

# **Ethics – Ways of Thinking & Acting**

**Talk for the Victorian Government Solicitor's  
Office**

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When I sat down to consider what I was going to say today I recalled the words of Groucho Marx, who said: “The secret of life is honesty and fair dealing. If you can fake that, you've got it made.”

Now we may laugh because of the incongruity of the idea of faking honesty and fair dealing. But the linking of those concepts to the secret of life, is perceptive and goes to the heart of what ethics is about.

What I want to do today is to provide a brief introduction into ways of thinking about and applying ethics. My focus will be on ethics in the personal sphere, but the main themes are also relevant to one's working life. The topic is large and broad and so I can only try to give you a very general overview. My hope is to at least ignite a few sparks that may cause you to go away and think further on the matters raised today.

## **What is Ethics?**

So first, what is ethics? Ethics is essentially about what is right or wrong, good or bad, or what should or should not be done.

One definition of ethics in the applied sense, is that ethics refers to “standards of behavior that tell us how human beings ought to act in the many situations in which they find themselves - as friends, parents, children, citizens, businesspeople, teachers, professionals, and so on.”<sup>1</sup>

But in a broader sense, ethics can be said to be an ongoing endeavour to answer the question “how one should live one's life?” - a question that goes back to Socrates. What follows from that then is seeking an answer to the question “what ought I to do?”.

Unfortunately, there are no agreed rules, formulas or ways of thinking. Answering these questions requires self-reflection on a constant basis. The Australian philosopher, Peter Singer, has said that, “To live ethically is to reflect in a particular way on how you live, and to try to act in accordance with the conclusions of that reflection.”<sup>2</sup>

Ethical reflection requires one to transcend one's own self-interest and recognise that others have interests as well. We should be able to say that the decisions we make are ones that we would want others to make in similar circumstances.

Many religions have adopted an ethical standpoint as summarised by the biblical Golden Rule – “do unto others as you would have them do unto you”. This can be contrasted with the Golden Rule of the Wild West – “do it to him before he does it to you”.

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<sup>1</sup> The Markkula Center for Applied Ethics (<http://www.scu.edu/ethics/practicing/decision/framework.html> - 4.11.07)

<sup>2</sup> Peter Singer, “*How are we to live?*”, Port Melbourne, Victoria, 1994, p.ix.

Now we can see that following the rule of the Wild West isn't going to get us very far. It would mean every man and woman for themselves, and would lead to a permanent state of anxiety and conflict. In such a situation, as Thomas Hobbes put it, the life of man would be "solitary, poor, nasty, brutish and short".

So to some extent ethical behaviour has evolved because we are social creatures that live in communities and rely on each other to a greater or lesser degree. It is about appropriate behaviour in dealing with others, recognising that we are all better off if there is cooperation and trust.

That is not to say that ethics is a construct of culture. Culture may play a part, but it is by no means the sole or primary determinant of what is ethical – contrary to the view of those known as cultural relativists. In this regard we should remember that for much of human existence slavery was culturally acceptable, as was the view that women were not entitled to the same rights as men.

Clearly different cultures have different practices, but often when one looks deeper into the underpinnings of those practices, we see a considerable amount of commonality. So, for example, one native tribe follows the ritual practice of eating its dead and is horrified to find out that another tribe buries them in the ground. The tribe that buries its dead are equally horrified by the cannibalism of the others. But what is common to them both is that they have a view that the dead should be honoured. They just have different ways of doing it.

Some thinkers have sought to look internally to the make-up of persons as a source of ethics. Charles Darwin suggested that we have a natural social instinct that leads us to have sympathy for our fellow human beings and a conscience that results from such feelings.<sup>3</sup> On the other hand, we also have desires to further our own self-interest and other perhaps less sympathetic desires. Our ability to reason, to engage in rational thought, can act as a constraint on, and a filter for, our passions and feelings, but there is no common internal mechanism that necessarily directs us to act ethically. Sympathy may be one motivation for ethical conduct but it is not a necessary or sufficient cause. Indeed, one of the challenges of ethics is how to counter limited sympathies.

