

Model Code of Ethics Principles





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INTRODUCTION

This document is in two parts. The first part consists in a summary of the main points of the document. The second part - comprising the main body of the document - elaborates and justifies the main points set out in the summary. (There is also an appendix describing the methodology used in producing this report, and listing references used.)

To assist the reader to find further details in the second part of the document regarding points made in the summary, the relevant page numbers of the second part are provided in the summary.

This document is not simply a 'how to do it' tool kit setting forth the means by which a code of ethics for occupations can be written. Rather it attempts to explain the nature and role of codes of ethics. That said, it provides a description of the generic content of codes of ethics, and an outline of the process that needs to be gone through in the devising of a code of ethics.

The specific content of codes of ethics are always matters of dispute. So inevitably the generic content of codes of ethics for occupations will be a matter of dispute. I have sought to offer a specific set of recommendations regarding the generic content of codes of ethics for occupations, and I have offered justifications for the content that I have recommended. However, this should be taken as an indicative list of issues to be covered in any given code of ethics, and not slavishly followed. Reasonable people can disagree on these issues.

Moreover, I have offered a specific process for writing a code of ethics for occupations. Once again, there are other ways of doing it, albeit ways that I do not believe should differ too radically from the process that I have recommended.

Finally, I have not sought to explain and justify, or solve in detail, all the controversial and problematic issues that codes of ethics give rise to. For example, I have not tried to solve the problem of how to write a code of ethics for members of an occupation working in a multi-disciplinary workplace, or working in an organisational setting in which there are potential points of tension between the requirements of the occupation and the requirements of the organisation. However, I have provided some assistance in relation to some of these issues. For example, I argue that codes of ethics for organisations need to be framed in part in relation to the ethically sustainable goals of the organisation. And I elaborate a position in regard to some of these issues, notably the distinction between the professions and other



occupations. While accepting that there is no clear dividing line between the professions and other occupations, I nevertheless argue that there are a set of (sometimes not clear cut) criteria for being a profession. Inevitably, other occupations will meet some of these criteria, and some members of some professions will not meet all of them. However, the existence of these grey areas does not vitiate the distinction; it merely complicates the overall picture.

Professor Seumas Miller Canberra, June 2002

1. Summary

Main Points

Ethics or morality is about what actions an individual person or member of an occupation ought to do, for example, journalists ought to seek the truth; and it is about what kind of character an individual person or member of an occupation ought to have, for example, firemen ought to be courageous. It is also about what features the organisations which employ members of specific occupation ought to have for example, systems of promotion ought to be fair.

Ethics is not the same thing as etiquette or manners. In general, codes of ethics should not address issues of politeness or dress.

Ethics is not the same thing as aesthetics. In general, codes of ethics should not address issues of style, rhetoric or self-presentation.

Codes of ethics refer not only to moral principles, but also to ideals of the good, for example, an engineer might insist on load bearing standards well above what the law requires because of his commitment to the ideal of safety. Sanctions – sanctions applied in the context of an appropriate complaints and discipline system - ought only to be deployed in relation to minimum standards (morality) but not in relation to ideals (ethics).

The view that codes of ethics are simply rules that prescribe what actions are to be performed, and what actions are not to be performed, is too narrow. Codes typically mention virtues, for example, integrity, and vices, for example, dishonesty, as well as actions. Further, codes of ethics are, or ought to be, concerned with affective attitudes for example, sympathy, as well as actions.

The culture or ethos of an occupational group or organisation is the 'spirit' that pervades it. Culture in this sense refers in large part to the attitude of the members of the group to one another and to their clients or customers. Culture in this sense is very often a question of ethical attitude, and therefore ought to fall within the purview of codes of ethics.

Goal or ends, including ideals, are states of affair or outcomes that individuals or groups or



organisations aim at or seek to realise by means of their actions, for example, year-end record profit. Ideals and aspirations are goals or ends that are good, or at least believed to be good. Principles, by contrast, govern actions, not as ends to their means, but as rules or maxims to instances of conformity to them, for example, do not mislead shareholders. As such, principles prescribe regularities in action, for example, do not commit acts of fraud.

Problem solving strategies and policies need to be framed in relation to the fundamental ends or goals of the institution or occupation; which is to say they need to be contrived and implemented on the basis of whether or not they will contribute to transforming the institution or occupation in ways that will enable it to provide, or better provide, the good(s), including services, which ultimately justify its existence. For example, additional training in interviewing may enable an auditing team to provide more comprehensive and more accurate audit reports.

In so far as codes of ethics are devices that can be used to reinforce desirable behaviour and change undesirable behaviour then they need to attend not simply to the behaviour (action) itself, but also to the character (habits) and affective attitudes that condition and motivate that behaviour.

There is an intimate connection between law and morality, but they are not identical. Yet many people conflate law and morality - they think everything that is law is morally good, and that everything that is morally good is the law. This view is particularly common among people whose task it is to make or uphold the law, such as lawyers and police officers. It is, however, a view that should be resisted.

Codes of ethics are a good place for members of occupations to signal their commitment to the basic laws, and thus basic moral standards, of their community, including the principle of individual autonomy (freedom of movement, of speech, to work etc.) which is the cornerstone of a free society.

The task of occupational ethics - as a branch of ethics, and thus in turn of applied philosophy - is systematically to reason and make judgements about ethical issues and problems that arise in occupations. As such, occupational ethics is not concerned with ethical issues that arise outside the work environment in (say) one's family life.

Codes of ethics ought not to address ethical or moral issues that are irrelevant to, or outside the sphere of, the duties, tasks and role of the occupation in question. For example, a practitioner's lawful sexual practices ought not to be an issue addressed in most codes of ethics.

Moral or ethical decision-making is, or ought to be, based on reasons. For example, fees ought to be paid because (for the reason) clients promised to pay them; sexual relationships between



psychiatrists and their clients are unethical because (for the reason) the special and unequal relationship between them makes it unlikely that consent to the relationship will be without coercion.

Some codes of ethics are supplemented by a model of practical moral reasoning, for example, the code of conduct of the Institute of Chartered Accountants of Australia, and of the Certified Practising Accountants. It is desirable that codes of ethics be supplemented by a sound model of practical moral reasoning in order to facilitate the application of the codes.

Occupational roles are defined in part by the end or ends that they serve, and in part by the types of action or activities that they perform which are the means to that end(s). In addition, some roles are evidently in part defined by the attitude that practitioners ought to have or adopt. This is especially true of occupational groups such as child minders, nurses, social workers, and psychologists.

In undertaking many, if not all, occupations individuals accept professional obligations, but some of these obligations are also moral obligations. These moral obligations are additional to the moral obligations that they had prior to entering the occupation; they are internal to the occupation.

Since the telos or end of the work of many occupations – notably the professions - is a moral good for example, health, then this should to be stressed in their codes of ethics.

Where members of an occupation have distinctive rights, for example, autonomy of surgeons in relation to whether or not to operate, the discretionary powers of individual police officers to arrest, these should be stressed in their codes of ethics.

There is a large degree of consensus in the sociological and philosophical literature as to the distinguishing marks of professional occupations, as distinct from occupations in general. Five such marks are especially salient. An occupational group counts as a profession in virtue of its having the following features: the work of its members is oriented to the provision of some good; members of the group possess and exercise creative expertise in the provision of this good; they possess a high degree of autonomy in the exercise of their expertise; they are grouped together as a self-conscious community; and they have a certain institutional status which typically is accorded legal recognition and protection.

The achievement of the institutional status of a professional brings with it a set of rights and duties which are, in a variety of ways, anomalous in comparison to those held by other workers: this anomalous status is in part a consequence of the legal privileges and requirements extended to the profession, for example, lengthy accredited university based education. Moreover, given the role of the professional associations, the code of ethics of members of the professions will need



to have sanctions built into them.

The relation between the members of some occupational groups (notably the professions) and their client group should not be assimilated to that which holds between buyers and sellers in a market. The professions and like occupations have a larger purpose; they exist to provide moral goods such as health, education, justice and the like; and provision of these goods is in the public interest.

Codes of ethics for the professions, and like occupations, need to reflect the relative priority of the moral goods – and public interest - that justify their existence over the requirements of the market.

When members of any occupation compete in the marketplace they ought to do so under conditions of fair competition, and with due regard to the rights of consumers.

A code of ethics has two aspects: (1) the content comprising the requirements, rules, principles, ideals, and so forth; (2) the commitment of the members of the occupation or organisation to conform to, and otherwise uphold, those rules and ideals.

While historically codes of ethics for occupations were the preserve of the professions, this is no longer the case; nor should it be. Codes of ethics are good for the professions; but equally codes of ethics are good for other occupations.

Since practical knowledge of ethical principles and ideals, and practical knowledge of their application, is not a static thing – ethical problems and the solutions to them undergo change – there is a need for ongoing revision of the code of ethics, ongoing education in relation to changes to the code of ethics, and especially ongoing education in relation to the application of the principles and ideals expressed in the code of ethics. The code of ethics, and associated ethical education, ought to be an important element in initial formal and informal education programs, and also in continuing education programs.

The process by which a code of ethics is drafted, or redrafted, ought to involve not only consultation regarding the basic principles and ideals, but also research into ethical problems confronted by members, and some attempt to have members ratify or otherwise indicate their acceptance of the code once it is finalised.

Codes of ethics prescribe and proscribe specific actions, and many of them attach sanctions to non-compliance. So codes of ethics have a regulatory function, in addition to their educative and cultural integration functions. Often the main regulatory role of a code of ethics is actually played by an associated code of practice. The code of ethics is a basic presentation of principles and ideals; the code of practice is a detailed description of the specific actions that are to be performed and not performed under given conditions, and of the sanctions that attach to



non-performance.

In contriving regulations account ought to be taken not simply of the self-interested motivations of the relevant actors, but also of their ethical motivations, including not only their sense of fairness and susceptibility to feelings of shame, but also their desire for the respect that goes with achievement of high ideals. This is a general truth that goes as much for codes of ethics and codes of practice, as it does for laws and regulations.

If reform in relation to regulations is to be effective then there needs to be a well-educated and ethically informed community of reflective practitioners; regulation and education, including ethical education, need to go hand in hand. Codes are a useful tool in this regard; for they are, or ought to be, documents that embody both a regulative and an educative function in relation to the basic principles and ideals of an occupation.

Codes of ethics should not exist in isolation. If they do they are unlikely to fulfil their educative, regulatory and integrative functions. A minimal code of ethics needs to be supplemented by explanatory material, by a model of practical ethical reasoning, by concrete examples of ethical problems and solutions, and where appropriate, by a code of practice.

Codes of ethics – and their associated codes of practice – should exist in an occupational environment in which the systems of reward and of punishment are perceived to be fair and reasonable. Moreover, codes of ethics need to exist in an occupational environment in which they are ‘owned’ by the members of the occupation in question.

Individual members of an organisation or occupation have ethical responsibilities in relation to the behaviour of individuals other than themselves. For example, a practitioner who becomes aware that one of his or her peers is incompetent or engages in serious wrongdoing that is in contravention of regulations or laws, may have an obligation to report the conduct. Certainly, there is an obligation to do something about this situation. This individual obligation (say) to report, exists by virtue of a collective responsibility to ensure that the minimum standards enshrined in the code of ethics are complied with.

