Law at the Frontiers of Biomedicine
Creating, Enhancing and Extending Human Life

Shaun D Pattinson
LAW AT THE FRONTIERS OF BIOMEDICINE

How should judges and legislators address challenges arising at the frontiers of biomedicine? What if it became possible to edit the DNA of embryos for enhanced traits, gestate a fetus in an artificial womb, self-modify brain implants to provide new skills or bring a frozen human back to life?

This book presents an innovative legal theory and applies it to future developments in biomedicine. This legal theory reconceptualises the role of legal officials in terms of moral principle and contextual constraints: ‘contextual legal idealism’. It is applied by asking how a political leader or appeal court judge could address technological developments for which the current law of England and Wales would be ill-equipped to respond.

The book’s central thesis is that the regulation of human conduct requires moral reasoning directed to the context in which it operates. The link between abstract theory and practical application is articulated using future developments within four areas of biomedicine. Developments in heritable genome editing and cybernetic biohacking are addressed using Explanatory Notes to hypothetical UK Parliamentary Bills. Developments in ectogestation and cryonic reanimation are addressed using hypothetical appeal court judgments.

The book will be of great interest to scholars and students of medical/health law, criminal law, bioethics, biolaw, legal theory and moral philosophy.
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Judges and legislators are increasingly being called upon to address biomedical developments that were once merely science fiction. This book considers future developments in the technologies enabling the creation, enhancement and extension of human life. All have their basis in some feature of existing biomedical science and range from likely incremental developments to less likely leaps: from refinements to the ability to edit the genes of embryos (heritable genome editing) to bringing frozen bodies back to life (cryonic reanimation). Consideration of these future technologies culminates in hypothetical legal responses: two UK Parliamentary Bills and two appeal court judgments.

These hypothetical legal responses apply the theory articulated and defended in the first two chapters. There is a sense in which chapter 2 may seem to be trying to sell vegetarianism to those who seek crispy bacon and medium-rare sirloin. It goes against the contemporary grain by both rejecting the 'toothbrush theory of philosophy' and adhering to an 'Archimedean point.' The former treats philosophical tools like toothbrushes and insists that everyone should seek their own and refuse to share another’s. The latter refers to the principle of levers attributed to Archimedes: ‘Give me something to stand on and I can move the world.’ Yet, this book explicitly supports the Archimedean claim made by Alan Gewirth that there is a supreme principle of morality.

This book has two purposes. One purpose is to present and apply a theory of adjudication and legislation. Another is to address ethical and legal issues raised by the future developments mentioned above. My central question is thus: how should judges and legislators understand and address the substantive, structural and conceptual challenges arising at the frontiers of biomedicine? In the process of answering this question I hope to provide something of interest even for committed carnivores.

The law and URLs cited in this book were last checked on 1 August 2022.

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1 Archimedes, as quoted in Ripstein 2007, 5.
2 See principally Gewirth 1978.
3 In a sense, this book is a sequel to Pattinson 2018.
4 The metaphors in this Preface do not describe my actual eating or toothbrush preferences – I am a meat eater (albeit with a dislike for bacon) and would like you to keep away from my toothbrush.
The writing of this book was greatly assisted by the award of a Major Research Fellowship by the Leverhulme Trust.

I am grateful to those who commented on papers in which I have presented ideas during the process of writing this book, including at the Society of Legal Scholars Annual Conference, Preston in September 2019, a DeepMind webinar in March 2021, the 14th World Conference on Bioethics, Medical Ethics and Health Law, Porto, Portugal in March 2022 and at the Society of Socio-Legal Studies Association Annual Conference, York in April 2022. I would also like to thank those who provided comments on early drafts of one or more chapters: Dave Archard, Deryck Beyleveld, Emma Cave, Zoe Gounari, Andy Greenfield, Gleider Hernández, Marianna Iliadou and Zoe Tongue. Their comments have saved me from many errors, though I remain fully responsible for all those that remain. I owe special thanks to Kaylin Raine, who did a literature search for me on issues related to cryonic reanimation during the term in which the pandemic had delayed her plans to study in Italy.

