formed independently of the recommendations given by any one particular foundational theory. I call the first type applied EPP and the second one constructive EPP.

Mapping EPP in terms of these two different types is meant both as a practical tool for the lay public and policy-makers who want to gain a bird’s eye view of EPP and as an exploration of the theoretical upshots of this difference. I will argue that the two types of EPP are better understood as friends rather than foes. This is to say that, though representatives of the two types of EPP often engage in mutual criticism, EPP as a whole is better off if both types of theorising thrive in their own terms and indirectly contribute to each other’s research programs.

The chapter proceeds as follows. In the first section, I offer a working definition of EPP and place it in the domain of ethical theorising. I then move on in the second section to specifying the difference between applied and constructive EPP. As stated, the central difference between the two is that applied EPP relies on the premise that the phenomenon of foundational moral disagreement should be approached by formulating a foundational ethical theory and further holds that EPP is dependent on that theory, while constructive EPP takes foundational disagreement as an irreducible dimension of ethical thinking and tries to regulate rather than resolve it. On the applied ethics model, one cannot go about doing EPP in the absence of a solution to the problem of moral disagreement. On the constructive ethics model, no such prior solution is required. Finally, I conclude with some thoughts about the relationship between applied and constructive EPP. In particular, I argue that the two types should not be seen as zero-sum competitors, but as potential cooperative partners. Such a conciliatory move is important for defusing two of the objections against EPP – namely, the practical guidance and the under-theorisation objection.
The ‘ethics’ in ‘public policy ethics’

What is EPP, as compared to other ways of ethical theorising? In answering this question, I will assume that EPP is a branch of practical ethics – namely, the branch whose subject matter is policy practice. My attempt to delineate the theoretical locus of EPP in the space of different kinds of ethical theories is by no means definitive, and has mostly clarificatory purposes.

I will start by noting that the term ethics is not always used with the same meaning. A useful strategy for making sense of these different meanings is to rely on a plausible working definition of ethics itself and then distinguish between different kinds of ethics. One such definition is that of ethics as theorised discourse about the moral domain. This means that while the moral domain refers to the actual entities considered to be moral (or not) – for instance, actions, decisions, attitudes, dispositions, or entire practices and institutions – ethics refers to our thinking about these entities and how they come (or fail) to be moral. The relevant distinction here is that between ethics as theorising activity and morality as theorised subject matter. Though the terms ethical and moral are sometimes used loosely in common (or even academic) conversation – for example, when we talk about ethical conduct or moral theory – a more careful usage will employ the former as a predicate for theory and the latter for that which is being theorised.

A first division of ethics thus construed (i.e., as theorising activity) usually splits it into meta- and normative ethics. Nuances aside, the most widely shared account of the distinction between the two disciplines is that meta-ethics covers theories about the kind of reality morality is and the status of moral judgements, while normative ethics is about theories that answer the normative question of the morally right thing to do. The former inquires into the nature of morality (what is morality?), while the latter ponders its normative content (what should one do in order to be moral?).

When it comes to meta-ethics, a non-exhaustive list of commonly discussed conceptions are realism, irrealism, and, more recently, constructivism. Roughly formulated, realism argues that morality is made of moral facts and that, as a consequence, moral judgements are beliefs that report a matter of moral fact. Different versions of irrealism, on the other hand, hold that morality is about expressing pro and con attitudes (like in meta-ethical expressivism) or that it consists in imperatives and prescriptions (like in meta-ethical prescriptivism). Finally, constructivism defines morality as part of the domain of practical problems individuals have to solve and construes moral judgements as tentative solutions to those problems.

Unlike meta-ethical theories, normative ethics theories try to answer what I called the normative question, which is: what is the morally right thing to do? As I read it, the normative question can be either asked in the abstract – that is, what is the morally right thing to do in general? – or formulated more concretely, as in what is the morally right thing to do in this particular case (or set of cases)? The difference between the abstract and the concrete versions of the question matters, because it further subdivides the field of normative ethics. I will use the term foundational normative ethics to refer to those theories that take themselves to offer a fully theorised answer to the abstract version of the normative question and, somewhat unusually, introduce the term practical normative ethics to refer to those theories that concentrate on a specific set of practical cases (and not morality as such) as their subject matter.