A self-regulating occupation is such that members run their own accountability systems, including complaints and discipline systems. More importantly, a self-regulating occupation is one in which members see to it that infringements of minimum standards are not tolerated; this is not so much a matter of formal processes, as of an ethical culture and a strong sense of collective responsibility.



2. Generic Content of Codes of Ethics

The generic content of codes of ethics is a matter of dispute. Nevertheless, in my view (defended in the main body of this document) in relation to their **generic content**, codes of ethics should ideally:

1. Describe not only minimum standards, but also occupational ideals; in so doing they should include not only action guiding principles, but also virtues and desirable attitudes, for example, 'Members of the Fire-fighters Brigade shall act with courage, but not recklessly endanger their own life, or that of others.'
2. Contain a statement to the effect that minimum standards ought not to be compromised, even in the face of internal pressure from the occupation or organisation to which one belongs or external pressure from outside organisations and groups, for example, 'Members of the Engineering Profession shall not compromise safety standards in buildings, since safety takes priority over commercial and other considerations.'
3. Contain a statement to the effect that members of the occupation or organisation ought to obey the just and reasonable laws of the community, for example, 'Members of the Taxi Drivers' Association shall obey the laws of the community, including the traffic laws, since they reflect the just and reasonable standards acceptable to the community'.
4. Contain a statement expressing commitment to the principle of individual autonomy (embracing freedom of movement, of speech, freedom to work for reasonable remuneration etc.) - the cornerstone of a free society, for example, 'The freedom of expression, and of association, of employees of the Widget Company ought not to be infringed in the workplace, since they are fundamental human rights'.
5. Contain a statement expressing commitment to non-discrimination on the basis of gender, race etc. for example, 'Members of the Customs Service shall not discriminate on the basis of gender, race, or religion'.
6. Contain a statement to the effect that members of the occupation or organisation ought to obey the just and reasonable regulations governing the activity of the members of the occupation or organisation in question (and relevant document setting forth regulations could be named), for example, 'Members shall comply with the regulations governing the practice of surveying as set out in the Association of Surveyors' Code of Conduct. If members believe any of these regulations to be unjust or unreasonable they should provide a written communication, citing reasons, to the



relevant officers of the Association’.

7. Contain an integrity statement to the effect that members of the occupation or organisation ought to avoid telling lies (tell the truth) and do what they say they will do (keep their promises), for example, ‘Members of the Real Estate Institute shall not misinform, or otherwise mislead, either the vendors they are acting on behalf of, or potential buyers’.
8. Set out the fundamental goals of an occupation – which in the case of the professions and like occupations, will be moral goods that are also public goods, for example, health, law and order, education, provision of housing - as well as the constraints on the pursuit of those goals. Police officers must act for the purpose of ensuring that the law is upheld and that conditions of social calm are maintained, but they must do so in a manner that ensures that the rights of citizens, victims and offenders are respected.
9. Identify the most important principles, rights and ideals listed in the code for example, ‘The most fundamental principle to be upheld by members of the Journalists’ Association is the freedom of the press’.
10. Set out the principal rights of members of the occupation in relation to salient groups such as employers, peers and clients for example, sphere of autonomy in relation to their employers. For example, ‘The autonomy of individual teachers in relation to specific course content and teaching methodology ought to be promoted, in so far as this does not conflict with the rights of colleagues or students, or with departmental guidelines’.
11. Contain a statement or statements committing members to respect the relevant rights of consumers, clients or others they serve for example, informed consent in relation to the work to be undertaken and the fees and payments to be charged, privacy and confidentiality. For example: ‘Employees of the National Bank shall keep the financial affairs of their customers confidential, unless required by the law to disclose them’; ‘Members of the Dentistry Association shall not perform any dental procedure on a patient without their informed consent’.
12. Contain a statement to the effect that complaints and disciplinary processes ought to conform to principles of independence, reasonableness and fairness. For example, ‘In their adjudication of complaints against police, members of the Police Complaints Tribunal shall not have a vested interest in a particular outcome, and shall make their judgements on the basis of the available evidence, and in accordance with



principles of natural justice, as well as in compliance with the provisions set out in the Disciplinary and Complaints Regulations’.

13. Contain a statement to the effect that members ought only undertake work that they are competent to perform, for example, ‘Members of the National College of Surgeons shall not perform surgical operations outside their sphere of expertise’.
14. Contain a statement to the effect that members ought to undertake their work conscientiously, and with efficiency and effectiveness, for example, ‘Members of the Bus Drivers’ Federation shall ensure that they keep to scheduled timetables’.
15. Contain a statement concerning the need for adequate initial and ongoing training and education, for example, ‘Members of the Oculists’ Association shall gain a minimum of ten points per year in the Association’s Professional Development Program in order to ensure that they keep up to date with recent developments’.
16. Contain a statement committing members to compete fairly in the market, for example, ‘Members of the Accountants’ Association shall not offer inducements to secure work’.
17. Contain a statement expressing the principle that one should build one’s professional or occupational reputation on the basis of merit for example, ‘Members of the Liquor Sales Representatives’ Association shall not make false or inflated claims in relation to their sales figures’.
18. Address the issue of occupational or organisational culture for example, secrecy and closing ranks in relation to wrongdoing or incompetence on the part of peers, for example, ‘Members of the Department of Social Welfare shall not remain silent or try to protect fellow members when they perform harmful or incompetent actions in relation to the provision of services to the vulnerable’.
19. Address problematic ethical issues that their members confront for example, the appropriate role of the market in relation to the provision of medical services, conflicts of interest arising from various sources, including role confusion. For example, ‘Members of the Auditors Association shall avoid conflicts of interest, including undertaking audits of firms with whom they or their families or their employers have a financial or other interest that may compromise the audit’.
20. Contain a statement in relation to the collective responsibility of members to report on any failure of their peers to meet minimum standards. For example, ‘If a public servant becomes aware of unlawful or otherwise corrupt activity on the part of another public servant he or she must report this either to a superior or to the police or to



the Ethical Standards Committee’.

21. Contain a statement in relation to loyalty and cooperation among members of an occupation in the service of the goals and ideals of the occupation, for example, ‘Members of the Surf Life Saver Association have a duty to render all necessary assistance to fellow members endeavouring to effect a rescue’.
22. The ethical issues raised by members of an occupation working in a multi-disciplinary workplace, or working in an organisation which might have requirements that are in potential conflict with the requirements of their occupation, need to be addressed in their occupational code of ethics, and/or the codes of ethics of the organisations in question. For example, ‘Members of the Journalists’ Association shall provide true and balanced news and comment, including in relation to newsworthy events the public disclosure of which might damage the interests of the organisation that employs them’.

NB: There are issues that codes of ethics should **not** address. These include:

- Etiquette. Ethics is not the same thing as etiquette/manners. So in general, codes of ethics should not address politeness issues. (There are possible exceptions, for example, diplomats.)
- Aesthetics. Ethics is not the same thing as aesthetics. So in general, codes of ethics should not address issues of style, rhetoric or self-presentation. (There are possible exceptions for example, fashion designers.)
- Private morality. Codes of ethics ought not to address ethical or moral issues that are irrelevant to, or outside the sphere of, the duties, tasks and role of the occupation or profession in question. For example, a practitioner’s lawful sexual practices ought not to be an issue addressed in many codes of ethics. Nevertheless, it needs to be noted that sometimes private sexual practices need to be addressed in a code for example, that teachers ought not to engage in sexual relations with their pupils.
- Technical skills and specialised knowledge. Codes of ethics should not attempt to detail specific skills or knowledge that might be necessary to successfully undertake an occupation. For example, public speaking skills are necessary for a successful barrister; but these skills ought not to be detailed in a code of ethics.



3. Process for Developing Codes of Ethics

There are a number of different processes that might be gone through in order to develop a code of ethics. However, I recommend the following **process** for developing a code of ethics for an occupation.

1. Establishment of Ethics **Committee** Phase
 - a. Establish an ethics committee to take responsibility for drafting the code. The committee should involve at least two members from outside the occupation, including a philosopher with expertise in occupational ethics, and at least one person 'representing' the occupation's client group. Membership of the Ethics Committee should be for a specified term. A degree of continuity of membership is desirable. So provision should be made for only half of the terms of members to expire at the same time.
2. Examination of **Issues** Phase
 - a. The Ethics Committee should identify the purposes to be served by a code of ethics for example, education, regulation □ identify the format of code of ethics for example, explanatory material, accompanying code of practice, model of practical reasoning examine the main goals, activities and context (including organisational context) of the occupation outline the role of members of the occupational group detail the main ethical requirements of members of the occupational group identify the main ethical problems likely to be confronted prepare a document setting forth the results of the above discussions. This document is not a draft code of ethics, rather it is a preliminary set of principles, various issues for discussion, and a list of questions. The document is to be used as a guideline during the research phase.
3. **Research** Phase
 - a. The document prepared by the Ethics Committee should be used in the research process of determining the views, attitudes and so on of the members of the occupation and members of salient other groups, for example, clients. That process should (ideally) include: survey instruments use of, and development of, case studies and focus groups interviews with key informants from outside the occupation.
4. **Drafting** of Code of Ethics Phase
 - a. In light of the research findings, a draft code of ethics and accompanying material,



should be prepared by the Ethics Committee.

5. **Consultation** Phase

- a. All registered members should be sent the draft code of ethics together with a questionnaire to gauge their response in general and to specifics.

6. **Ratification** of Code of Ethics Phase

- a. The code should be circulated for the purposes of final comment and ratification by members of the occupation or by the relevant representative occupational bodies.

7. **Review** of Code of Ethics Phase

- a. There should be a formal review of the code of ethics at set intervals by the Ethics Committee. The review should at least involve a Consultation phase in addition to a redrafting by the Committee.



4. Codes of Ethics: Analysis and Justification

Ethics and Codes of Ethics

4.1 Ethics and Morality

Codes of Ethics are concerned with ethics.¹ But what is ethics? Ethics or morality is about what actions an individual person or member of an occupation ought to do, and it is about what kind of character an individual person or member of an occupation ought to have. It is also about what features the organisations which employ members of specific occupations ought to have.

Although ethics is concerned with what ought to be done, or not done, it does not embrace the entire sphere of prescribed or proscribed actions. For there are 'oughts' other than the ethical or moral 'ought'. Sometimes we say things like, "You ought to have said 'Hello' to Jack". Here the 'ought' is one of etiquette. You ought, because it is rude not to greet people; rude, but not necessarily unethical or immoral.

Ethics is not the same thing as etiquette or manners. So codes of ethics should not address issues of politeness.

We also need to distinguish ethics or morality from aesthetics. Sometimes we say that that painting is good, or that so and so ought not wear green trousers with a blue shirt, or shocking pink suits. Here we have in mind aesthetics; it is not unethical or immoral to dress in these ways.

Ethics is not the same thing as aesthetics. So codes of ethics should not address issues of style, rhetoric or self-presentation.