I dedicate this book to my dearest Zoe and our beautiful boy, Orion.

SDP
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PART I

Moral and Legal Theory
1

Moral and Legal Values

1.1. Introduction

I was sure there was a white light. As my eyes focused it morphed into a white sleeve, into which a robotic arm retracted. ‘Welcome to New Life’, declared the woman to whom the arm was attached. Only moments before, or what had felt like only moments before, I had been sedated into unconsciousness on the understanding that I would soon die and be cryonically frozen.

This was my reanimation; my second life. I had begun my first life genetically enhanced and gestated in an artificial womb. That had been a long life. Every time a body part had failed it had been replaced with a synthetic part, until my cybernetic body had required treatment beyond what was available to medical science. I had then been informed that the best my billions could buy was the chance to be reanimated, when science could either cure my ailment or transfer my consciousness.

This scenario captures a possible future for the technologies explored in this book. You are probably thinking that it is no more than science fiction. One response would be to point out that there have been many steps towards delivery of my imagined billionaire’s life, with its super enhancement and super longevity. As will be explained later in this book, humans have been genetically modified, embryos are living longer outside the womb, premature babies are surviving earlier in gestation, pacemakers and artificial limbs are treatment options, and there are cryonically frozen corpses. But many assumptions have to be made to view these as steps on a trajectory towards this imagined future, and numerous additional assumptions are, if I may change my metaphor, hiding below the surface.

My narrator is a billionaire, because it is generally assumed that delivering such dreams will be so expensive that it will be within the purview of only the very rich, thereby magnifying existing socio-economic inequities. Yet, technologies that cost a great deal of money at the outset usually end up becoming much cheaper. It cost around $2.7 billion to sequence the human genome in 2003.1 By late 2015, the cost had dropped to below $1,500. It is now available to consumers for two or three hundred dollars; as one journalist put it, ‘for less than the price of the latest Apple Watch’2 This is an example of what seems to be a predictable trend.

1 See NHGR 2019.
2 Mullin 2020.
We are, however, generally bad at predicting the future of science and innovation. Dolly the sheep was created using a technique dismissed just over a decade before as ‘biologically impossible’ by two well respected developmental biologists. My bet is that no interviewee, when asked in 2015 where they would be in five years’ time, predicted being furloughed or homeworking due to a global pandemic. 2020 vision was apparently rare! There is an asymmetry between what is obvious before and after an event, scientific discovery or technological innovation. Search engines and social media now seem an obvious way to make money from the internet, but things were not nearly so obvious during the early days of the internet. After something occurs or has been explained we can easily move, like Dr Watson in *The Adventure of the Dancing Men*, from considering it to be ‘utterly inexplicable’ to ‘absurdly simple’. There is no way around this, so the technologies selected for consideration in this book range from those that currently seem to be likely incremental developments to some apparently distant and less likely leaps.

One objection to thought experiments is that they often simplify dilemmas. How realistic is it to imagine a binary choice between pulling or not pulling a lever to substitute one death for five (as per Philippa Foot’s trolley problem), or between remaining connected to or disconnecting yourself from an unconscious world-famous violinist (as per Judith Jarvis Thomson’s thought experiment on abortion)? How many plausible moral reasons for distinguishing between killing and letting die does James Rachels exclude when he asks you to imagine being in the same room as a starving child with a sandwich you do not need? This book will separate out the technologies alluded to in my opening scenario with an eye on the limitations and assumptions easily cloaked by imaginary futures and thought experiments. Some of the most demanding ethical and legal challenges are presented by the very complexity and uncertainty that it is so tempting to ignore.