The domain of foundational normative ethics (or normative ethics for short) is usually, if imprecisely, carved up into three contending theories – namely, consequentialism (with utilitarianism being the most prominent version thereof), deontologism (within which Kantian ethics occupies a central position), and virtue ethics (which tends to be specified either in the register of neo-Aristotelian ethics or in terms of feminist or care ethics). These theories offer irreconcilable answers to the abstract normative question. Consequentialism often takes the
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ultimate principle of right action to reside in the maximisation of aggregate social utility (which can, for example, be understood in terms of pleasure, preference, or interest satisfaction). Deontologism takes morally right action to be the action whose motives derive from a sense of duty or the respect of individual rights. Finally, virtue ethics holds that an action is right if it contributes to an agent’s relevant virtue (say, courage or justice) and, more critically, if it partakes in the agent’s ultimate virtue (which can be understood either in terms of moral flourishing on the neo-Aristotelian account or as care on some other conceptions).

The domain of practical normative ethics (or practical ethics, for short) is not naturally ordered along the fault lines of foundational normative principles. Rather, it tends to track differences between practices that invite ethical reasoning. In its current state, practical normative ethics lists a series of scattered sub-disciplines, like health care ethics, business ethics, media ethics, criminal justice ethics, drug policy ethics, traffic ethics, engineering ethics, and so on. Going beyond this untidy list would arguably require a systematic account of different practice types that we could then use to structure the domain of practical ethics. This is outside the scope of this chapter. Even so, it will be useful to think about the branches of practical ethics in terms of the kinds of practical interests that they characteristically take to constitute their subject matter. Doing this would present us with a rough distinction between three branches of practical ethics: personal ethics (relevant for persons’ practical interests), professional ethics (pertaining to professional interests), and public policy ethics (concerned with the public’s interests). This distinction is hardly definitive, but it should be sufficient when it comes to placing EPP on the map of different types of practical ethics.

The field of EPP, as I read it, can be further parsed by looking at how it relates to the domain of foundational normative ethics. Doing this allows us to distinguish between different accounts of EPP on the basis of their commitment to, or, conversely, independence from any one particular foundational theory of normative ethics. Thus, there are theories that will be defined in terms of distinct normative conceptions. Take, for instance, Peter Singer’s (1975/2002) or Tom Regan’s (1983) accounts of the impermissibility of ongoing government policies that enable the eating of non-human animals. Though substantively distinct, both accounts anchor their critique of animal eating in foundational theories of normative ethics, with Singer defending a utilitarian principle that calls for the minimisation of aggregate suffering and Regan arguing for a deontological grounding of animals’ individual moral rights.

Conversely, there are theories that rescind any affiliation with specific theories of normative ethics. Take, for example, Mylan Engel’s (2012) argument that one should ground the impermissibility of eating (and, therefore, of enabling the eating of) animals without relying on any ‘theory that explains what it is about right actions that makes them right and what it is about wrong actions that makes them wrong’ (52). Engel thinks that this is possible by assessing impermissibility beliefs according to whether they coherently fit with most of our other moral beliefs – say, beliefs about the moral badness of suffering – instead of tracking them back to foundational principles, like utilitarians or deontologists do. To assess coherence, all we need is an epistemic theory of coherence, not a deep ethical theory. Or so Engel argues.

For the purpose of this chapter, it does not matter whether Singer’s, Regan’s, or Engel’s theories are substantively correct. What matters is clarifying the structure of the relation between EPP and the domain of foundational normative ethics. When the relation is organised such that EPP theories are taken to basically apply the content of any one foundational theory to policy practice, it is apt to talk of applied ethics and, more specifically, of utilitarian, deontological, virtue ethics EPP, and so on. When the relation is structured such that the content of EPP is defined in terms of the practical solutions for arbitrating among contending moral views on policy matters, it is apt to talk of constructive EPP.
Furthermore, because constructive EPP is not predicated on any specific foundational theory, its underlying varieties will be more adequately referred to in terms of the procedures for managing instances of moral disagreement. Thus, for theories that set an accent on the importance of politics for dealing with morally controversial policies, one can speak of institutional or political ethics, or, more specifically, of democratic ethics. When the emphasis is on moral experiments and the relevance of social inquiry for ethical justification, it will make more sense to talk of ethical pragmatism.\(^\text{10}\)

My attempt to place EPP within the broad landscape of ethical theorising can be summarised by means of Figure 3.1.