The terms "ethics" and "morality" are often used interchangeably. However, sometimes ethics is distinguished from morality. One way of making the distinction is as follows. Morality is about *minimum standards* of behaviour and attitude. Do not kill the innocent, do not tell lies, do not steal or commit fraud. These are all minimum standards of behaviour; they are moral principles. On the other hand – on this way of thinking - ethics is a wider notion. Ethics involves *ideals* and aspirations; it goes beyond minimum standards. A doctor who was competent, and was not negligent might not be engaged in immoral behaviour. Nevertheless, such a doctor might not be a *good* doctor. To be a good doctor implies doing more than merely complying with minimum standards. For example, a good doctor would have a caring attitude to his or her patients.

¹ For a valuable introduction to codes of ethics see (ed.) Margaret Coady and Sidney Bloch Codes of Ethics and the Professions (Melbourne University Press, 1996)



Henceforth, I will distinguish ethics and morality in this above-described way. So morality refers to minimum standards, while ethics refers to a wider field of value that embraces notions of what is good and worth aspiring to - ideals as well as minimum standards.

Accordingly, codes of ethics will refer not only to moral principles, but also to ideals of the good. One important point to consider in this connection concerns punitive sanctions.

Presumably punitive sanctions - sanctions applied in the context of an appropriate complaints and discipline system - ought only to be deployed in relation to minimum standards (morality) but not in relation to ideals (ethics). A second important point concerns education. If ideals are to be realised then they need to be inculcated. If this is not to be done primarily by punitive sanctions, it will need to be done (at least in large part) by formal and informal education.

Let us now turn to a general account or map of the ethical or moral terrain. We will return to values and issues specific to occupations, and to codes of ethics, in the ensuing sections.

In thinking and reasoning about moral or ethical questions, and about codes of ethics, there are a number of key concepts and distinctions. We will now introduce some of the more important of these.

First we need to distinguish between actions, habits and attitudes.

Actions are morally right or morally wrong or neither. Examples of actions normally regarded as morally right are truth-telling, paying one's debts and providing for one's children. Examples of actions normally regarded as morally wrong are breaking a promise, killing an innocent person and thieving. Examples of actions which are normally regarded as neither morally right nor morally wrong are going for a walk, drinking a bottle of lemonade or buying the Sunday papers.

If we now turn to ethical actions, as opposed to merely morally acceptable, actions then we can see that they tend to be actions in conformity with ideals or aspirations. For example, giving bread to a hungry person, or not taking advantage of one's competitor when they are in an unfortunate situation due to bad luck.

Notwithstanding the distinction between minimum standards and ideals, the boundary between these is blurred; there is a considerable grey area. Moreover, it is important to note that attending only to minimum standards - being a 'rule addict' and eschewing ideals - is an ultimately unsustainable position. Rule addicts will tend to lose sight of the values, including ideals, that inform even the rules embodying minimum standards; ultimately this is corrosive of conformity to minimum standards, as well as the realisation of ideals.



Codes of ethics typically prescribe and proscribe actions. Indeed, codes of ethics are largely about actions. However, the view that codes of ethics are simply rules that prescribe what actions are to be performed, and what actions are not to be performed, is too narrow. For one thing, codes of ethics typically mention virtues and vices, as well as actions. Virtues and vices are habits or dispositions to act. As such they are not simply actions, they are elements of a person's character. For another thing, codes of ethics are, or ought to be, concerned with affective attitudes as well as actions. Attitudes are important; attitudes motivate actions.

Habits are dispositions to action that are typically or standardly performed by a person. For example, Winston Churchill had the habit of smoking cigars. Habits include virtues, such as courage, honesty and determination, as well as vices, such as cowardice, corruption and dishonesty. Winston Churchill was said to be a courageous leader because he frequently or habitually made hard decisions in the service of his country. The police officer Chook Fowler was said to be corrupt because he consistently or habitually engaged in illegal activity to enrich himself. Some habits are neither virtues nor vices. For example, the habit of taking the dog for a walk in the early morning would not normally be regarded as either a virtue or a vice.

Once again, vices tend to call for moral condemnation; people who are corrupt or dishonest fail to meet minimum standards. On the other hand, persons possessed of virtues tend to be seen as ethical; they have dispositions to do good. They do more than merely avoid wrongdoing. However, once again there is a grey area here between minimum standards and ideals.

As noted above, the key property of virtues and vices is that they are elements of character; they are to do with what a person is, as opposed to what a person might do on some particular occasion. Clearly character, and thus virtues and vices, are of central importance in ethics, and typically they feature in codes of ethics. For example, many codes of ethics advocate the virtue of honesty, trustworthiness, sincerity, and so on.

Affective attitudes, including feelings and emotions, are not actions as such; nor are they habits or merely dispositions to act. A person can obey all the rules, even do so as a matter of habit, and yet have a 'bad attitude'.

As with actions and habits, affective attitudes can be classified into those that are by and large good, such as a caring or sympathetic or sensitive attitude, and those that are for the most part morally wrong, such as an attitude of hatred or contempt. Naturally, some attitudes would not normally be regarded as either good or morally wrong, for example, the attitude or feeling of excitement generated at the thought of being paid a large salary. Moreover, there is a grey area here between morally problematic attitudes such as hatred, and attitudes that one ought to ideally have, but ought not suffer moral condemnation if one did not experience them for



example, friendliness.

Codes of ethics have typically been much more concerned with actions than with attitudes. That said, the so-called caring occupations, such as child-minders, social workers and nurses, typically mention attitudes, such as caring or being sympathetic. So do some other codes, such as journalists' codes. They often note the need for sensitivity in, for example, interviewing someone who has recently suffered trauma. Moreover, even the accountants' codes speak of a duty of care. Doubtless, this duty of care is in large part spelled out in terms of actions. However, it is difficult to conceive of this duty to care as not having at least a partial attitudinal element. A similar point holds for the duty of impartiality.

A further important point that should be made in relation to codes of ethics and attitudes concerns culture or ethos.

The culture or ethos of an occupational group or organisation is the 'spirit' that pervades it. A group can be to have a low rather than high morale, or to have a positive culture rather than a culture of complaint, or to have a culture of service rather than one of contempt for their clients. Culture in this sense refers in large part to the attitude of the members of the group to one another and to their clients or customers. It goes without saying that culture in this sense is very often a question of ethical attitude, and therefore ought to fall within the purview of codes of ethics.

We can further characterise actions, habits and attitudes as being *intrinsically* good/bad or good/bad in terms of their *consequences*. For example, the excitement derived from driving fast cars might not be intrinsically either morally good or morally bad. However, such desire for such excitement might cause (say) a taxi driver to drive fast in heavy traffic and thereby cause accidents. If so, this excitement might be held to be morally bad in virtue of its consequences.

The notion of a *principle* or rule is fundamental to ethics and especially morality, especially in relation to actions. Here we need to distinguish between moral or ethical *principles* and goals or *ends*. We also need to distinguish between moral or ethical principles and other sorts of principles.

Goal or ends, including ideals, are states of affair or outcomes that individuals or groups or organisations aim at or seek to realise by means of their actions. Ideals and aspirations are goals or ends that are good, or at least believed to be good. Principles, by contrast, govern actions, not as ends to their means, but as rules or maxims to instances of conformity to them. As such, principles prescribe regularities in action.

The *proximate* or immediate justification for the existence of many occupations is the



existence of a widespread desire, and therefore economic demand, for the product or services that they provide. The justification for ice cream sellers is that people desire to eat ice creams. Presuming such desires not to be harmful – as opposed to harmful desires such as a desire to inject heroin – then the fulfilment of these desires is a good thing, and the product that fulfils them can be referred to as a good, though not necessarily a moral good.

However, the *ultimate* justification for the existence of human institutions and of associated occupations, such as government, the education system, the health system, the economic system and the criminal justice system, is their provision of some moral or *ethical or moral good* or goods to the community. The existence of universities is justified by the fact that the academics that they employ discover, teach and disseminate the fundamental human good, knowledge. The existence of governments is justified by the fact that they provide the fundamental social good, leadership of the community, and thereby contribute to prosperity, security, equitable distribution of economic goods, and so on. The existence of the economic system is justified by the fact that they provide for the material well-being of members of the communities that participate in that system.

In short, the point of having any one of these institutions is an ethical or moral one; each provide some fundamental human or social good(s). And the extent to which some specific government or university or economic system fails to provide the moral good which justifies their existence is the extent to which their continued existence needs to be called into question. There are international and historical examples where an institution has for one reason or another got to the point where it is no longer providing the moral good(s) that justify its existence.

In relation to government, cases in point include totalitarian governments such as those under Stalin or Hitler, and also governments no longer able to govern, such as the 'governments' of Liberia and former Yugoslavia.

In relation to economic systems, examples might include the socialist economies in former East European communist regimes, which ultimately failed to adequately provide for the material needs of their communities.

In relation to occupations, consider the academics, business people, bureaucrats, doctors, psychiatrists, police officers, journalists, and so on, who abandoned the principles and ideals of their chosen occupations, and put their knowledge and skills in the service of the evil ends of totalitarian government during the Nazi period.²

Closer to home, consider the failure of lawyers, accountants, company directors,

² Guy Adams and D Balfour Unmasking Administrative Evil (Sage Publications, 1998)



economic journalists and politicians to meet the minimum moral standards of their occupations during the 1980's – the period of Bond, Scase and the other 'bold riders' – and the consequent financial ruination of large numbers of ordinary Australians.³

Problem solving strategies and policies need to be framed in relation to the fundamental ends or goals of the institution or relevant associated occupations; which is to say they need to be contrived and implemented on the basis of whether or not they will contribute to transforming the institution or relevant associated occupations in ways that will enable it to provide, or better provide, good(s) -especially moral good(s) - which ultimately justify its existence.

What of *principles*, as opposed to ends? Examples of moral/ethical principles are: tell the truth, do not break your promises and do not murder. Examples of legal rules are: do not steal, do not murder, drive on the right hand side of the road. Examples of natural scientific principles include, 'Speed = distance/time', and of a social scientific principle, 'Systems of government tend towards oligarchy (rule by the few)'. Examples of rules in games include, 'Don't pass the ball forward (rugby)' and 'Don't kick the ball into your own goal (soccer)'. An example of a rule of thumb is, 'Look to the right, look to the left and look to the right again before crossing the street'.

Principles and rules are concerned with generality, that is, with types of action or event as distinct from one-off actions or events for example, 'Do not tell lies' (principle) rather than 'Do not tell John a lie here and now'.

Normative principles are concerned with what is good/bad, what ought and ought not to be for example, 'People who are sick *ought* to go to bed', and '*Good* administrators only make changes to the procedures if they have a good reason to do so' (stability is a virtue in administration).

Notice that ethical or moral principles are one, but only one, species of normative principle.

Other kinds of normative principle are prudential and aesthetic normative principles.

Moral and ethical normative principles are concerned with what a person ought to do or ought to be, and with what an organisation ought to do or become. For example, 'Individuals ought to tell the truth', and 'Organisations ought to reduce corruption'.