One of this book’s aims, as I have hinted, is to examine the ethical and legal issues raised by plausible biomedical innovations in the creation, enhancement and extension of human life. The other aim is to present a theory for judicial and legislative development of the law. These two aims cohere because the application of this book’s legal theory is best explained by considering how it would deal with developments that are likely to find existing legal rules to be unclear or otherwise wanting. The biomedical innovations examined in this book represent developments of just this type. They would evoke considerable moral concern and this chapter unpacks different types of moral perspectives capable of underpinning such concerns.

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3 See Wilmut et al 1997 and McGrath & Solter 1984, 1319, respectively.
5 Doyle 1905, ch 3.
6 Cf the discussion of heritable genome editing in ch 3 and cryonic reanimation in ch 6.
8 See Rachels 1979, 160. Rachels neutralises, for example, the cost to the actor and the probability that death will result.
This book has three parts. Part 1 (this and the next chapter) contextualises, articulates and defends the framework that is to be applied to four biomedical case studies. This chapter sets out the context for the theory presented in chapter 2. Part 2 addresses four case studies involving the creation, enhancement or extension of human life: heritable genome editing, ectogestation, cybernetic biohacking and cryonic reanimation. Part 3 is the conclusion.

This chapter maps the territory of morality and the trajectory of appeals to moral criteria in the law of England and Wales, enabling subsequent chapters to take a particular path forward. The focus here on the law of a single jurisdiction is necessitated by the later presentation of hypothetical judgments and draft legislation for the biomedical case studies.

1.2. Types of Moralities

The terms ‘morality’ and ‘ethics’ are used by different people to capture divergent concepts. They are used as synonyms in this book. For current purposes, morality (or ethics) is to be understood as referring to action-guiding requirements that are other-regarding in the sense that they require an individual to act in the interests of others. For some moral theories (including the theory defended in chapter 2), morality can be defined more narrowly as other-regarding obligations that are categorical in the sense of overriding all other interests or obligations. There are various potential sources for other-regarding obligations, giving rise to three types of moralities: cultural morality, refined cultural morality and acultural morality.

Cultural morality refers to the moral convictions of a particular community. As the label suggests, a refined cultural morality cleaves or shapes cultural moral convictions to derive a coherent principle or set of principles. An acultural morality is yet more ambitious in its rejection of reliance on any cultural moral convictions. This section unpacks all three types of moralities.

1.2.1. Cultural Morality and Refined Cultural Morality

According to a BBC nationwide survey of those aged 16+, 83% feel a significant responsibility to be faithful to their partner, 59% consider capital punishment justifiable and 73% believe abortion justifiable. While 78% believe assisted dying in the face of terminal illness justifiable, 49% believe that suicide is never justifiable in any circumstance. Opinion polls of this type are one way of discerning the dominant moral convictions of a particular community, but such a cultural morality is indistinguishable from a set of shared prejudices. Dworkin distinguishes this

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9 See BBC 2019.
type of morality (which he refers to as morality in the ‘anthropological sense’) from morality in the ‘discriminatory sense’.

Discriminatory morality refers to a morality free from ‘prejudices, ration- alizations, matters of personal aversion or taste, arbitrary stands, and the like’. Dworkin tells us that reasons are to be given for a discriminatory morality and these are to exclude: prejudice (taking account of considerations excluded by the community’s conventions), mere emotional reaction (personal feeling without reason or justification), rationalisation (appeal to false or irrational beliefs, or relying on evidence known to be irrelevant or insufficient) and parroting (mere citation of the beliefs of others). A discriminatory moral position must also be held sincerely, be consistent with that person’s other moral beliefs and not be presented as self-evident when it is controversial.

Dworkin’s discriminatory morality will not appeal to anyone who rejects the normative force of cultural morality, for it offers refinements rather than replacement or justification. This is exemplified by Dworkin’s rejection of prejudice, defined as ‘postures of judgment that take into account considerations our conventions exclude’. Dworkin is invoking cultural morality (‘our conventions’) to provide content for discriminatory morality. Discriminatory morality therefore cannot, nor is it meant to, provide reasons for its acceptance to those who refuse to identify as part of the relevant group, accept the group’s moral precepts or indeed accept any moral precepts at all. It is, in my terminology, a refined cultural morality.