Before addressing the distinction between applied and constructive EPP, I want to highlight some features of this classificatory figure. First, as stated, the classification is not meant as a definitive ordering of ethical theories. Nor is it meant as an exhaustive one, since it excludes disciplines like descriptive ethics or doctrines like ethical relativism. Second, the classification is not a smooth one, in that the classificatory steps are not guided by the same conceptual criterion across the board. For instance, in distinguishing between meta- and normative ethics, the differentiating criterion is whether one asks what morality is (meta-ethics) or what
morality should be about (normative ethics). Next, the distinction between different branches of practical ethics is based on the nature of their corresponding practices (personal, professional, or public), while the distinction between applied and constructive EPP is, as we will see in more detail, based on their underlying position towards the problem of fundamental moral disagreement. Third, and finally, the classification allows for further sub- or parallel orderings of additional ethical theories and does not say anything about the merits of the classified theories.

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The aim of this section is to specify the distinction between applied and constructive EPP. As already indicated, the distinction I defend is one between two standards of success in EPP. One such standard posits that morally justified policies are those that enact moral principles as articulated by the best available theory of (foundational) normative ethics. This is applied EPP. Another standard of success holds that, since there is extensive disagreement about whether such a theory is actually available, justified policies should instead draw on any theory that promises to push public policy towards moral improvements at the margin.11 This is constructive EPP.

Disagreeing about moral disagreement

Supporters of applied and constructive EPP concur on the idea that morality matters for public policy. However, given that most people, and especially philosophers, disagree on what morality ultimately requires of us, there is ongoing divergence on how morality should be brought to bear on policy issues. Disagreement about what the right moral requirements are occurs both at the practical level – for instance, when we are confronted with morally controversial policy initiatives, like sanctioning hate speech or institutionalising euthanasia – and at the theoretical level, as when we are called to consider which foundational theory in normative ethics – say, utilitarianism, contractualism, or care ethics – should ultimately inform our practices.

Faced with the problem of fundamental moral disagreement, supporters of applied EPP argue that ethical theorising should start by formulating – or, more modestly, identifying – a foundational theory that solves that disagreement. This is typically done by first identifying the criteria that make an action eligible for moral consideration – for example, universality, equality, or stringency – and then showing that there is at least one ethical theory – say, utilitarianism, contractualism, or care ethics – that is well placed to satisfy those criteria. In so doing, supporters of applied EPP aim to show that there is one correct answer to what I called the abstract normative question – namely, what is the right thing to do in general? They then proceed to show why the answer given by contending theories to this same question is wrong – thus explaining fundamental moral disagreement away – and conclude with a discussion of the relevant policy implications of their thus putatively vindicated theory.

Unlike their applied counterparts, defenders of constructive EPP hold that the problem of fundamental moral disagreement is far from being settled and that, as a consequence, we are not entitled to hang our minds onto the hook of any one foundational theory. Constructive EPP thus takes disagreement to be a feature, not a bug of ethical thinking. It contends that, given our disagreement about whether morality is a matter of consequences, contracts, care, or some other core value, we should simply shun any presumption in favour of one of the foundational theories. In so doing, constructive EPP holds that there is (or might be) more than one good answer to the abstract normative question and that the real work in EPP will consist mostly in
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tackling different concrete versions of that question. Constructive EPP thus aims to show that there is no straightforward inference from one’s account of normative ethics to one’s EPP. To put it in terms of the classificatory figure earlier (Figure 3.1), constructive EPP is premised on the thesis that there is no direct connection between any one distinct conception of foundational normative ethics and any one distinct conception of practical normative ethics.

Note that my distinction between applied and constructive EPP is at least partly a substantive one and, as such, differs from the methodological distinction between top-down and bottom-up theorising, where the former consists in inferring ethical conclusions about policy from overarching moral principles in a syllogistic manner, while the latter derives principles from practice (Beauchamp 2003). I take the methodological distinction to be often overplayed, since most plausible EPP theories rely on both top-down and bottom-up reasoning. This is to say that, despite differences in privileged methods, there are no purely top-down or bottom-up theories of EPP. Most theories are mixes of the two (and, sometimes, other) methodologies.12

Note also that my distinction between the two versions of EPP is orthogonal to the distinction between monistic and pluralistic ethical theories, where the former reduce morality to one single foundational principle, while the latter parse the moral landscape into a plurality of such principles. On my reading, the fact of entertaining a pluralistic account of normative ethics does not necessarily dictate one’s approach to EPP. This is because it is possible to imagine pluralistic foundational theories – for example, those developed by W.D. Ross (1930/2002) or McCloskey (1969) – that are then used as fixed frameworks for applied EPP. Thus, one can be a pluralist about foundational normative ethics and advocate applied EPP.