Some of moral or ethical principles are *forward looking* in that they draw attention to future consequences of actions, for example, 'Do not drink and drive'. Other moral or ethical principles are *backward looking* in that draw attention to the motivations or intentions which caused the action or state of affairs, for example, 'You are morally entitled to the service which you have paid for'.

³ Trevor Sykes *The Bold Riders* (Allen and Unwin, 1994).



Some principles are concerned with nature of *actions in themselves* (irrespective of motivations or consequences), for example, the principle not to murder the innocent.

Some principles are not concerned (or not only concerned) with rightness or wrongness of actions but with good or badness of *persons*. These moral principles draw attention to a number of elements of moral decision making which are governed by principles, including: character; motivation; intention; action considered on its own; consequences of action.

Affective attitudes are important when it comes to actions. Some actions are regarded as bad/good or moral/immoral partly in virtue of the goodness or badness of the attitudes which motivated them. For example, if a client is disadvantaged by a bureaucrat who acts out of resentment or dislike, this makes the action seem worse than if it were the result of an honest and understandable mistake.

Affective attitudes, including feelings and emotions, are motivations for action and for habits for example, “I killed him (action) out of revenge (motivation)”, and “I am honest (habit) because I fear imprisonment (motivation)”.

Affective attitudes are themselves sometimes caused by beliefs, including the belief that an action is right or wrong, for example, the belief that John stole the old blind lady's purse or that John is a coward causes the attitude of dislike/contempt for John. Further, attitudes are sometimes caused by habits or dispositions, for example, a dishonest disposition causes disgust with oneself.

Like actions, habits and attitudes can be changed, albeit over time, for example, sloppy and uncaring worker in an occupation or organisation with a dysfunctional culture might become a careful and concerned worker in a different working environment.

In so far as codes of ethics are devices that can be used to reinforce desirable behaviour and change undesirable behaviour – albeit devices that need to be used in conjunction with complaints and discipline systems, appropriate structures of reward, effective processes of conflict resolution, ethics education programs, and so on - then they need to attend not simply to the behaviour (action) itself, but also to the character (habits) and affective attitudes that condition and motivate that behaviour.

4.2 Law and Morality

Many people conflate law and morality - they think everything that is law is morally good, and that everything that is morally good is the law. This view is particularly common among people whose task it is to make or uphold the law, such as lawyers and police officers. It is, however, a view which should be resisted.



We should note firstly that not all laws are good. This is probably most clear in the case of repressive states such as Nazi Germany or South Africa in the apartheid era. In these states laws were framed which discriminated against people on racial grounds. For example, blacks could not vote or own property. These regimes passed many laws that were properly framed, yet morally abhorrent. Secondly, not all morally good actions are legally enforced. Parents should be kind to the children, but there is no law to this effect.

So law and morality are not necessarily the same thing. From this it follows that sometimes the requirements of law and morality can pull us in opposite directions. This potential conflict raises issues of profound importance. Consider the laws prohibiting voluntary euthanasia or mandatory sentencing of juveniles for minor crimes. Should doctors engage in voluntary euthanasia on some occasions? There is evidence that some do, and in violation of the law. What of judges, lawyers and police in relation to crimes they know are subject to mandatory sentencing? Should they seek to bend or thwart the law on occasion?

Notwithstanding the fact that law and morality are not necessarily the same thing, it is nevertheless true - at least in the case of the criminal law - that law and morality often coincide. For example, there are laws against theft, fraud, assault and murder, and theft, fraud, assault and murder are morally wrong. This coincidence or overlap between much of the criminal law and some moral principles is no accident. For the criminal law is fundamentally about ensuring minimum moral standards; it is about the protection of basic moral rights, including the right to life, to liberty, to physical security and to property. The moral rights enshrined in the criminal law are those ones regarded as fundamental by the wider society; they constitute the basic moral norms of the society. Naturally, some of these are contentious, and as society undergoes change some of these moral norms change - for example, moral attitudes in relation to homosexuality have changed - but there are a core of moral norms which there is reason to believe will never change or ought not to change for example, right to life, freedom of thought and speech and physical security.

In the light of the above, a question arises as to whether all or most codes of ethics ought to say something about obedience to the law. Some, such as many solicitors and police codes of ethics already do. But other occupations not closely involved with upholding the law, such as the code of the National Institute of Forensic Engineers, also state that the law should be upheld.

Codes of ethics are a good place for occupations to signal their commitment to the basic laws, and thus basic moral standards, of the community to which they belong, and to which they contribute. Moreover, in this connection it is important for occupations to express their commitment to the cornerstone principle of a free society, namely the principle of



individual autonomy. Individual autonomy comprises the various freedoms, including freedom of speech and thought, freedom of movement, and freedom to work and do so for reasonable remuneration.

4.3 Occupational Ethics

The task of occupational ethics - as a branch of ethics, and thus in turn of applied philosophy - is systematically to reason and make judgements about ethical issues and problems that arise in occupational groups.

In this context "to reason" is to be understood broadly. To reason in this sense includes, but is not exhausted by, deductive reason. Nor is to reason about occupational ethics necessarily to generate abstract truths good for all people in all places at all times. There are some moral propositions which are universal, for example, do not murder innocent persons. However, many of the propositions of occupational ethics need to be relativised to particular institutions and occupations. Physical courage might be a necessary virtue for police, but not for academics. Such relativisation in respect of ethical claims about occupational practices and institutions has been part and parcel of philosophising from the time of the philosophers, Aristotle through Hume, Rousseau, Hegel and up to modern times.

This need for relativisation to context has nothing whatsoever to do with the opposition to objective truth propounded in the past by philosophers such as Nietzsche, and more recently by postmodernists and others. A claim once relativised to context still needs to be assessed for its truth/falsity. In occupational ethics the need for relativisation arises in part because the ethical dimension of any given occupational practice has what might be called an internal and an external aspect.

Two things need to be noted about the external ethical aspect. Firstly, it consists of moral principles that ought to be adhered to by the occupant of the occupational role. But secondly, these moral principles are typically not sufficient for the person to undertake that role competently.

These external moral principles - and their associated character traits (virtues) - have such a high degree of generality that they exist more or less independently of any particular occupational practice. Such principles and virtues govern behaviour and attitudes in most occupational behaviour; for example, the principle not to take human life, or the virtue of honesty. Many such moral principles are enshrined in the law. Thus it is against the law to commit murder, to steal or to engage in fraud.

That said, there are many external moral principles that are not, or should not be, enshrined in the



law. For example, cheating on one's sexual partner is regarded as a vice, as is failing to keep one's promises.

Codes of ethics ought not to address ethical or moral issues that are irrelevant to, or outside the sphere of, the duties, tasks and role of the occupation in question. For example, a practitioner's lawful sexual practices ought not to be an issue addressed in most codes of ethics.

The internal ethical aspect consists of principles and virtues which are necessary for a person to undertake his or her particular occupational practice competently. Thus good hand/eye coordination is a virtue which is internal to being a good pilot, but by no means to most occupations.

This is not to say that all aspects of professional practice are matters of morality. That would be absurd. It might be unprofessional for lawyers to wear shabby clothing when appearing in court or for doctors to be unsympathetic to their patients, but it is not necessarily immoral.

Moreover, possession of specific technical skills and knowledge might be necessary for someone to successfully perform an occupational role, and therefore undertaking a role when one does not possess those skills or knowledge might be a breach of ethics. For one thing, undertaking the role without the necessary skills may cause harm. For another, it may constitute deception, if (say) one's client believes one has the skills in question.

That said, possession of a technical skill or of technical knowledge does not in general confer a moral or ethical status. Being able to lay carpets does not in itself make carpet laying a morally virtuous activity. On the other hand we regard some occupational roles as important one by virtue of the moral goods that they bring about, for example, doctors can save lives. Accordingly, we regard possession of the skills necessary to perform these roles – roles that realise moral goods – as moral or ethical virtues.

However, even where occupations deliver moral goods, and consist in the exercise of skills that are virtues because they enable these moral goods to be provided, there would be little point in detailing all these skills, let alone all the accompanying technical knowledge, in the codes of ethics of these occupations. Codes of ethics are not supposed to be exhaustive or comprehensive descriptions of the tasks and knowledge necessary to perform a given occupational role.

Codes of ethics should not attempt to detail specific skills or knowledge that might be necessary to successfully undertake an occupation. For example, public speaking skills are necessary in order to be a successful barrister; but these skills ought not to be detailed in a code of ethics.



On the other hand, some practices that are internal to a given occupation are matters of morality, and not because they violate some externally determined moral principle. For example, if a policeman fails to intervene in an attempted burglary, the policeman has not only failed in his professional duty, he is also morally culpable. Similarly, a doctor is morally culpable if she fails to attend to a patient who is very ill. And a correctional officer who is negligent with respect to the security of prisoners in his/her charge is morally culpable; similarly for a nurse with respect to patients in his/her care.

Thus in undertaking a particular occupation individuals typically accept professional obligations, but some of these obligations are also moral obligations. These moral obligations are additional to the moral obligations that they had prior to entering the occupation; they are internal to the occupation.

4.4 Ethics and Reasoning

Morality or ethics is *practical*; it concerns what a person or group *ought to do*, and what a person or group *ought to be*. It comprises answers to questions such as: Ought I buy a new car or spend the money on my son's education? Ought I to inform the police that my friend takes illegal drugs? Ought Jane to leave her husband? Ought I inform on a corrupt colleague? Ought I charge this impoverished client a smaller fee? What ought we to do? Should we turn away refugees from Afghanistan? Should we introduce voluntary euthanasia? Should the market fully determine the structure of fees to be paid by professionals? Should BHP have closed down its Newcastle steelworks if it is more profitable to do so?

Moral or ethical decision-making is, or ought to be, based on reasons for example, Jane ought to leave her husband because (for the reason) he is beating her up; fees ought to be paid because (for the reason) clients promised to pay them.

Moreover, often there are reasons for and against a particular course of action, and therefore a *complex structure of reasons* is involved. For example, in relation to insisting that one's client pay the full fee, there is at least one reason in favour of this, namely, the client in effect agreed to pay the set fee by virtue of knowing what the fee was and accepting the service. But there is also at least one reason against insisting on the full fee, namely, the client is impoverished and cannot afford to pay it without suffering severe hardship as a result.

This complex structure of reasons or arguments involves *factual* claims. For example, the fee is \$X, the client's income is \$Y, the service performed was the extraction of an extremely painful tooth. But it also involves ethical or *moral values* or moral normative claims, for example, to suffer ongoing extreme pain is bad; a practitioner has a moral right to be paid a reasonable fee



for services rendered.

One pervasive form of reasoning in relation to both ethical and non-ethical issues is *means/end reasoning*, for example, business people ought to reduce costs because this will lead to lower prices and increased profits. Moreover, much of the reasoning in ethics is means/end reasoning for example, I ought to authorise this child to be taken from her family because the father is a child abuser and if the child is not removed then she will suffer grave harm. Here the end – to protect the innocent child – is a moral end.