There are degrees of refinement. Cultural moral convictions shaved of prejudices, matters of personal aversion or taste and the like amount to a minimally refined cultural morality; whereas the derivation of moral criteria from a single shared moral conviction would amount to a maximally refined cultural morality.

Most ethicists and bioethicists work within refined cultural morality. Consider the popularity among Anglo-American scholars of the method often referred to as ‘reflective equilibrium’, which seeks balance between shared moral convictions and theoretical insights. Beauchamp and Childress state that their four principles of biomedical ethics (respect for autonomy, nonmaleficence, beneficence and justice) ‘are derived from common morality’, and they identify their approach as ‘an appropriately adjusted version of reflective equilibrium’. Nussbaum similarly insists that her ‘capabilities approach’, which focuses on ‘what people are actually able to do and to be’, follows the method of seeking reflective equilibrium.

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12 See Dworkin 1977, 249–251.  
13 See Dworkin 1977, 251–252.  
14 Dworkin 1977, 249.  
15 This terminology has its origins in the work of Rawls (see the most recent edition of *A Theory of Justice*: Rawls 1999, esp 42–45), but is frequently used by others for purposes beyond those conceived by Rawls.  
16 Beauchamp & Childress 2019, 13 and 443.  
17 See Nussbaum 2000, 6 and Nussbaum 2006, 352.
Accordingly, she asks us to use ‘our moral judgments and intuitions’ to compare the capabilities approach with contractarianism, utilitarianism and other approaches.\(^{18}\) In her words, ‘intuitions both test and are tested by the conceptions we examine, hoping, over time, to achieve consistency and fit in our judgments taken as a whole’.\(^{19}\) These approaches utilise the shared (or at least widespread) moral convictions of a particular group, but seek more than the exclusions and weak internal coherence of Dworkin’s discriminatory morality. Also consider Harris’ strategy in *The Value of Life*, which is to ‘test’ moral principles by reference to ‘hypothetical counter examples’ to determine whether they ‘hold good … in any imaginable or possible world’ and then ask whether the underlying values ‘taken as a whole are well calculated to make the world a better place’.\(^{20}\) Harris analogises moral theorising with a houseboat at sail, whereby every plank is kept under examination for maintenance, repair or replacement ‘without sinking the whole enterprise’.\(^{21}\) This approach and analogy encapsulate the enterprise of seeking a type of reflective equilibrium, according to which cultural morality is part of a process of dynamically reviewing and rendering moral principles into a coherent whole. In contrast to Nussbaum’s use of reflective equilibrium, Harris’ candidate for the resulting morality is utilitarianism.\(^{22}\) In common with all attempts to place considered moral convictions into reflective equilibrium, these theorists cannot answer critics who reject the normative force of the relevant moral intuitions. That would require a morality that was in no way dependent upon cultural morality; it would require an *acultural morality*.

### 1.2.2. Acultural Morality

An acultural morality is one derived from premises that are not tied to acceptance of the contingent moral convictions of a particular group, whether unrefined or refined. There are two types of acultural moralities, distinguished by the nature of their justificatory claims. The first seeks to derive criteria for determining what is morally permissible from the assumption that members of all cultures must accept other-regarding oughts: weak moral rationalism. The second seeks to derive moral criteria from non-moral premises: strong moral rationalism.

Examples of weak moral rationalism pepper the philosophical literature. Hare, in his *Moral Thinking*, seeks to show that anyone who accepts moral oughts (understood as ‘universalisable’, ‘prescriptive’ and ‘overriding’ precepts) is logically committed to accepting preference utilitarianism.\(^{23}\) A similar project is often attributed to Kant, whereby he is understood in the *Groundwork of the Metaphysic*

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\(^{18}\) See Nussbaum 2006, 352 (emphasis added).

\(^{19}\) Nussbaum 2000, 151.

\(^{20}\) See Harris 1985, 235–236.