Who's who? The theory and practice of public policy ethics

In the rest of this section, I will try to flesh out the distinction between applied and constructive EPP. I will do this by listing some of the authors that I include in either of the two types, and by pointing to some salient family resemblances that better draw the profile of each type. For reasons of space, the distinction is bound to be broad-brush, and will need to be further nuanced on a later occasion.

The most salient examples of authors who share the applied ethics standpoint are Peter Singer (2011), Robert Goodin (1995), Richard Hare (1989), Bernard Gert (1984), Alan Donagan (1994), and, to some extent, Frances Kamm (2007) and Philip Pettit (Pettit & Marti 2010).13 Other (numerous) examples of the applied ethics model are those EPP theories that extend a ready-made normative theory – quite often, Rawls’s theory of justice – to one or several policy areas, such as anti-discrimination (Carcieri 2015) or criminal justice (Dolovich 2004).14 What brings these authors under the same banner is their stable normative commitment to one normative theory, be that theory utilitarianism (Singer, Goodin, Hare), deontologism (Gert, Kamm), consequentialist republicanism (Pettit), or justice as fairness (some Rawlsians).

Some of the main authors who fit the constructive EPP category are Tom Beauchamp and James Childress (2013/1979), Dennis Thompson (1987), Albert Jonsen and Stephen Toulmin (1989), Jonathan Wolff (2011), John Uhr (2010), Eric Thomas Weber (2011), Andrew Cohen (2015), Annabelle Lever (2017), and most (if not all) the contributors to this volume. These authors will typically acknowledge that plausible EPP accounts are normatively non-committal, in the sense that they do not recognise a presumption in favour of any one normative theory at the foundational level. As Wolff (2011) notes, there is ‘little prospect of demonstrating that any view is true or correct’ (5) in the realm of normative ethics. Similarly, Uhr (2010) contends that ‘our task is not to arrive at a consensus about agreed moral belief-systems’ (89), and Cohen
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(2015) argues that fundamental moral disagreement is not fatal, because ‘addressing policy controversies (…) might not require resolving theoretical differences’ (11).

Though there are various controversies within constructive EPP itself – for instance, about whether we should construe morality in terms of principles or about the degree to which ethics should diverge from the policy status quo – what holds the members of this broad philosophical family together is their agreeing that fundamental moral disagreement is here to stay and that this does not necessarily pose an obstacle (and might sometimes turn out to be an opportunity) for EPP. Constructive EPP holds that we do not need to wait for foundational convergence on one true (or otherwise best) conception of normative ethics to do EPP. Put differently, constructive EPP champions a non-convergentist position on issues of theoretical normative ethics, while applied EPP is convergentist in the sense that it presumes a normatively correct theory such that EPP can ultimately be referred back to it.15

This split between convergentist and non-convergentist attitudes towards the problem of fundamental moral disagreement has significant consequences for both the theory and the practice of EPP. For reasons of space, I will concentrate on only two of the differences in the theory and practice of EPP, as instantiated by the applied and constructive approaches. The first difference concerns the practical aim that ethics should play in relation to public policy. The second difference pertains to the theoretical priorities within each strand of EPP. The rest of this section is dedicated to outlining these two central differences. On the question of the practical aims of EPP, applied EPP often tracks what I call an ethos of overall approximation, whereas constructive EPP usually pursues an ethos of marginal improvement. The ethos of approximation holds that EPP’s main practical task consists in pulling public policy in the direction of an institutional set-up that best approximates one’s normative theory. For example, Robert Goodin (1995) dedicates an entire book to showing that his favoured version of welfare-utilitarianism – which is roughly the idea that morality is about maximising people’s overall welfare – is the ultimate target policy-makers and practitioners should be aiming at. Goodin thinks welfare-utilitarianism offers ‘a complete normative guide for the conduct of public affairs’ (4) and, furthermore, contends that ‘it is almost indecent to apply any other [normative conception]’ (4) to public policy.