In ethical decision-making there is another form of reasoning, which we will refer to as *reasoning from moral or ethical principles*. What of reasoning from moral principles, as distinct from means/end reasoning? Consider the following example:

Premise 1: I believe that lying is wrong (moral principle)

Premise 2: Telling this suspected fraudster that I will not report him is a lie
Conclusion: I ought not to tell this suspect that I will not report him.

This argument is not a *deductive* argument since the conclusion could be false even though premises were true, for example, if I am an auditor and telling the suspect the truth would enable him to flee the country and escape. Nor is the argument *inductive*, since a moral principle is a normative claim, not an inductive generalisation; nor is it necessarily based on induction. Further, the argument is not a piece of means/end reasoning since there are no goals or desires in the premises.

Where there are competing moral reasons, for example, telling a lie versus preventing a fraudster to escape, then a *balance* has to be struck on the basis of reasons.

Codes of ethics typically prescribe and proscribe actions, habits and attitudes. So far so good. However, at least two questions arise. The first question concerns the reason or reasons for prescribing some action or other.

Sometimes codes do provide reasons for their prescriptions. But in general the code is too brief to elaborate the various reasons. Nevertheless, reasons ought to be given. Hence the need for a bare code of ethics to be supplemented by explanatory material.

The second question concerns what to do when prescriptions and principles which are desirable in themselves, nevertheless come into conflict in some particular situation. As mentioned above, there is a need for a rationally motivated balance to be struck.

Accordingly, there is a need for a process of rational reflection.

Some codes of ethics are supplemented by a model of practical moral reasoning, for example,



the code of professional conduct of the Institute of Chartered Accountants of Australia, and of the Certified Practising Accountants. There are a number of such models of reasoning available in the applied philosophical literature, some more adequate than others. It is desirable that codes of ethics be supplemented by a sound model of practical moral reasoning in order to facilitate the application of the codes.



5. Professions and Codes of Ethics

5.1 Professions and Occupations

Let us now turn to occupational and professional roles.⁴ Shortly I will distinguish professional roles from other occupational roles. However, first we need to get clearer on the notion of an occupational (or professional) role. Roles are teleological in nature; they are distinguished from one another according to the *ends* or goals which they serve. Thus we distinguish the role of a police officer from that of a chef by virtue of the different ends that they serve; judges act in order to ensure law and order, chefs act in order to provide cuisine.

While necessary to differentiate roles, the telos or end of a role is not sufficient to distinguish one role from another. Perhaps the end of lawyers, like that of police, is to ensure that the law is upheld. Accordingly, we also need to attend to the *means* or type of action or activity by which the end of some occupational role is realised. Clearly police, but not lawyers, uphold the law by means of the use, or threat of the use, of coercive force.

So occupational roles are defined in part by the end or ends that they serve, and in part by the types of action or activities that they perform which are the means to that end(s). In addition, some roles are evidently in part defined by the attitude that practitioners ought to have or adopt. This seems to be true of the caring occupations, for example, child-minders, nurses, social workers, psychologists.

Historically, a further distinction has been made between occupations and professions. All professional roles are occupational roles, but not all occupational roles are professional roles.

The terms "professional" and "profession" are of course used in a wide variety of ways - I take medicine to be a profession, but also, it would seem, prostitution; we speak of lawyers acting in a professional manner, but we might also say of a carpet-layer that he has done a very professional job.⁵ Here, however, I use the terms "professional" and "profession" in a relatively restricted way. My approach to the issue of professional roles involves an investigation of, and generalisation from, the characteristic features of such paradigmatic professions as the law, medicine and architecture, and I take it that a person counts as a professional in virtue of their membership of such a profession. Despite regional variations in the

⁴ The following account of professional roles is taken from Andrew Alexandra and Seumas Miller "Needs, Moral Self-consciousness and Professional Roles" *Professional Ethics* vol.5 nos.1&2 1996

⁵ For a useful survey of different approaches to the definition of professions see Stephen Barker "What is a Profession?" *Professional Ethics* vol.1 nos.1 & 2 1992 pp.73-99. Barker also propounds his own quasi-contractual account.



organisation of, and constraints on, professional work, there is nevertheless a perhaps surprising degree of congruence in such matters, at least in the English-speaking world.

As noted above, a worker will be classified as a member of a particular occupation in virtue of the characteristic activities that they undertake, taken together with the end that those activities serve - gardeners are those people who tend gardens, cooks those who prepare food, and so on. Likewise professionals can be identified in part by recourse to the characteristic activities that they perform, and the ends that these activities serve: doctors are just those workers who heal the sick, lawyers those who give legal advice, architects those who design buildings, engineers those who construct buildings, and so on. Such a definition of professionals and professions seems adequate to some of things that are so called, such as prostitution, but will not do for the objects of our attention, what I have dubbed the paradigmatic professions. This can be seen by reflecting on the fact that paid performance of these functions does not necessarily qualify the performer as a professional. To earn that description the performer also needs to bear various distinguishing social and legal marks. Typically they have to possess certain educational qualifications, belong to the appropriate professional body and so on.

Indeed, there is a large degree of consensus in the sociological and philosophical literature as to the distinguishing marks of professional occupation.⁶ Five such marks are especially salient. An occupational group counts as a profession in virtue of its having the following features: the work of its members is oriented to the provision of some good; members of the group possess and exercise creative expertise in the provision of this good; they possess a high degree of autonomy in the exercise of their expertise; they are grouped together as a self-conscious community; and they have a certain institutional status which typically is accorded legal recognition and protection.

Let us elaborate further on these distinctive marks of the professions.

First, there is the end of the professions. On one view the good toward which the work of members of a professional group ought to be oriented is the satisfaction of certain fundamental needs, such as justice and health. Moreover, those who have the fundamental needs in question cannot themselves provide for the need. Since they cannot satisfy themselves they have a moral claim against those who can satisfy it. But we all possess a number of fundamental needs - actual and potential - which we cannot satisfy

⁶ Other marks, such as self-regulation, are more controversial. See eg. Michael D. Bayles "Professional Power and Self-Regulation", *Business and Professional Ethics Journal*, vol. 5, No. 2, 1986, p.27; Paul Camenisch "Business Ethics: On Getting to the Heart of the Matter", *Business and Professional Ethics Journal*, vol. 1, no. 1 (1981) p.61.



ourselves, but which others can. Hence we have a moral claim against those who can satisfy these needs - in modern societies these will be often be professionals - and correspondingly professionals have a duty to satisfy such needs.

Second, the successful prosecution of professional work requires extensive and ongoing, training and education, and an associated fineness of judgment. These qualities are necessary because of the complexity and yet indeterminate nature of much of a professional's work. There is, for example, typically no mechanical procedure available to guide the decision as to what is the most appropriate means to the desired end. Consider the work of an architect.

Third, the characteristic skilled creativity of the professional entails a consequent substantial degree of professional autonomy. With respect to a range of important decisions – for example, whether or not to perform a surgical operation and by what method - the professional is the one to decide, and not (say) the professional's manager.

Fourth, the skills of the professional can only be developed and transmitted within a group: professionals typically undergo a lengthy, and often on-going, process of training and accreditation by their fellows. Moreover much professional work is collegial in nature, with the individual practitioner drawing on special skills and knowledge of colleagues for example, a doctor learning of new developments in his field, or seeking the professional opinion of other doctors.

Fifth, the paradigmatic professions, as well as being communities in this sense are also institutional entities of a certain sort: members of the profession belong to professional bodies such as the Australian Medical Association.⁷ The modern professions are typically groups with venerable historical roots, and organisationally they are often continuous with the medieval guilds. Nevertheless, in the institutional form with which we are familiar, they are very much a modern phenomenon. In his study The Medical Profession in Mid Victorian England M. J. Peterson argues, for example, that it was impossible to talk of the medical profession in England at all before the Medical Act of 1858, and even then of dubious value for a considerable time after that.⁸ What is distinctive, in the first place, about the modern institutions, as against

⁷ There are interesting points of divergence and convergence between professional associations and industrial unions. The latter have been conceived simply as organisations acting in the interest of their members, the former as having a role in relation to the interest, so to speak, of the community in relation to the services provided by the member. In recent times some trade unions have sought to carve out a role not dissimilar to that of a professional association for example, National Tertiary Education Union.

⁸ M.J. Peterson The Medical Profession in Mid-Victorian England Berkeley: University of California Press; cf. Evan Willis Medical Dominance Sydney: Allen and Unwin, 1990, pp. 37-38. The standard account of the rise of the modern professions is A.M. Carr-Saunders and P.A. Wilson The Professions Oxford at the Clarendon Press, 1933. The achievement of governmental recognition and protection was not an easy or uninterrupted process: for an account of some of the vicissitudes encountered by the professions in Nineteenth-Century America see Eliot Friedson "Nourishing Professionalism" in E.D. Pellegrino, R.M. Veatch, J.P. Langan (eds.) Ethics, Trust and the Professions: Philosophical and Cultural Aspects Washington D.C.: Georgetown University Press, 1991, pp.193 -215, esp. p.196.



their historical forebears, is their relation to the state - they are legally defined institutions, which is not to say that they are totally *constituted* by the law.

So a profession comprises persons who are not simply practitioners, but who occupy specific positions and stand in authority relations to others in a structured professional organisation and pursue the collective ends of that organisation, through such activities as lobbying the government, accrediting individuals and institutions, disciplining miscreant members, as well as ensuring that sufficient practitioners to service the whole community are trained and licensed, and that remuneration for such practitioners is sufficiently attractive to make it likely that they will actually exercise their skills and so on.

Not only *are* members of the paradigmatic professions organised into such corporations, it is at least arguable that they *should* be so organised, and that such corporations should possess a high degree of power and autonomy. That they should be so organised follows from the fact that such corporations, if properly functioning, help generate and preserve the professional community, which itself is desirable; that such corporations should have a high degree of power and autonomy follows both from the fact that members of the profession are well placed to identify the means to the fulfilment of the fundamental need definitive of that profession, and that the fulfilment of this need may require actions that reach beyond the provision of service to individuals. The achievement and retention of health is the end of the health professions, for instance. But reaching this end is dependent, in part, on the provision of adequate public health facilities, such as a clean water supply, and an effective sewerage service. As part of their professional role, doctors should be prepared to agitate for such services. Though they can do so as individual members of the profession, they can do so much more effectively as an organised corporation.

If indeed the professions are a distinctive form of occupation with the defining features described above then this will need to be reflected in their codes of ethics. Since the telos or end of the work of the professions is a moral good then this should to be stressed in their codes of ethics, as should the distinctive rights of professional practitioners, for example, autonomy. Again, given the role of the professional associations, the code of ethics of members of the professions will need to have sanctions built into them.

I have argued for a distinction between the professions and other occupations. That said there is no clear dividing line between the professions and other occupations. Rather there is a set of criteria for being a profession. Many occupations meet some of these criteria, but not all; so they are not professions. Some occupations are such that most of their members meet the criteria; so these are professions. However, some members of these occupations – the



occupations that meet the criteria for being professions – do not meet all of the criteria. So there are grey areas. But here, as elsewhere, the existence of greyness does not destroy the distinction between black and white.