The major religions have looked to a divine source for morality. What is right and good is what God says it is. There are a number of difficulties with this position. In particular, which of the Gods of the various religions is the one to listen to? And then how does one ascertain what the will of that God is, or would be, in the relevant circumstances? Further, one might also ask the question, if something is good only because God says it is, then how does one establish that God is good?

Unfortunately, the search for a purely objective basis for determining ethical conduct has not succeeded. Ethics is not a science. That does not mean that we should give up on the project of ethical reflection and deliberation. Most of us want to do, and want to be seen to do, the right thing. And we want to be able to justify our actions on grounds that would be acceptable to reasonable people. We regularly engage in

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<sup>3</sup> Charles Darwin, *The Descent of Man*, London 1875

ethical discourse in our every-day lives and make judgments about whether individuals are deserving of praise or condemnation for what they have done.

### **Key elements of ethical behaviour or judgments**

The question then is, are there some recognisable elements to ethical behaviour? There do appear to be some broad commonly agreed factors. These can be summarised as follows:

First, ethical conduct should be assessed from an *impartial* standpoint. When we act ethically, we are looking beyond our own interests. We look at things from the viewpoint of the impartial bystander. What would the impartial bystander consider the right thing to do?

Second, when we make an ethical judgment, we are saying that it should be applicable to everyone in relevantly similar circumstances. In this sense we say that it is *universalisable*. The action is not right or wrong for this person alone, it is right or wrong for everyone in relevantly similar circumstances.

Third, our decisions need to be *justifiable* based on reasons that are rational and that would be accepted by reasonable persons. One aspect of being able to justify one's decisions is that they should be consistent.

And fourth, our decisions should be *action-guiding*. We should be prepared to act on them.

### **Ethical Theories**

I come now to ethical theory. I propose to give a brief, and by necessity, very general, overview of the main ethical theories that have been proposed as guiding our ethical behaviour and judgments.

Ethical theories are often presented in three categories: (1) those that rely on consequences; (2) those that rely on rights and duties; and (3) those that rely on virtues.

A consequentialist approach evaluates actions on the basis of their consequences, their tendency to bring about a certain state of affairs. The most widely adopted consequentialist theory is utilitarianism, attributed to Jeremy Bentham and John Stuart Mill. Broadly, utilitarianism holds that the best action is one that produces the greatest overall happiness. Happiness was chosen because it was considered to be an intrinsic value towards which all other activity is directed. Utilitarianism is a consequentialist approach because one's conduct is aimed at producing the best consequences - the maximisation of happiness. Other consequentialist approaches might seek to maximise other sources of value, such as pleasure, justice or the satisfaction of people's preferences.

A rights and duties approach differs, in that it aims to establish pre-determined rights and duties that cannot be abrogated, and in particular, do *not* vary depending on the consequences. The 18<sup>th</sup>-century German philosopher, Immanuel Kant, was one of the foremost promoters of this approach. He suggested that ethical conduct was based on doing one's duty arising from what he called a 'categorical imperative'. One way in which Kant suggested we determine whether we have a categorical imperative is to consider whether we would be prepared to prescribe certain action in universal terms to everyone – as a universal law. If it is something that we are willing to say everyone should do or should not do, then it becomes a duty that binds us.

Kant also described his categorical imperative as treating human beings always as ends and never merely as means. By this he meant that humans have an inherent dignity such that they should never be used merely for another's own benefit, as a means to that other person's ends, and therefore that they shouldn't be harmed or deceived or be treated in a way that would prevent them from exercising their own autonomy and pursuing their own ends.

Another way of determining ethical conduct that comes under the rights and duties approach, is the 'contractualist' approach, based on a notional contract or agreement. This relies on attempting to ascertain what rules of conduct might be agreed by rational parties if they were placed in a hypothetical situation of having to determine the rules by which they were to live. What rules would they hypothetically agree to?