Another example of the ethos of approximation is given by the application of Philip Pettit’s republican theory of freedom to José L.R. Zapatero’s political program (Pettit & Marti 2010). Pettit’s republicanism defends the idea that government action should be geared towards making sure nobody is arbitrarily subjected to another individual or collective agent’s will. In the political campaign running before the 2004 elections, Zapatero publicly adopted Pettit’s version of republicanism as his governing strategy, and invited Pettit himself to evaluate his government’s results at the end of his first mandate in 2008. After assessing Zapatero’s policies in various domains – such as education, health care, or the regulation of state agencies, Pettit concluded that it was worth a 9 out of 10 on the normative scale drawn by his conception of republican freedom. This suggests that, on the applied ethics view, the typical practical task of ethical theorising is to provide a measure of the degree to which any given policy arrangement approximates (or diverges from) one’s professed normative ideal. The ethos of marginal improvement is not about practical pull. Rather, it is about practical push. By this, I mean that proponents of constructive EPP care less about pulling policy towards the pre-set destination of any given normative theory. Instead, they are more concerned with the ways in which it is possible to push policy away from practices that are obviously morally problematic. This is, I think, Jonathan Wolff’s (2011) point in contending that ‘the policy debate is not about ideals’, but ‘about change’ (78). Similarly, Eric Thomas Weber (2011) insists
that ‘the fundamental problem in ethics (.) is that actions, decisions, policies (.) are worse than they could be and we need to figure out how to make them better’ (68). Given this, the main practical task is to imagine rules and principles that push policy arrangements away from a morally undesirable status quo. It is not that of moving them closer to a normative ideal.

An example of marginal improvement is given by Wolff’s principle of ‘pragmatic equality’ that he proposes for the reform of disability policies. The principle states that ‘justice for people with disabilities requires that disability does not add to the other injustices in the world’ (2011: 154). The principle does not make things perfect, but it promises to make them better. Moreover, Wolff’s principle works even in a world where we are not clear about the overall direction that the government’s (disability) programs should pursue, in that it shows how, irrespective of the normative ideal you endorse, it’s possible to push for an ethically informed reform of the policy status quo. From an applied EPP perspective, vindicating a principle like pragmatic equality looks like a bad compromise or business half-done. Seen from a constructive EPP standpoint, this is precisely the practical contribution ethics can realistically hope to bring to policy reform.

Applied and constructive EPP do not diverge only in their understanding of the practical relation between policy and ethics. They also differ in the way they organise their theoretical priorities. On the applied side, most theorising ultimately consists in fully working out one’s first-order account of foundational normative ethics. Even when it considers specific policy examples – like the legalisation of euthanasia clinics or the permissibility of canteen nudging – different theories of applied EPP will give priority to figuring whether their underlying foundational theory offers a sound basis for allowing, requiring, or rejecting the policy.

When the implications of the theory look morally objectionable – as when they conflict with our reflective judgements about the policy issue at hand – applied EPP often either attempts to show that the objection is mistaken or, alternatively, draws on the objection in an effort to revise its underlying theory so that its primacy is preserved at the foundational level. The intellectual history of utilitarianism – moving from hedonic utilitarianism (Bentham and Mill) to preference- or welfare-utilitarianism (Singer and Goodin) – can be seen as series of responses to particularly powerful (and often policy-borne) objections, with the end-goal of articulating the correct foundational account of normative ethics. Applied EPP, then, looks like normative ethics by other means.

Unlike its applied counterpart, constructive EPP does not prioritise first-order reasoning about the correct account of foundational normative ethics. To come back to the terminology I introduced in the previous section, constructive EPP does not try to answer the abstract normative question. With fundamental moral disagreement taken as a potentially unsolvable problem, it focuses more on building theories of EPP that are compelling when (and insofar as) we abstain from foundational normative debates. Put differently, constructive EPP prioritises second-order ethical theorising about EPP. Second-order theorising, in this case, refers to EPP accounts that refrain from first-order theorising about the right thing to do in general and focus on the policies we have good second-order ethical reasons to pursue given our persistent disagreement in the domain of first-order normative theorising. The proposal, then, is that we can rely on second-order ethical accounts of particular policy issues even if we espouse otherwise irreconcilable first-order views at the foundational level. Second-order ethical theories, in short, are those theories we want to have in light of the divergence between our first-order normative theories.

This restraint from first-order normative debates is often visible in the fact that work done in constructive EPP claims no special substantive affiliation with any of the contending
conceptions of normative ethics. There is no theory such that it can be coherently characterised in terms of a foundational normative position – say, utilitarian or deontological – and constructive in the way I define the latter concept here. A good example of such restraint is Beauchamp and Childress’s (1979) formulation of their four principles for health care policy – namely, autonomy, beneficence, non-maleficence, and justice – in a way that sidesteps their disagreeing on whether deontology or utilitarianism is the right foundational account of normative ethics. According to Beauchamp and Childress, deontologists and utilitarians ought to track the four principles at a second-order level of theorising, even if they are otherwise opposed in the way they model morality at the first-order level.