\(^{21}\) Harris 1985, 236.


\(^{23}\) See Hare 1981, ch 10 and 219. Hare refers to his method as ‘rational universal prescriptivism’.
of Morals as seeking to show that anyone who accepts morality is logically required to accept the Categorical Imperative. Accordingly, Kant and Hare can be understood as seeking to derive their very different moral principles from acceptance of the moral point of view. Yet, they also seek to avoid reliance on the cultural morality of a particular group. While weak rationalism assumes that we owe duties to take account of the interests of others, it otherwise eschews reliance on moral intuitions – in contrast to the method of seeking reflective equilibrium.

Some theorists have gone further by seeking to derive criteria for moral permissibility without assuming that we owe duties – let alone categorical duties – to take account of the interests of others. These are theories within strong moral rationalism. Kant’s project in the *Groundwork* is to show that any rational being with a will is rationally required to accept the Categorical Imperative. Accordingly, Kant declares, this moral principle is to be understood as ‘a necessary law for all rational beings’ on the basis that it is ‘connected (entirely *a priori*) with the concept of the will of a rational being as such’. Gewirth, in his *Reason and Morality*, seeks to show that the Principle of Generic Consistency (PGC) is ‘dialectically necessary’. This method involves arguing from the internal viewpoint of an agent (‘dialectically’) from premises that cannot be coherently denied within that perspective (‘necessary’ premises). Thus, Gewirth seeks to show that for an agent to understand what it is for her to be an agent is for her to accept the Principle of Generic Consistency; according to which all agents have a set of specific rights (see chapter 2). In other words, Kant and Gewirth share a justificatory strategy in relation to their moral philosophy. Both analyse the internal perspective of a being that is able to act for its freely chosen purposes (a rational being with a will/an agent) and thereby seek to derive an acultural morality from agential self-understanding. Their derived deontological principles differ in important ways. For a start, the duties imposed by the Categorical Imperative are not automatically subject to the will of the beneficiary, whereas the duties imposed by the PGC are subject to the will of the rights-holder to whom they are owed.

### 1.2.3. Moral Relativism versus Moral Universalism

Moral beliefs could be considered universal or relative. *Moral universalists* claim that basic moral beliefs can be true or rational. *Moral relativists* claim that basic moral

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25 See Kant 1785 [4: 448]: ‘we must prove that it belongs universally to the activity of rational beings endowed with a will’.
26 Kant 1785 [4: 426].
28 See Gewirth 1978, 42–47.
30 There are three variants of moral universalism: basic moral beliefs are capable of being true (moral intuitionism/arational cognitivism), rational (moral rationalism/rational noncognitivism) or both true and rational (moral naturalism/moral realism/rational cognitivism).
beliefs are on a par with regard to their truth and rationality; they are relative to a particular person or group of those who happen to share those beliefs or feelings.

A cultural morality is explicitly universalist. Cultural and refined cultural moralities are more complex. Both are reliant upon the cultural moral convictions of a particular group: the refined version relies on a subset of one or more shared moral intuitions. But those convictions could claim to express universal or relative norms. A refined cultural morality may, for example, rely on the conviction that all humans have equal rights and dignity, as proclaimed by various international human rights instruments.

An objection might be made to the way my framework identifies positions that rely on substantive moral intuitions as cultural moralities even if it is claimed that those intuitions capture universal or objective values. This categorisation is not arbitrary. To validate the content of a moral duty by reference to a moral intuition is to make it contingent upon acceptance of that intuition. But, since any substantive moral intuition can be meaningfully opposed by a counter intuition, all such intuitions must be regarded as either relative to a particular individual or group (as per cultural or refined cultural morality) or capable of being supported by a justificatory process that does not rely upon them (as per acultural morality). A moral intuition does not transcend its cultural basis merely because it is widely shared, fits with other moral intuitions or is expressed in universalist terms.

Some theories are capable of being placed into more than one group, depending on whether their declared features are dispensable. Consider John Rawls’, much admired and much maligned, justificatory framework in his *A Theory of Justice*.  