5.2 The Professions and the Market

The achievement of the institutional status of a professional brings with it a set of rights and duties which are, in a variety of ways, anomalous in comparison to those held by other workers: this anomalous status is in part a consequence of the legal privileges and requirements extended to the profession. Of great importance in this connection is the relationship of the professional to the market.

Historically, professionals have been sheltered in important ways from the disciplines imposed on other occupational groups by market forces. Professions have exercised a legal monopoly or near monopoly (in the case of for example, lawyers) or a kind of quasi-monopoly (in the case of most other professions) over the provision of services in their area of expertise. There have been at least strong disincentives put in the way of non-professionals entering the market in such services: they have not been allowed to sue for fees owed, for example, and they have not been allowed access to many of the institutional settings where such services are required, irrespective of the wishes of those who consume the services. For example only qualified lawyers can represent others in court for payment⁹; and only qualified medical practitioners can treat people in hospitals. Not only have professionals been sheltered from competition with non-professionals, their exercise of the control which they are granted as a group over entry into the profession (often called "closure" in the sociological literature) means that they have also tended to be sheltered from vigorous competition within the profession. In such respects, then, professionals appear to have been privileged, relative to most other workers.

There is a tendency within the sociological literature to see the achievement and retention of such privileges as the end of professional organisation; and correspondingly to take the attribution of the status of a profession to some occupational grouping as a function of such achievement. In other words a group is counted as a profession because it is privileged, not privileged because it is a profession.¹⁰ However, this is only part of the story about the

⁹ See the Victorian [Legal Profession Practices Act](#) 1958

¹⁰ See Friedson op. cit. p.197; cf. Raymond Murphy *Social Closure: The Theory of Monopolization and Exclusion* Oxford: Clarendon Press, 1988; Randall Collins "Market Closure and the Conflict Theory of Professions" in Michael Burrage and Rolf Torstendahl *Professions in Theory and History* London: Sage Publications, 1990. For a useful survey of views in relation to this issue see Lisa Newton "The Origins of Professionalism: Sociological Conclusions and Ethical Implications" *Business and Professional Ethics Journal* vol.1 no.4 1982 pp.33-49.



distinctive status of professionals. For if it is true that in some respects professionals are privileged relative to other workers, it is also true that in other respects professionals are restricted relative to other workers.

As I have claimed, professionals have sheltered from the full rigours of the market. It is also the case, however, that they have been denied full access to the potential benefits of the market. Typically, professionals are forbidden from profiting from their expertise in a variety of ways. Of course they are restricted by the law, as are all workers, but it is worth noting that the consequences of using their skills for illegal ends may be more severe for professionals than for others, since the professional faces not simply the standard legal penalty associated with their wrong-doing, but also the prospect of effectively losing their right to continue to practise their occupation, or the benefits that go with practising their occupation as a member of a profession. In this respect a professional is unlike, say, the farmer who uses specialised knowledge to grow a crop of marijuana. And they may be similarly penalised even if they do things which if they were done by other people would not count as illegal. Lawyers are forbidden, for example, from engaging in action which is judged to be "dishonourable" by a body of their professional fellows (in Victoria, a committee of the Law Institute), and may have their professional status cancelled or suspended as a consequence of such a judgment.

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In some ways professionals possess less control over the exercise of their occupational skills than most other workers. Doctors can be required to tend the sick and injured (when there is no other qualified practitioner available, for example) whether they want to or not. Lawyers are required to accept clients on a "first come, first served" basis.

One of the consequences of the restrictions on the activities of professionals is that the area of discretion which professionals and their clients possess in regard to their contractual arrangements is also unusually restricted, in comparison with the amount of flexibility typically enjoyed by other service providers and their clients. If I employ someone to paint my house we can agree that I will pay them less than the standard rate, in return, say, for not insisting on the usual degree of finished detail. Professionals and their clients cannot enter into agreements of this form for much of the kinds of work undertaken by professionals. (So I cannot enter an agreement with my doctor that I will pay her less than the standard fee for the removal of my appendix, on the condition that she spends no more than an hour on the operation.)



We can conclude that historically, at least, professionals could not plausibly be represented as participants in the open market, negotiating the sale of the use of their skills to the highest bidder.

However, it may well be that in this regard things have changed, or are in the process of changing. Certainly, there is pressure on the professions from various quarters, including the Australian Competition and Consumer Commission, to adopt a more competitive market centred model. Moreover, many professionals are now employed in large business corporations, and in this context their work can be seen as no different from any other employee contributing to the economic 'product' produced by the corporation who pays them. These processes are now so much under way that in some quarters there is talk of the "de-professionalisation" of the professions. By "de-professionalisation" it is meant that the professions cannot, and perhaps ought not, be regarded as distinctive occupations.

At any rate, the question that now has to be asked is whether or not de-professionalisation is a good thing; or, at least, whether it is a good thing in certain respects. Given the conception of the professions offered in the previous section, it is self-evident that de-professionalisation would be a bad thing that ought to be resisted.

What is in large part at stake here is the basic conception of the professions as necessarily different from other more market based occupations. As already noted, on one view the salient features of the professions can be understood and assessed by seeing the role of the professional as the satisfaction of fundamental needs. Those who have a fundamental need which they cannot satisfy themselves have a moral claim against those who can satisfy it. But we all possess a number of fundamental needs - actual and potential - which we cannot satisfy ourselves, but which others can. Hence we have a moral claim against those who can satisfy these needs - in modern societies these will be often be professionals - and correspondingly professionals have a duty to satisfy such needs. The fact that the end of a profession is the realisation of a fundamental need, not only gives rise to a moral obligation to satisfy that need, it also entails that the standards of professional practice necessary to ensure the adequate satisfaction of that need are themselves moral standards.

Given this, the relation between professionals and their client group should not be assimilated to that which holds between buyers and sellers in a market. This is also the case for many other occupations. Consider police officers, soldiers, ambulance drivers and firemen. In the idealised picture of the market with which we are familiar from the writings of economists and bureaucrats market actors - buyers and sellers alike - are driven by selfish motivations, the desire to satisfy their own desires. A transaction is rational when, and only when, each of the parties to the transaction believes, with good reason, that their desires will be more satisfied after the



transaction than they were before.

On this picture there is no obligation on a holder of a good to sell it if he prefers to do something else with his time, or if he judges that he will not be better off after the transaction than before. So professionals are not simply market actors, since they *do* have an obligation to provide certain kinds of goods to those in need of them. This general obligation entails the demands made on particular professionals to provide their services to particular clients whether they wish to or not. It also helps explain restrictions on the contractual freedom in dealings between clients and professionals. A professional is obliged to do what is necessary for the satisfaction of a client's needs, so they are not free to enter into agreements which would prevent them from so acting. (Nevertheless a client does retain a lot of contractual freedom since they are not forced to engage a professional; and often there are a variety of means to the satisfaction of their need, and they can negotiate with the professional so as to obtain the one they prefer.)

In the actual exercise of their skill, of course, professionals often act in ways which could hardly be represented as providing for the satisfaction of fundamental needs, but rather are driven by market considerations, including consumer demand, and the desire on the part of individual professionals to maximise their financial benefits. Plastic surgeons at times perform operations the purpose of which is the gratification of the patient's vanity, lawyers in the employ of the rich use their expertise to intimidate the poor, and so on.

And the very nature of both the professional community and the professional corporation often actively militate against the achievement of the satisfaction of the ends which we take to be definitive of the profession. Members of a professional community tend to develop a high degree of solidarity; a solidarity which is expressed in the difficulty in getting a member of a profession to testify to the incompetence of a fellow, and an unwillingness to expel incompetents. The activities of professional corporations also often cannot be represented as conducing to the satisfaction of individual needs, and may even be inconsistent with such satisfaction. The role of such organisations is not, as a matter of logic or fact, necessarily identical with the professional role of the individual members of the profession.

Nor are the collective ends constitutive of these organisations necessarily identical with the collective ends of the profession construed as a community. For example, particular professional bodies typically pursue the collective end of the promotion of the financial interests of their members. But such interests are not necessarily identical with the long-term interests of the professional community, and may well be inconsistent with the demands of the professional's role as I have interpreted it. Such inconsistencies are particularly likely to arise when



the interests of the membership comport with the interests of some powerful external force such as the state. For example, a government may require cutbacks in health expenditure, and as a consequence less medical students.¹¹ This may well be in the financial interests of the existing membership of the medical association - it means fewer doctors but higher incomes for those who are doctors - though not in the interests of the health of the community. One way to guard against undue pursuit of self-interest on the part of a professional body in relation to decisions regarding entry requirements, standards, and so on, is to have appropriate external representation.

In conclusion, the relation between professionals – and many other like occupations - and their client group should not be assimilated to that which holds between buyers and sellers in a market. This is not to say that professionals are not, or ought not to be, in the market. In many cases they can and should be. Moreover, when professionals compete in the marketplace they ought to do so under conditions of fair competition, and with due regard to the rights of consumers. However, the professions, and other like occupations, have a larger purpose. They exist to provide moral goods, including health, education, justice and the like; and these are public goods the provision of which is in the public interest. Where the marketplace serves as a means to this end, all is well. But when a competitive market impedes the realisation of this end, then it is the competitive market that must be subjected to scrutiny and give way to strictures.

Codes of ethics for the professions need to address this issue, and reflect the relative priority of the moral, and public, goods that justify their existence over the requirements of the market.

¹¹ This is not to suggest that the interests of the state and professional groups always coincide. In fact the likelihood of conflict between these interests is quite high in some cases. One of the principal ends of the academic profession is the pursuit of truth, but notoriously the truths in question may be unpalatable to the state.



6. Codes of Ethics

History of Codes of Ethics

Codes of ethics belong to that family of texts, including written oaths, rule-books, codes of practice and the like, wherein the members of some group sets forth a set of requirements, and perhaps aspirations, and commit themselves to act in accordance with these requirements.

So a code of ethics has two aspects:

- 1. the content comprising the requirements, rules, principles, ideals, and so forth;**
- 2. the commitment of the members of the occupation or organisation to conform to, and otherwise uphold, those rules and ideals.**

What I have called the content of the code ought to reflect the proper ends or goals of the occupation, as well as the reasonable constraints on the activities undertaken in pursuit of those ends. The commitment to that content on the part of the members of the occupation consists of an oath, or promise, or other kind of undertaking that each member has given to adhere to the code.

Historically, the term “code” has applied to such diverse texts as the Code of Hammurabi (18th Century BC), the Priestly Code (of the Old Testament), the Hippocratic Oath (5th Century BC – for medical practitioners), monastic codes of the middle ages (for example, Benedict’s Rule), the rule of the Knights Hospitallers of St John of Jerusalem (during Crusades) and the Code Napoleon (1804-10).

So priest, monks and knights have provided themselves with codes for centuries. And these codes typically consisted of a commitment to some or other variety of ethical content; so they can be more or less regarded as codes of ethics.

As far as the professions, in particular, are concerned, lawyers and doctors of a kind existed in ancient Greece and Rome.¹² Medicine became a full-blown profession before law. Medicine emerged as a profession in the early Christian era.