As I see it, there are at least three strands of second-order theorising that are being currently (and fruitfully) pursued within the constructive EPP approach. The first one includes attempts to formulate lower-level (i.e., non-foundational) principles – similar to the one articulated by Beauchamp and Childress – that can be reasonably supported irrespective of one’s stand on foundational matters. These principles are often called mid-level, because they occupy an intermediate level of generality between first-order foundational principles – like welfare-maximisation as defended by utilitarians or happiness as developed by neo-Aristotelians – and particular moral judgements. The concept of mid-level principles was articulated by Michael D. Bayles (1986), and mid-principlism has since then fed into various public policy areas, such as the organisation of elections and political campaigns (Thompson 2004), the regulation of intellectual property (Merges 2011), and animal welfare policies (Fraser 2012).

Mid-level principles are usually advocated as mechanisms for bypassing foundational disagreement and securing an adequate, if narrower, basis for ethically informed policies. For Bayles as for others, the point of mid-level principles is that they enable agreement on moral considerations that have an intermediate level of generality – for instance, the principle of proportionality in assigning intellectual property rights or the principle of fairness in the allocation of financial resources between political candidates – even if the agreeing parties otherwise continue to diverge on moral fundamentals. To put it in Bayles’s (1986) terms, ‘if a particular judgment or rule can be shown to follow from mutually accepted principles, then it is practically justified, even if the disputants disagree about the norms that support or justify the principles’ (62). The claim here is that policies can get all the justification they need from mid-level principles without resorting to foundational principles and that local agreement about specific mid-level principles is more likely to emerge than agreement on moral fundamentals.18

The second strand of constructive EPP is not directly invested in building principles that are more likely to secure ethical agreement. Instead, it focuses on formulating meta-principles for regulating ethical debates about public policy. A topical example here is Gutmann and Thompson’s (1990) account of ‘principles of preclusion’ and ‘principles of accommodation’. Principles of preclusion are meant to filter out morally invalid considerations – for instance, by testing whether they are internally coherent – while principles of accommodation regulate the ways in which putatively valid moral considerations are incorporated in policy decisions. Both kinds of principles require that suitable procedures be instituted for regulating policy debates – for instance, a requirement of public justification or a practice of periodic revision of ‘important moral decisions’ (85). Thus, meta-principles inform the way in which EPP is practically designed.

A third strand of constructive EPP focuses directly on the design of collective decision-making procedures for tackling moral disagreement. Here, there is an increasing amount of reflection that brings democratic theory to bear on EPP. For example, Annabelle Lever (2017) argues that we should use the values we agree on as citizens living in democracies – say, equality
or the accountable exercise of power – to assist us in finding answers to otherwise intractable normative questions. In deciding whether a particular policy is justified, the proposal is to start from uncontroversial assumptions about democratic rights, duties, institutions and values, which can be treated as provisional fixed points for ethical reflection, and see what follows from them for philosophical controversies (.) or the relative merits of competing ethical approaches and values.

(6)

The idea here is to rely on a set of democratically recognised propositions to seep through those normative propositions we might disagree on because of our commitment to foundationally contending theories.

Adding to Lever’s (2017) ‘democracy-centred approach to ethics’, there is current work on designing decision procedures for dealing with moral disagreement that might turn out to be highly relevant for EPP. For instance, William MacAskill (2016) argues that, given our fundamental disagreement on the right thing to do in general, we could resort to different electoral methods to decide on the option that is most warranted in particular. MacAskill argues that we can use a modified version of the Borda count – a method that favours broadly endorsed candidates and avoids the narrow majorities sometimes allowed by first-past-the-post voting systems – to decide which option is most supported by otherwise opposed foundational theories. Drawing on MacAskill, we can imagine a framework for EPP where different foundational theories are treated as voters, their rankings of policy options are counted as individual votes (whose weight might vary depending on the credence and relevance of each theory for the policy in question), and specific electoral methods (like the Borda count) are used to compute those votes into ethically justified policy outcomes.

Similarly, Searing and Searing (2016: 105–120) explore three methods for deciding whether a policy is morally justified when different foundational ethical theories value it differently. The first method is simple aggregation: the policy outcome is computed as a +1 if it is justified on a given theory and as a −1 if it is not. A policy is conclusively justified if the sum of the scores given by each theory is itself positive. The second method is more fine-grained, in that it introduces a weighting scheme, whereby different theories are given different weights according to their relevance for the policy in question. For example, if the policy is most relevant for people’s rights, rights-based ethical theories will have more weight in calculating the final score than, say, utilitarian theories. Third, and finally, Searing and Searing point out that there are policies where, because a categorical yes/no answer makes little sense, the line-drawing method used by casuists might be more adequate. The idea here is that, for each theory, there is a continuum running from ‘permissible’ to ‘not permissible’ such that a policy will be positioned towards one of the two ends for each of the continua corresponding to a given ethical theory. The permissibility of any given policy will depend on whether the chart that is constituted by the different permissibility points for each of the continua leans in the general direction of permissibility.