To give you an example of the different results that may follow from a consequentialist approach, in contrast to a rights and duties approach, I'll refer to a thought experiment called "Jim and the Indians"<sup>4</sup> created by the English philosopher, Bernard Williams.

Williams gives the following scenario:

A foreigner, Jim, accidentally wanders into the central square of a South American village. Tied up against the wall are 20 native Indians facing a firing squad. Pedro, the commander, after establishing that Jim is a foreigner from a far away land, decides to honour Jim by allowing him to shoot one Indian. If Jim does that, then Pedro will release the others. If Jim does not participate, then the firing squad will shoot them all as planned. There are no other options available. Jim has to decide either to shoot one person and enable 19 to go free, or to do nothing and watch all 20 die.

A consequentialist would say, the better consequences would be to have only one person die rather than 20. Therefore, Jim should shoot. Someone favouring a rights and duties approach would say that killing an innocent person is absolutely wrong and a violation of that person's rights. Therefore, Jim should not shoot.

Both positions can be argued from an ethical standpoint. You may have your own view, but most people would see an ethical dilemma. I'll leave it to you to dwell on

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<sup>4</sup> Bernard Williams 'A Critique of Utilitarianism' in J.J.C. Smart and Bernard Williams, *Utilitarianism for and against* (Cambridge University Press: Cambridge, 1973), pp 96-100. Reproduced in Peter Singer ed., *Ethics*, (Oxford 1994) pp 339-345.

what you might do. You might also like to think about whether your decision would change if the number of potential deaths varied substantially.

The other main theoretical approach to ethics is the ‘virtues approach’. This goes back to ancient Greece. It does not provide a formula for determining the right course of action. Rather, it focuses on the moral character of the decision-maker. So it is not about ‘What should I *do*?’ but rather ‘What sort of person should I *be*?’. The premise is that a morally sound person instilled with certain traits of character would intuitively know what the right thing to do was.

The ancient Greeks considered that there were four cardinal or major virtues - namely courage, temperance, wisdom and justice. Thomas Aquinas in the 13<sup>th</sup>-century added three theological virtues - faith, hope and charity. Perhaps a more modern, but by no means definitive, list of virtues that a person of good character might develop, would include the following:

honesty, courage, compassion, generosity, tolerance, fidelity, integrity, fairness, self-control, practical wisdom, politeness, respect, and gratitude.<sup>5</sup>

In this regard I note that a number of these virtues are incorporated to some extent in the Code of Conduct for Victorian Public Sector Employees<sup>6</sup>. In particular, the virtues of honesty, fairness, respect and integrity stand out.

## **Reflective Equilibrium**

I turn now to the notion of ‘reflective equilibrium’. Strict adherence to one ethical theory or set of principles can lead to results that we may find jar against our intuitions as to what is right or good. In practice, we often engage in what John Rawls called a ‘reflective equilibrium’ where we reflect back and forth between ethical theory or principles on the one hand, and our intuitions on the other hand. In a state of reflective equilibrium, we may come to modify ethical theories or principles so that they accommodate our more firmly felt intuitions or, alternatively, we may see that in the light of a rational application of a theory, our intuitions should be adjusted, for instance because they may be based on some prejudice or failure in rational thought.

For example, we might start off with the principle that it is wrong to lie – that we have a duty not to lie and that others have a right not to be lied to. There are a number of reasons as to why that is a good principle. However, we all know that there are some situations where lying can help grease the cogs of social harmony – the so-called ‘white lies’. Telling someone that they look good when they don’t, or turning down an invitation by saying that you are already booked on that date when you are not. Or there may be more serious situations where you lie to protect yourself or someone else from a grave threat. You have now qualified your principle of not lying, by reference to the better consequences that may flow from lying in certain circumstances. Your intuitions have caused you to reflect on the principle you first

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<sup>5</sup> One more detailed consideration of relevant virtues can be found in Andre Comte-Sponville, *A Short treatise on the Great Virtues*, Vintage, London, 2003.