During the dark ages medical knowledge – and indeed legal and other knowledge – was preserved in the monastic orders. Following the establishment of universities in the mediaeval period knowledge and learning, including that pertaining to the professions, gradually broke free from the Church and underwent a process of secularisation. In the early 16th century professional and other associations – essentially elite guilds – were formed and confirmed by the

¹² Ian Siggins “Professional Codes: Some Historical Antecedents” in (ed.) Coady and Bloch op. cit.



monarchs of the day, practitioners were issued licences, entry restrictions were imposed, high fee structures introduced, judges, doctors and others professionals were drawn from their ranks, and so on. The basis for the modern professions was laid. In 1794 Thomas Percival proposed a code of ethics for physicians and surgeons in England. In 1808 the Boston Medical Society put forward a code of ethics. By the early part of the 20th century codes of ethics were in place in most of the traditional professions in the US, and in due course the possession of a code of ethics became a defining feature of being a profession.

In the latter part of the 20th century codes of ethics for the professions underwent significant changes, as the professions sought to accommodate legal, social and economic changes. In part these changes reflected the desire of the traditional professions to hold onto their power and status as their members were increasingly housed in large organisations, and subjected to competitive market pressures. Moreover, other occupations, such as journalism, nursing, and recently policing, aspired to professional status. Accordingly, these emerging 'professions' developed codes of ethics.

A final important development has been the proliferation of codes of ethics among members of occupations who do not necessarily seek to present themselves as among the professions for example, real estate valuers, and in organisations who do not even constitute occupations. The latter organisations include both public sector and private sector organisations.

Historically, codes of ethics were an important defining feature of the traditional professions. In an earlier section I argued that there was an important distinction to be made between professions and other occupations. This claim is consistent with some occupations emerging as professions; such occupations have come to possess the defining properties of professions. However, the possession of a code of ethics can no longer be regarded as a defining property of the professions. Perhaps this was historically the case; but it is no longer so. Moreover, it is surely desirable for many occupations that are not professions, to nevertheless have a code of ethics. Indeed, it is desirable for many organisations to have a code of ethics.

In short, while historically codes of ethics for occupations may have been the preserve of the professions, this is no longer the case; nor should it be. Codes of ethics are good for the professions; but equally, codes of ethics are good for other occupations

The Functions of Codes of Ethics: Ethics Education and Ethics Regulation.

By presenting in an explicit form the basic ends of an occupation, the rights and duties of the members of the occupation, the constraints on their activity, the rights of clients, and so on,



codes of ethics perform an educative function.¹³ Knowledge of the code of ethics is knowledge of the ethical ideals and principles pertaining to that occupation, and members of the occupation can and ought to possess that knowledge. This knowledge is principally what is known as *practical*, as opposed to theoretical, knowledge. It is knowledge about how to do something, as opposed to knowledge concerning what is the case.

The knowledge expressed in a code is expressed in a condensed form. Accordingly, there is a need for additional explanatory material for example, regarding the nature and function of the specific occupation in question, and additional tools for applying this knowledge, for example, a model of practical ethical reasoning. Moreover, this knowledge needs to be suitably contextualised in relation to specific concrete ethical problems that might be confronted by members of that occupational group. So there is also a need for supplementary case studies and the like.

Moreover, since this practical knowledge of ethical principles and ideals, and practical knowledge of their application, is not a static thing – ethical problems and the solutions to them undergo change – there is a need for ongoing revision of the code of ethics, ongoing education in relation to changes to the code of ethics, and especially ongoing education in relation to the application of the principles and ideals expressed in the code of ethics. The code of ethics, and associated ethical education, ought to be an important element in initial formal and informal education programs, an also in continuing education programs.

It is important to note that ethical codes not only have content; they are not simply documents that can be the objects of (practical) knowledge; they also involve, or ought to involve, commitment on the part of the members of the occupation or organisation in question.

The commitment in question is both personal and collective commitment. Each individual practitioner commits him or herself to the content of the code, or should do so. But each does so on condition the others do so; the individual commitments are interdependent and therefore collective. Such interdependence of commitment to a common set of ideals and principles is in part constitutive of a self-conscious community of practitioners, and is a necessary condition for that community having an ethical culture. Accordingly, code of ethics have a function of socio-ethical or cultural integration, as well as of education in the narrow individualistic sense.

In order that that this commitment exist in some tangible form, there is a need at the very least for the individual members of the occupation or organisation to participate in the establishment,

¹³ For a useful discussion on functions of codes of ethics see Judith Lichtenberg "What are codes of ethics for?" in (ed.) Coady and Bloch op.cit.



and ongoing revision, of their code of ethics. Without such participation the code will not be a 'live' document, and it will not be 'owned' by the members of the occupational group or organisation.

The process by which a code of ethics is drafted, or redrafted, ought to involve not only consultation regarding the basic principles and ideals, but also research into ethical problems confronted by members, and some attempt to have members ratify or otherwise indicate their acceptance of the code once it is finalised.

Codes of ethics prescribe and proscribe specific actions, and many of them attach sanctions to non-compliance.

So codes of ethics have a regulatory function, in addition to their educative and cultural integration functions. Often the main regulatory role of a code of ethics is actually played by an associated code of practice. The code of ethics is a basic presentation of principles and ideals; the code of practice is a detailed description of the actions that are to be performed and not performed, and of the sanctions that attach to non-performance.

Be that as it may, here I want to elaborate on the notion of regulation and its relation to ethical behaviour and to ethics education (formal and informal).

Regulation, like ethical education, ought to proceed in such a way as to secure compliance with appropriate moral principles, especially compliance with minimum standards for example, avoidance of criminal activity such as fraud, theft, eschewing of unfair practices, and so on.

Moreover, regulation of occupations involved in the market economy ought to promote an efficient, competitive market; and education likewise ought to promote this.

However, regulation of itself, unlike education, is less able to promote pursuit of ideals, as opposed to conformity to minimum standards. This is not to say that the regulative and the educative roles of codes of ethics (or of codes of ethics and codes of practice) are somehow independent of one another, or that they ought to be. Far from it. They ought to be interdependent and mutually reinforcing.

In contriving regulations account ought to be taken not simply of the self-interested motivations of the relevant actors, but also of their ethical motivations, including not only their sense of fairness and susceptibility to feelings of shame, but also their desire for the respect that goes with achievement of high ideals. This is a general truth that goes as much for codes of ethics and codes of practice, as it does for laws and regulations.

Here it is worth bearing in mind that regulations, and the law more generally, are conformed with



not only because they have sanctions attached, but also because they are perceived to be fair, and also rational in terms of the ends of the activity regulated. Compliance with unfair or irrational regulations can be very hard to achieve, even if heavy penalties attach to non-compliance. Indeed, it may be that the best regulatory strategies are ones in which the fairness and reasonableness of a regulation and the sanctions attaching to it, mutually reinforce one another.¹⁴

Contriving and framing regulations gives rise to a wide array of quite specific ethical problems concerning the fairness of particular practices or reward systems, the ethical unacceptability of some conflicts of interest, and so on. Many of these are complex intellectual problems, and solving them involves not simply the identification of (often competing) ethical considerations, but also the elaboration of new principles that give due weight to these ethical considerations. There is a need for systematic ethical reflection.

Regulations may be too few and too simple, or conversely, too many and too complex. If the former, they might fail to regulate ethically undesirable practices: if the latter, practitioners might be unduly hamstrung, and have to face the consequent moral dilemma of either ignoring regulations, or failing to operate an efficient profitable business. Indeed, if regulations are incomprehensible, then practitioners may not be able to discharge their moral obligations to obey the regulations even if they want to.

The general point to be made here is that if reform in regulations is to be effective then there needs to be a well-educated and ethically informed community of reflective practitioners; regulation and education, including ethical education, need to go hand in hand. Codes are a useful tool in this regard; for they are, or ought to be, documents that embody both a regulative and an educative function in relation to the basic principles and ideals of an occupation.

Codes of Ethics and the Occupational Context

Codes of ethics should not exist in isolation. If they do they are unlikely to fulfil their educative, regulatory and integrative functions. As we have already seen a minimal code of ethics needs to be supplemented by explanatory material, by a model of practical ethical reasoning, by concrete examples of ethical problems and solutions, and possibly by a code of practice.

More generally, codes of ethics, if they are to succeed, need to exist in an environment in which ethics education is taken seriously and undertaken on an ongoing basis.

Further, codes of ethics – and their associated codes of practice – need to exist in an

¹⁴ See Ian Ayres and John Braithwaite *Responsive Regulation* (Oxford University Press, 1992)



occupational environment in which the systems of reward and of punishment are perceived to be fair and reasonable. Moreover, codes of ethics need to exist in an occupational environment in which they are 'owned' by the members of the occupation in question.

The desire amongst members of an occupation to do what is right can be reinforced by ensuring a just system of rewards and penalties within the occupation or organisation. Unfair workloads or financial rewards, unjust systems of promotion, unreasonably harsh disciplinary procedures for minor errors, and so on, are all deeply corrosive of the desire to do one's job well and to resist inducements to do what is illegal or otherwise immoral.

Further, complaints and discipline processes need to be transparent, independent and fair. Moreover, they need to be reasonably efficient and effective. If not, they will cease to adequately serve their function, they will be regarded with ambivalence and they will ultimately fall into disrepute.

Fair and effective complaints and discipline processes are important, if minimum moral standards are to be maintained. Those who are incompetent, or seek to engage in behaviour in contravention of codes of practice, or behaviour that is corrupt or even unlawful, need to be made accountable and held responsible. However, the logical endpoint of increasing accountability is a huge corpus of regulations, and ongoing and expensive investigative and disciplinary activity.

Moreover, excessive reliance on accountability mechanisms bypasses the issue of moral responsibility which lies at the heart of corruption and unlawful conduct. In the last analysis the only force strong enough to resist unacceptable behaviour is the moral sense - the desire to do what is right and avoid doing what is wrong. If most practitioners in a given occupation do not for the most part have a desire to avoid doing what contravenes relevant regulations or laws, or is otherwise immoral, no accountability system no matter how extensive and elaborate can possibly suffice to control unacceptable conduct.

The desire to do what is right does not exist independently of the habit of reflection and judgment on particular pressing ethical issues. Accordingly, the desire to do what is right can be reinforced by ensuring that ethical issues are matters of ongoing discussion and reflection in initial training programs, further education programs, and in relation to ethical codes.

Further, the desire to do what is right must be reinforced by utilising the intrinsically collective nature of an occupational group, or of an organisation, and in particular by stressing that members of an occupation are collectively responsible for maintaining the minimum standards. It is a mistake to rely on the moral courage of isolated individuals conceived of as



being responsible only for their own actions.

In general, if an individual did all that he or she could in the circumstances to avoid performing a wrongful individual action, or contributing to a wrongful joint action, then that individual should not be held responsible or penalised for such actions. However, that is not the end of the matter.