To sum up, most theorising within the constructive EPP framework goes into regulating foundational moral disagreement in a way that generates ethically informed policies. Constructive EPP avoids taking a position in favour of any given foundational theory of normative ethics. It does this most notably by focusing on principles that are indifferent between foundationally opposed normative theories or by devising decision-making procedures that give a fair weight to all of the relevant foundational theories.
As Figure 3.1 shows, most authors included in the constructive EPP category do not tie their theoretical positions to any of the foundational theories I mentioned in the previous section. Rather, in referring to their work, they use expressions that are normatively non-committal, like ‘experimental ethics’ or ethical pragmatism (Weber), ‘democratic ethics’ (Weber, Lever), or ‘political ethics’ (Thompson). This testifies to the fact that EPP is possible without taking a foundational position on questions of normative ethics.

Conclusion: better friends than foes

This chapter defended a distinction between two modes of ethical theorising. I have argued that, as currently practised, EPP is split between an applied and a constructive approach. On the applied approach, the focus is on bringing policy practice closer to theory and on refining theory in a way that prevents or solves the objections coming from practice. On the constructive approach, the emphasis is set on working out ethically justified policies in a way that does not presume that a solution to deep normative questions has been found.

A few remarks are required by way of conclusion. First, it bears repeating that my typology of EPP should not be read as a substantive argument favouring a specific ethical theory over others. Distinguishing between applied and constructive EPP is neither an endorsement nor a repudiation of one of the two approaches. Rather, my position is that each of the two approaches comes with its own set of theoretical and normative problems. For instance, the applied model problematically presumes that there is a correct answer to the abstract normative question, and does this despite historically enduring disputes about what the correct answer is. The constructive model, on the other hand, seems ill-placed in formulating the criteria for determining why a particular consideration counts as a moral one. This is because defending any such particular criterion seems to entail a commitment to a view of normative ethics that the constructive approach is meant to resist.

Second, the typology does not imply that the ongoing background project of articulating a conception of normative ethics is a degenerative one. Figuring out whether the most adequate way to think about morality should track a utilitarian, deontologist, neo-intuitionist, or mixed account remains an important task with potentially desirable practical effects.21 Rather, the typology is meant to show that there are other theoretical frameworks beyond the applied ethics one for approaching the morality of public policy.

Third, the typology creates the conceptual space for a more discerning view of varieties of practical ethics that are not structurally amenable to the applied approach. For instance, accounts of virtue ethics that model particular virtues in terms of their specific target-function within a practical domain – say, courage in warfare – without directly grounding them in any one overarching virtue – such as, most prominently, *eudaimonia* – are no longer necessarily criticisable for failing to spell out their normative foundations (Swanton 2003). Extending the distinction between applied and constructive ethics beyond EPP to the general field of practical ethics thus helps us identify relevant differences between theories that might otherwise be lumped together because they rely on confusingly identical terminology.

Fourth, it should be emphasised that the distinction between the two types of EPP is not a dichotomy. Though most authors who reflect on EPP tend to espouse either of these two approaches and to criticise others for not doing so, there is no knockdown theoretical ground for favouring one approach over the other or for saying that the two cannot benefit from each other. As I see it, each side should encourage more rather than less theorising on the other side. To wit, applied EPP could benefit from the constructive reflection on mid-level principles and...
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decision-making procedures when it comes to rendering its otherwise abstract ethical principles more cogent for policy practice. Conversely, constructive EPP could use the advances in normative ethics – for instance, the formulation of unified foundational theories like Parfit’s – to better define the range of considerations that matter for deciding whether a particular policy is justified. Thus, for all their differences, applied and constructive EPP are better thought of as friends rather than foes.

If I am right about the way in which applied and constructive EPP connect to the domain of foundational normative ethics, the two can be deployed in parallel rather than in alternative to each other. This is because they function at different levels of theorising and, as such, cannot come in direct theoretical conflict. Applied EPP is caught in first-order normative theorising – that is, in finding a solution to foundational moral disagreement – while constructive EPP engages mostly in second-order theorising – that is, in theorising those principles or principled practices that we all have moral reasons to follow given our disagreement on moral fundamentals.