31 See Rawls 1999 (the first edition of which was published in 1971).

32 Rawls 1999, ch. 3.

33 See Rawls 1999, esp. 107.

34 See Rawls 1999, 18 and 42–45.

35 Rawls 1999, 18.
The veil of ignorance is an impartiality condition, requiring us to reason from a moral point of view. Thus, if Rawls’ contractarian reasoning were to operate without reliance on specific substantive moral intuitions, the resultant political theory would adopt a weak moral rationalism. But his method of reflective equilibrium permits adjustment to the conditions of the original position, and the derived principles, to take account of our considered moral convictions. By way of example, Rawls includes potential agents within the scope of the principle of equality on the basis that ‘this interpretation of the requisite conditions seems necessary to match our considered judgments’. Any conclusions resulting from adjustments made to accommodate moral intuitions will have justificatory force only for those who accept those moral intuitions, so the result is that Rawls’ method operates within refined cultural morality.

Chapter 2 will defend the derivation of a particular moral principle (Gewirth’s PGC) both within maximal acultural morality and, less ambitiously, within maximal refined cultural morality. There is, however, much more that can be said about the nature of morality and law without at this point committing to any particular criteria for moral permissibility.

1.2.4. Criteria for Moral Permissibility

The three types of moralities outlined above are compatible with vastly divergent criteria for moral permissibility. Cultural morality is the least theoretically demanding and is likely to support a set of obligations and prohibitions of the type favoured by tabloid journalists and populist politicians. Normative theories, setting out specific criteria for determining how we ought to act or weigh other-regarding principles, can be grouped in many ways. Elsewhere I have divided criteria for moral permissibility into five camps: utilitarian, rights-based, duty-based, virtue ethics and mixed theories. Each is a group of normative theories with common central tenets, rather than a specific theory. This five-fold grouping will be used in this book, because it has explanatory value and the existence of a miscellaneous category (mixed theories) ensures that it is exhaustive.

Utilitarians hold that we ought to achieve the best balance of utility over disutility, which typically requires the maximisation of pleasure over pain (classical utilitarianism) or the maximisation of preference satisfaction (preference utilitarianism). Crucially, individual interests are to be added together (for aggregation or averaging) and compared. Jeremy Bentham’s classical utilitarianism was aggregative: ‘it is the greatest happiness of the greatest number that is the measure of right and wrong.’

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36 cf Gauthier 1986, who uses a contractarian method to argue for moral constraints without assuming impartiality: a form of strong moral rationalism.
37 Rawls 1999, 446.
38 See Pattinson 2006 and 2020, ch 1.
39 Bentham 1775, 393. On Bentham’s use of the greatest happiness principle, see Burns 2005.
1.2. Types of Moralities

Rights-based and duty-based theories hold that the duties owed to individuals may be outweighed by more important duties owed to other individuals but cannot be outweighed by adding together the interests of different individuals. These two deontological approaches diverge on whether the moral duties owed to an individual may be waived by that individual. This difference can be expressed in terms of adherence to rival conceptions of rights. These are two conceptions of what Hohfeld termed a ‘claim-right’: a justifiable claim or entitlement imposing duties on others.⁴⁰ The *will-conception* regards the duty imposed on others by my right as subject to my will, in the sense of being waivable by me.⁴¹ I will refer to these as *will-rights*. The *interest-conception* regards the duty imposed on others by my right as tracking my important interests and, crucially, these interests are not intrinsically connected to my will.⁴² Since my autonomy interests may be overridden by my other interests, my possession of a right does not imply that I may release you from the correlative duty. I will refer to these as *interest-rights*. Accordingly, rights-based theory holds that individuals have will-rights, whereas duty-based theory holds that individuals have interest-rights. It follows that rights-based theories permit suicide, because a will-right to life permits suicide, subject only to the rights of others. In contrast, the interest-rights recognised by duty-based theories are not automatically subject to the right-holder’s will and the interest in life is often regarded as the most important interest, which rules out suicide.⁴³