<sup>6</sup> See the State Services Authority website at:  
<http://www.ssa.vic.gov.au/CA2571410025903D/0/4CC303660D457702CA257150002EF72B?OpenDocument>

held, but now you need to come up with an internally consistent approach to the issue of lying that you can justify on rational grounds.

An ethical approach suggests that you should be able to universalize your decision from an impartial perspective. In other words, consider whether a reasonable impartial bystander would be prepared to agree to everyone acting in the same way in similar circumstances.

### **Moral Saints – ‘Overdemandingness’ of Ethics**

I want to say something about the perceived ‘overdemandingness’ of ethics. One criticism of ethical theory in general is that it can appear to make demands on our lives that are impossible to achieve. That it tries to turn us into what philosopher Susan Wolf calls ‘moral saints’<sup>7</sup>. She defines a moral saint as “a person whose every action is as morally good as possible” – someone whose life would be “dominated by a commitment to improving the welfare of others or of society as a whole”.<sup>8</sup>

Wolf suggests that that is not, and should not be, the aim of ethical theory. She says that our lives would be “strangely barren” if we devoted all our time “to feeding the hungry or healing the sick or raising money for Oxfam”.<sup>9</sup> There are many activities in life other than moral pursuits that are worthwhile and that contribute to us developing into healthy, happy, well-rounded and richly endowed human beings. And from a consequentialist point of view, one might argue that society as a whole benefits from individuals developing in this way.

So, we shouldn’t feel that an ethical life imposes an obligation to relinquish all these other activities. Leading an ethical life shouldn’t be overly burdensome. It should be within the bounds of what is psychologically realistic. Ultimately, each individual has to decide how he or she will live. And hopefully that will entail self-reflection, evaluation and re-evaluation from an ethical standpoint. But if the ethical life is thought to be too hard, then people will opt out altogether, and that would be antithetical to the aim of ethics.

### **Personal and professional ethics**

Up till now I have been discussing personal ethics – ways of thinking and acting in one’s personal life. In one’s professional life there are other forces at play. In particular, decisions in professional life have to take into account the fact that there are different stakeholders involved, including one’s employer and one’s clients, and that different duties may arise in virtue of one’s professional role. Sometimes the personal and professional may appear to be in conflict. For example, a lawyer’s obligation of confidentiality to his client may prevent him from disclosing something that may be for a greater common good. Or a public servant may believe that certain

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<sup>7</sup> Susan Wolf ‘Moral Saints’, *Journal of Philosophy*, 79 (1982) 419-439, reproduced in part in Peter Singer ed, ‘Ethics’, Oxford 1994, pp 345-361

<sup>8</sup> Ibid, p. 346

<sup>9</sup> Ibid, p. 348

government conduct will cause disadvantage to some people, but the government of the day has decided that it should be done.

Professional obligations need to be considered in the broader context of the pluralist liberal democratic society that we live in. There are roles that are best performed in particular ways for the overall benefit of society – for example, justice is thought to be better served by upholding client confidentiality, because confidentiality encourages clients to be more open with their lawyer, thereby enabling the lawyer to more ably advise on the client's rights and legal options; and a system by which the carrying out of government decisions made by democratically elected and publicly accountable representatives, is thought to be the more preferable system by which we should be governed. In other words, the decisions and judgments we make in our professional lives need to be considered on a larger canvas.

It is sometimes difficult for professionals to see the broader landscape and the benefits to society as a whole by them being required to act in certain ways. That is one reason why most professions have developed codes of conduct. Built into those codes are rules that have been considered having regard to the role of the profession in society.

### **Impediments to ethical decision-making**

Before I go on to discuss some practical considerations in approaching ethical decision-making, I want to mention briefly some impediments.

Some of the main impediments to ethical decision-making are as follows:

- having insufficient or incorrect facts
- not having clear goals
- pride or fear (leading to individuals not asking questions, or not seeking help, or not being prepared to make the hard but right choices)
- lack of knowledge or experience
- an inappropriate work culture, where ethical conduct is not recognised or is subverted
- perceived conflicting loyalties
- addictions, such as drugs, alcohol and gambling
- pressure from a perceived lack of time (how often do we rush something only to find out later that we could have had more time?); and
- tunnel vision.