Endorsing both modes of theorising might prove beneficial to EPP overall. In particular, it might provide EPP with the resources for answering two (jointly inconsistent) objections that are often raised against it. The first objection is that, in delving into policy questions, ethics risks losing sight of the normative issues that matter philosophically rather than practically. In lowering itself to the level of concrete policy questions, ethics forgoes one of its essential objectives, which is that of formulating the true theory of morality (Gaus 2005). The second objection is that, in prioritising research on moral fundamentals, philosophers neglect reflecting on the more concrete ways in which morality can be brought to bear on practical policy decisions. The first objection is one about under-theorisation in EPP, while the second one is about the deficient action-guidance of ethical theories.

My analysis of applied and constructive EPP helps defuse these two objections. It does so by showing that neither of the two objections tracks EPP as a whole. A lot of the work in applied EPP focuses on formulating the correct theoretical account of morality, and is thus relatively immune to the under-theorisation objection. Conversely, a lot of the work in constructive EPP deals with bringing ethics to bear on practice, and therefore fares well by the action-guidance objection. If this is correct, then the two objections have less of a bite on EPP overall.

My distinction between applied and constructive EPP thus makes a case for both the theoretical and practical relevance of ethics for public policy. Moreover, it suggests that there are good all-considered reasons for favouring both modes of theorising. Consequently, to the question application or construction in EPP?, my answer will tend to be both, but never combined.22

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Notes

1 Given its ambiguous use in the literature, I define applied ethics somewhat stipulatively. Even so, those who refer to their work as applied ethics most often fit my characterization and the authors I associate with the constructive ethics model rarely characterise their work as applied ethics. The term constructive EPP should not be directly associated with the constructivist position in normative ethics, as represented by John Rawls, Onora O’Neill, or Christine Korsgaard. As it will become clear in the following sections, applied and constructive EPP are accounts of practical ethics, not distinct conceptions of normative ethics.
Application or construction?

2 Wolff defends a partly similar argument in this section.
3 Practical ethics as a distinctive discipline goes back at least to the end of the 1960s and the beginning of the 1970s, when (especially British and US) moral philosophers start reflecting about some specific policy questions, such as nuclear deterrence, anti-discrimination programs, and abortion.
4 The distinction here is a strictly pragmatic one meant to clarify whether one is referring to theories or actions and practices that are being theorised.
5 For a more detailed picture of meta-ethics, see Copp (2006).
6 These two examples are by no means exhaustive of irrealism.
7 Bagnoli (2013).
8 See Baron, Pettit, and Slote (1997). For a unified view of normative ethics, see Parfit (2011).
9 For a survey of these different domain-specific sub-disciplines, see Hansson (2011).
10 These examples of constructive accounts of EPP are by no means exhaustive.
11 This is not to say that constructive EPP is necessarily bound to seek marginal improvements over profound policy reforms. Note also that marginal is not the same as minor and that, consequently, marginal improvements can sometimes be substantial.
12 Paulo (2016).
13 Including Pettit in this list is premised on the idea that his republicanism is a non-utilitarian version of consequentialism – namely, a consequentialism of freedom applied to politics and public policy. Thus construed, Pettit’s republicanism counts as applied ethics.
14 For an inventory of different application of Rawls, see Doorn (2009).
15 For a critique of convergentism in meta-ethics, see Blackburn (1998).
16 For a view that partly overlaps with Wolff’s, see Putnam in this volume.
17 I use the concept of second-order theorising in a way that draws on Joseph Raz’s (1990) concept of second-order reasons.
18 The claim about a higher probability of agreement on mid-level (as opposed to foundational) principles relies on an implicit proposition, which is that the probability of X is higher than the probability of X and Y. Because of their narrower practical scope, mid-level principles cover shorter conjunctive chains of ethical propositions about practical cases than foundational ones, thus gaining a higher probability for ethical agreement. Bayles’s claim about the probability of mid-level agreement is, then, a conceptual and not a normative one.
19 MacAskill articulates his proposal at the individual level, but there is no principled reason for not extending it to the inter-individual/public policy level.
20 This should not be confused with the policy analysis methods used for designing and selecting policies all things considered (where only some reasons are moral ones).
21 One such effect is given by the (policy) debates initiated by Singer’s (1975/2002) critique of the animal meat industry.
22 This is because one cannot non-contradictorily both commit and not commit to a given theory of normative ethics.

References