A common objection to rights-based theories is that will-rights can only be possessed by agents and, so the objection goes, this excludes very young children, severely cognitively impaired adults and other proper subjects of moral concern from moral protection. A partial response is to point out that while non-agents would not be the subjects of direct duties, they could still be the subjects of vicarious duties. Inflicting harm on a non-agent would still be impermissible where it happens to violate the will-rights of an agent. And we typically love our children, pets and others deemed to be non-agents so profoundly that harming them is likely to harm us in ways that could amount to an infringement of our rights. But that will not suffice as a defence of a rights-based theory within a cultural or refined cultural morality with a core moral conviction that non-agents are owed direct duties. A more sophisticated response, which will be advanced in the next chapter, is available if will-rights are considered to be *categorical*. That response, which draws out the moral implications of the inescapable fallibility of our judgments

⁴⁰ See Hohfeld 1923.
⁴¹ eg Hart 1955. There is a crucial difference between *waiving the benefit of a right* (ie releasing another from the correlative duty) and *waiving the right itself* (ie giving up the right). This is important if the rights-based camp is to capture theories holding that rights are *inalienable*, so that an individual cannot possess the properties of a rights-holder without possessing the associated rights (see eg Gewirth 1978).
⁴² eg MacCormick 1977.
⁴³ eg according to Keown, the right to life is ‘a right not to be intentionally killed’ and the correlative duty not to kill commands respect over ‘a choice to kill, whether another or oneself’ (Keown 2018, 38 and 53, respectively).
about others’ minds, shows that protecting categorical will-rights requires interest-rights to be granted to those who seem to be only partial agents.

This chapter has so far summarised examples of theorists’ work within all but one of the five camps: utilitarian (eg Harris and Hare), rights-based (eg Gewirth), duty-based (eg Kant) and mixed theories (eg Beauchamp and Childress). No examples have yet been cited of virtue ethics, which has its origins in the work of Aristotle and is undergoing a revival, particularly within feminist theory.\(^{44}\) Theories of virtue ethics focus on virtues and vices, character and motive. If they are to be understood as moral theories, then they need to be interpreted as giving rise to other-regarding obligations to act either in accordance with a set of virtues or as a virtuous person would act.

More generally, the conception of the good life attributed to a virtuous person need not impose duties to act in the interests of others. Part of the appeal of an ethic extending beyond other-regarding duties is that it enables various feelings and relationships to be regarded as good or bad without those evaluations implying a duty to bring them about or prevent them. There cannot, for example, be a meaningful duty to love someone, because you cannot have a duty to bring about a set of feelings over which you do not have voluntary control. You could meaningfully have a duty to try to love someone or even to act as if you love someone, but love as a subjective feeling is not the meaningful object of your will. It needs to be emphasised, however, that the language of morality in no way prevents recognising love, friendship, benevolence or other such feelings and relationships as morally good; as long as this is not taken to suggest that the achievement of these things could be a moral requirement.

Virtue ethics is to be distinguished from accounts of virtue within other types of normative theory.\(^{45}\) From the perspective of other theories, a virtue is to be understood as a character trait disposing towards compliance with the tenets of that theory, such as the maximisation of utility or compliance with rights.\(^{46}\) Since virtues may refer to intrinsic or instrumental goods in this way, particular care needs to be taken when identifying a virtue ethics theory from use of the language of virtues.

1.3. Refined Cultural Morality and the Law

Legal instruments and judicial decisions frequently directly appeal to a refined cultural morality. Consider judicial references to ‘right-thinking members of

\(^{44}\) See Aristotle BCE and Anscombe 1958 (often identified as the inspiration for the revival of virtue ethics). More recent examples include Hursthouse 1991; MacIntyre 2007; Besser-Jones & Slote 2015; Berges 2015.

\(^{45}\) See Hursthouse 2016, who refers to the latter as ‘virtue theory’.