For individual members of an organisation or occupation also have ethical responsibilities in relation to the behaviour of individuals other than themselves. Consider a practitioner who becomes aware that one of his or her peers is engaged in unlawful or corrupt or incompetent conduct. Clearly, there is an obligation to do something about this, for example, to report the conduct. This individual obligation exists by virtue of a collective responsibility that members of an occupation or organisation have to ensure that minimum standards are complied with by all members of the occupation or organisation.

Indeed collective responsibility also entails such actions as reporting infringements of minimum standards, and support for, rather than opposition to, those who report such infringements in good faith.

The collective effort to ensure that the minimal standards of an occupation – minimum standards enshrined in the code of ethics - will contribute to the internalisation by practitioners of those standards. More important, such a collective effort will ensure that practitioners identify with those standards so that self-respect, as well as the respect of others, depends on the maintenance of those standards and on intolerance of those who cannot or will not meet them.

The notion of a self-regulating occupation has a good deal of currency. One meaning for this term is that the members of an occupation establish and run their own accountability systems, including complaints and discipline systems. A second meaning is that members of an occupation see to it that infringements of minimum standards are not tolerated; this is not so much a matter of formal processes as of ethical culture and a strong sense of collective responsibility. Whether or not a given occupational group ought to be self-regulating in the first sense, it certainly ought to be self-regulating in the second sense. For if it is not self-regulating in this second sense, then it is not likely to be an ethical community of practitioners.¹⁵

Generic Principles of a Code of Ethics

In earlier sections I have detailed what might be termed the generic functions of codes of ethics for example, educative and regulative. I have also detailed the various associated institutional

¹⁵ Self-regulation as a mark of the professions is controversial. See e.g. Michael D. Bayles "Professional Power and Self-Regulation", *Business and Professional Ethics Journal*, vol. 5, No. 2, 1986, p.27; Paul Camenisch "Business Ethics: On Getting to the Heart of the Matter", *Business and Professional Ethics Journal*, vol. 1, no. 1 (1981) p.61.



devices and educational tools that need to accompany codes of ethics, if such codes are to be effective. These included additional explanatory material, case studies, models of practical ethical reasoning, ethics components in continuing professional development programs, codes of practice, and just and reasonable complaints and discipline systems. And I have indicated the kinds of participatory process that needs to be gone through in the drafting and redrafting of codes of ethics. Further, I have described, in suitably general terms, the features of the occupational and organisational context in which codes of ethics would have maximal effect.

It remains to consider the generic content of codes of ethics. Given the diversity of occupations – and I have insisted on a distinction between the professions and other occupations – many of the principles and ideals differ, and ought to differ, from one occupation to another. In this connection view the Center for the Study of Ethics in the Professions at the Illinois Institute of Technology has made an important contribution in compiling a library of codes. (See the website <http://ethics.iit.edu/PublicWWW/codes.>) The library contains 500 codes of ethics.

Nevertheless, in the context of the conclusions reached above, and in the light of our review of a large number of codes of ethics, and our discussions with key informants, a number of important points in relation to the generic content of codes of ethics suggest themselves. Codes of ethics should ideally:

1. Describe not only minimum standards, but also occupational ideals; in so doing they should include not only action guiding principles, but also virtues and desirable attitudes.
2. Contain a statement to the effect that minimum standards ought not to be compromised, even in the face of internal pressure from the occupation or organisation to which one belongs or external pressure from outside organisations and groups.
3. Contain a statement to the effect that members of the occupation or organisation ought to obey the just and reasonable laws of the community.
4. Contain a statement expressing a commitment to the principle of individual autonomy (comprising freedom of action, speech, to work etc.) – the cornerstone of a free society.
5. Contain a statement expressing commitment to non-discrimination on the basis of gender, race etc.
6. Contain a statement to the effect that members of the occupation or organisation ought to obey the just and reasonable regulations governing the activity of the members of the occupation or organisation in question.



7. Contain an integrity statement to the effect that members of the occupation or organisation ought to avoid telling lies (tell the truth) and do what they say they will do (keep their promises).
8. Set out the fundamental goals or ends of an occupation, as well as the constraints on the pursuit of those ends, for example, health, law and order, education, provision of housing.
9. Prioritise some of the principles, rights and ideals listed in the code.
10. Set out the principal rights of members of the occupation in relation to salient groups such as employers, peers and clients, for example, sphere of autonomy in relation to their employers.
11. Contain a statement or statements committing members to respect the relevant rights of consumers and clients, for example, informed consent in relation to the work to be undertaken and the fees and payments to be charged, privacy and confidentiality.
12. Contain a statement to the effect that complaints and disciplinary processes ought to conform to principles of independence, reasonableness and fairness.
13. Contain a statement to the effect that members ought only undertake work that they are competent to perform.
14. Contain a statement to the effect that members ought to undertake their work conscientiously, and with efficiency and effectiveness.
15. Contain a statement regarding adequate initial and ongoing education.
16. Contain a statement committing members to compete fairly in the market.
17. Contain a statement expressing the principle that one should build one's professional or occupational reputation on the basis of merit.
18. Address the issue of occupational or organisational culture, for example, secrecy and closing ranks in relation to wrongdoing or incompetence on the part of peers.
19. Address problematic ethical issues that their members confront, for example, the appropriate role of the market in relation to the provision of medical services, conflicts of interest that arise from various sources including role confusion.
20. Contain a statement in relation to the collective responsibility of members to report on any failure of their peers to meet minimum standards.
21. Contain a statement in relation to the need for loyalty and cooperation among



members of an occupation in the service of the goals and ideals of the occupation.

22. The ethical issues raised by members of an occupation working in a multi-disciplinary workplace, or working in an organisation which might have requirements that are in potential conflict with the requirements of their occupation, need to be addressed in their occupational code of ethics, and/or the codes of ethics of the organisations in question.

The process for developing a code of ethics for an occupation might take the following form.

1. Establishment of Ethics **Committee** Phase

Establish an ethics committee to take responsibility for drafting the code. The committee should involve at least two members from outside the occupation, including a philosopher with expertise in occupational ethics, and at least one person 'representing' the occupation's client or consumer group. Membership of the Ethics Committee should be for a specified term. A degree of continuity of membership is desirable. So provision should be made for only half of the terms of members to expire at the same time.

2. Examination of **Issues** Phase

The Ethics Committee should:

- identify the purposes to be served by a code of ethics, for example, education, regulation
- identify the format of code of ethics for example, explanatory material, accompanying code of practice, model of practical reasoning
- examine the main goals, activities and context (including organisational context) of the occupation
- outline the role of members of the occupational group
- detail the main ethical requirements of members of the occupational group identify the main ethical problems likely to be confronted
- prepare a document setting forth the results of the above discussions. This is not a draft code of ethics, but rather a discussion of issues, ethical problems, and ideally a set of case studies and questions.

3. **Research** Phase

The document prepared by the Ethics Committee should be used in the research involving the members of the occupation and members of salient other groups, for example, clients. This research would (ideally) include: survey instruments, case studies (pre-



existing ones and development of new ones), focus groups□ interviews with key informants from outside the occupation.

4. **Drafting** of Code of Ethics Phase

In light of the research findings, a draft code of ethics and accompanying material, should be prepared by the Ethics Committee.

5. **Consultation** Phase

All registered members to be sent the draft code of ethics together with a questionnaire to gauge their response in general and to specifics.

6. **Ratification** of Code of Ethics Phase

The code should be circulated for the purposes of final comment and ratification by members of the occupation or by the relevant representative occupational bodies.

7. **Review** of Code of Ethics Phase

There should be a formal review of the code of ethics at set intervals by the Ethics Committee. The review should at least involve a Consultation Phase in addition to a redrafting by the Committee.



Appendix

Methodology

The tasks and methodology deployed in this project included both descriptive components (i.e. those relating to what professional codes of ethics are *in fact* like) and normative components (i.e. those relating to how professional codes of ethics *ought* to be). Since the Generic Content of Codes of Ethics is an instrument of evaluation its development will necessarily involve normative tasks. However, for such an instrument to be able to be used in relation to actual codes of ethics, it will need to have been developed on the basis of an examination of past and existing codes. So there are descriptive tasks to be performed.

The tasks and relevant methods deployed in this project were as follows:-

Stage 1 - Data Gathering

1. National and international library and Internet searches in relation to past and existing professional codes of ethics and secondary literature thereon.
2. Structured interviews with key informants from a variety of relevant professional groups and industries in Canberra and Sydney.

Stage 2 - Descriptive Analysis

3. Organisation of the resulting data and identification of generic ethical principles and functions contained in it.
4. Analysis of those principles, resulting in a taxonomy of them in terms of their ethical and historical significance.

Stage 3 - Preparation of Report

5. Evaluation of the merits of generic principles and functions embodied in past and existing codes of ethics.
6. Writing up of a draft Generic Content of Codes of Ethics (a Model Code of Ethics Principles) in the light of this evaluation.
7. Writing up of a draft explanation and justification of the Model Code and its various components.
8. Writing up of a draft process for developing a Code of Ethics.



Stage 4 - Finalisation of Report

9. Circulation of this draft for comment to: (a) internal reviewer from CAPPE, and; (b) international reviewer.
10. Rewriting of the draft code in the light of this peer review and of comments from the Professional Standards Councils.



References

The major reference collection of codes of ethics in relation to this study was provided by the Center for the Study of Ethics in the Professions at the Illinois Institute of Technology. The Center has made an important contribution to the study of codes of ethics by compiling a library of codes. (See the website <http://ethics.iit.edu/PublicWWW/codes>). The library contains 500 codes of ethics.

□The codes of ethics of the occupations with professional standards schemes with the NSW Professional Standards Council were also consulted.

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Who can make a submission?

Any person or organisation may comment on the matters raised in a paper. If you have information, an opinion, argument or recommendation for action on a matter under review, or personal experience of the issues involved the Professional Standards Council would be pleased to receive your submission.

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There is no set format for submissions. A short comment in a letter may be sufficient. Alternatively you may wish to prepare detailed suggestions or a critique of several pages.

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Please ensure that your name (and association or organisation if appropriate), contact address and telephone number are clearly indicated on the submission. The submission is to be signed, either on your own behalf or on behalf of the organisation you represent. If you are signing on behalf of an organisation indicate at what level the submission has been authorised (e.g. Executive Committee, President, Chair etc.).

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Once received by the Council Secretariat, submissions will be deemed to be public documents, and may be quoted in any further documentation produced on the topic by the Council. A copy of your submission may be accessed by other persons. All materials will be appropriately referenced. A request for confidentiality will be respected by the Council in relation to the publication of, and public access to submissions. If you would like your contribution to be treated as confidential, please indicate this on your submission. Please note, as a government agency, our records are subject to the *Freedom of Information Act 1989* (NSW) and *Freedom of Information Act 1992* (WA). There is provision in the Act for exemption on the grounds of confidentiality and any request for a copy of a submission marked "confidential" will be determined in accordance with the relevant *Freedom of Information Act*, but the Professional Standards Council cannot guarantee that exemption will be granted in each case.



How to send a submission

Submissions can be made in writing in the following ways:

Email: pscinfo@psc.gov.au

Mail: Professional Standards Councils
GPO Box 4021, Sydney NSW 2001