To elaborate further on the last two points, I shall mention an experiment that focuses on what can happen when there are perceived time pressures and how tunnel vision can prevent us from seeing what is more important.

In 1973, psychologists John Darley and Daniel Batson<sup>10</sup> set up an experiment with students from Princeton Theological Seminary. The experiment was based on the

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<sup>10</sup> Darley, J. M., & Batson, C. D. (1973). "From Jerusalem to Jericho": A Study of Situational and Dispositional Variables in Helping Behavior," *Journal of Personality and Social Psychology* 27



biblical parable of the Good Samaritan, which tells of a Samaritan stranger who helped an injured man who had been assaulted by thieves and then left on the roadside half-dead. Others passed by on the other side of the road without helping.

For the experiment, students were informed that they were to give a talk that would be recorded in a nearby building. Half of the students were assigned to give their talk on the Good Samaritan parable; the others were assigned to talk about seminary jobs. Some were told that they were running late and should hurry; some were told they had just enough time to get to their destination; and some were told that they were early, but that nevertheless they should make their way over. On the way over, the students had to pass an actor slumped in a doorway. He moaned and coughed and looked in considerable distress.

Of the students who were told that they were running late, only 10% stopped to offer assistance to the actor. Of the students who were running early, 63% stopped to help. Of those told that they had just enough time, 45% stopped. The important comparison is that 10% of those running late, compared to 63% of those running early, stopped to give assistance. It made no difference whether the students were to give their talk on the Good Samaritan parable or on seminary jobs, nor did it matter what their particular religious outlook was. The main determinant in the provision of assistance was how much of a hurry the students were in.

This was just one experiment, and there could be a number of conclusions from it. Do ethics become disposable or secondary in our faster paced lives? Is our cognitive capacity affected by hurriedness? One plausible conclusion is that the experiment demonstrates that under time pressure we can be too focused on a particular task to the extent that we may close our eyes to what is more important.

### **Considerations in reaching an ethical decision**

Finally, I want to suggest some questions that might be considered in trying to reach an ethical decision. The following questions are intended as prompts to help guide you in the right direction:

- First, what is the problem? Define it and come back to it in the light of further reflection.
- Do you have all the relevant facts?
- Are you satisfied as to the truth of those facts?
- Who are the individuals and groups likely to be affected by your decision?
- Do you have specific obligations that need to be satisfied?
- What options do you have?
- What are the likely consequences of the various options?
- What option would lead to better overall consequences for all affected?
- What option do you think a person of the highest character would choose?
- Have relevant persons been consulted?
- If there is a clear ethical dilemma, is there another party or body that can be consulted to help resolve it?
- Would you be happy if your decision were open to public scrutiny?

- What would your family think of your decision?
- Would it be acceptable to the person you most respect?
- How would you feel if you were the subject of the decision?
- Would your decision be one that you would be happy for anyone to make?
- Would your decision be consistent with your values and those of your organisation?
- Will you think well of yourself?<sup>11</sup>

I'll end with the words of Ann Landers, an American newspaper columnist, who said: "Hold up the decision to the glaring light of publicity. Would you want your family and friends to know what you have done? The decisions we make in the hope that no one will find out are usually wrong."<sup>12</sup>

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<sup>11</sup> See other decision-making frameworks at: *The Markkula Center for Applied Ethics* at <http://www.scu.edu/ethics/practicing/decision/framework.html> - 19.2.08; St James Ethics Centre <http://www.ethics.org.au/about-ethics/what-is-ethics/ethical-decision-making.html#2> - 19.2.08; Josephson Institute <http://josephsoninstitute.org/MED/index.html> - 19.2.08

<sup>12</sup> From 'Dear Ann', *The Washington State Journal* (October 5, 1969), Ann Landers. Reproduced in *Morals and Values*, ed Marcus Singer, New York, 1977.