benchtv
a benchmark production

Précis Paper

Capabilities, Obstacles and Support for Professional Ethical Decision-Making

Dr Hugh Breakey discusses ethical decision-making and failing, and how institutions can create an environment that supports moral choices.

<u>Discussion Includes</u>

- How do ethics influence the way that professionals practice?
- The stages of ethical decision making
- Obstacles to moral sensitivity and moral reflectiveness
- Structuring an ethical workplace
- Moral motivation and decision making
- The relevance of moral competence

Précis Paper

Capabilities, Obstacles and Support for Professional Ethical Decision-Making

1. In this edition of BenchTV, Dr Hugh Breakey (Research Fellow – Institute for Ethics, Governance and Law, Griffith University) and Tayla Gee (Benchmark Producer, AR Conolly & Company) discuss Dr Breakey's research into ethical decision-making.

<u>Overview</u>

2. The right ethical choices should ideally be made conscientiously, not out of fear of punishment. Dr Breakey's research considers whether it is possible to structure an organisation or institution in a way that will make the people within it behave more ethically, that is, take the right moral action for the right moral reason.

3. An ethic can be any type of moral principle or value that we care about. We encounter ethics on a daily basis, but ethics also arise in professional life.

4. There are a number of codes and professional obligations that each profession is required to live up to, the content of which is often straightforward to ascertain. The deeper question, however, is what are the underlying principles, and why might a person obey those principles? Two professionals who obey a code of conduct might do so for very different reasons. One way in which ethics might be thought about is as a contractual obligation or quid pro quo in exchange for the advantages that come from being within a certain profession. Yet even if one professional views their ethical obligations from this standpoint, other professionals may observe the same obligations for quite different reasons: for example, they may focus on upholding the honor, dignity and excellence of the profession and its practices.

5. Professional ethical codes will generally stipulate who the obligation to act ethically is towards, including:

    *   Obligations to the client or patient;
    *   Duties to the community more generally;
    *   Duties to the rest of the profession.

6. The impact of (and the possibility of punishment for) violating a professional ethical standard may depend upon who the subject of the duty is. For example, Dr Breakey described how there has been a breakdown in the social compact between banks and society, and as a result, banks now find themselves subject to additional taxes and scrutiny.

7.   Dr Breakey set out a number of stages of ethical decision making:

- *Awareness:* in order to be able to act morally, a person needs to be aware that they are in a morally-loaded situation, and to isolate the morally salient features of that situation.
- *Judgment:* a person must be able to reason their way through the process to a justifiable judgment about the correct course of action.
- *Decision-making and action:* the person must be able to translate the decision into action (and have the capacity to act).
- *Achievement:* the person must be able to achieve the action that they set out to do. Sometimes, trying one's best and attempting to act morally will be sufficient, but professionals are also often required to have a certain level of competence.
- *Review:* the person will sometimes reflect on the decision and action that they took.

8.   It is important to note that problems can occur at every one of these stages that prevent a person from acting ethically. Dr Breakey's research therefore focuses on what structures can be put in place to encourage individuals within an institution to act ethically.

Moral Sensitivity

9.   When talking about moral awareness, one of the issues is whether an individual actually becomes cognisant that there is an ethical issue. Sometimes, moral sensitivity is straightforward as professionals may be aware that a certain class of situation raises moral issues. However at other times, because a professional is concentrating on something else, the ethical issue may not be revealed.

10.   To have moral sensitivity, a person will be aided by empathy and experience, as well as education and codes of ethics. However, moral sensitivity may be clouded by factors such as scripts or standard ways of doing things that might prevent a clear picture of ethical issues; and compassion fatigue or burnout. Scripts refer to cognitive processes that map existing knowledge onto a template for understanding and response, and can incorporate moral concerns. However scripts that do not include a concern for unusual ethical issues may prevent the professional from approaching the issue with sufficient moral sensitivity.

Moral Reflectiveness

11.   Once a person has become aware that there is an ethical issue on hand, they must then reason through how to approach the issue. These moral steps are internal processes that occur when a person reasons and thinks their way through a moral dilemma.

12.   Obstacles to moral reflectiveness and moral decision making can include biases of thought, including moral biases, and neutralisations. Neutralising occurs when the individual tries to reason that an exception to the normal rule applies to their situation, such that they do not have to act in accordance with normal ethical decision-making.

Moral Motivation

13.   Once a person has become aware of an ethical issue and reasoned through it, they must move into a stage where they must act on their decision. In cases where the stakes are high and there are a number of conflicting considerations, the issue of moral motivation comes into play.

14.   Obstacles to moral decision-making can include egoism and personal desires; self-interest and profit; and loyalty. If a professional is risking their reputation, or risking that a client will walk out and find another professional to do the job, a professional may be tempted to act unethically because of their own self-interest.

15.   The last obstacle, loyalty, is particularly relevant to legal professionals. Most of the time, making the right ethical decision will be best for both the individual and the organisation around him or her. However, at times, these interests will conflict. Moreover, research by David Luban highlights concerns with lawyers' professional obligations to advocate for their clients, demonstrating how if a professional is consistently advocating for someone, it becomes easy to believe in the moral righteousness of the client's position and lose objectivity about one's professional obligations.

Action and Moral Character

16.   Most of the time, when a person has made the decision to act ethically, it will be straightforward to act upon that decision. However, there can be cases where, having made a decision to act morally, it can be difficult to stand up and do the right thing.

17.   Moral character refers to the ability to make a judgment call and then act on the judgment. The main obstacles to moral character will be peer pressure and concerns about authorities. However, these are not strictly speaking obstacles to the moral character functioning, as character is simply the type of moral fibre to allows a person to be resilient in the face of

obstacles and overcome them. Good moral character can be encouraged by the institution around the individual, such as by putting in place social supports to act ethically.

Moral Competence

18. Often, we do not judge people on the basis of their competence once they actually act in a moral way – as long as they have tried to do the right thing, this will be sufficient. However at times, people will be judged by their level of competence, particularly where their actions fall short of the level required of their profession.

19. Training will contribute to a person's moral competence, but there is no substitute for experience. This means that professionals will get better at making moral decisions as they move through their career. Obstacles to moral competence will include being unfamiliar with a particular area of practice, and the availability of options that the professional will be able to competently pursue.

Moral Reflectiveness

20. Although not part of the decision making itself, reflectiveness after the event can be relevant to the way that a person makes future decisions. Moral reflectiveness also allows a person to consider the ethical issues with a greater sense of objectivity, and without time pressures.

Structuring an Ethical Workplace

21. The psychological qualities of an individual are not the sole determiner of moral reasoning. Rather, the environment that a person is in also plays a major role in their ethical decision-making.

22. Structures such as advice hotlines and informal advice from colleagues and mentors assist professionals to make ethical decisions by assisting with moral reasoning. Institutional systems such as these allow people to bypass the moral reasoning stage by providing the correct ethical decision.

23. Dr Breakey advocates surgically targeted reform in order to build ethical regimes. With all of the stages discussed to making ethical decisions, problems can occur at each point in time. If all that happens when an ethical problem occurs is that the individual involved is blamed, an institution can miss opportunities for fixing problems. In contrast, if we carefully consider the stage at which the problem occurred, we can design initiatives that target the specific problem that occurred.

24. For example, a problem involving moral awareness may arise where a task is decentralised, so that instead of one individual taking care of the task, the responsibility is spread out across a number of individuals. Because the task is being taken care of by a team, a problem that might get picked up by one professional talking to a client may not get picked up by the team. In a case such as this, the reason for a morally-bad decision is not that an individual made a decision to do the wrong thing ethically, but rather there was a lack of moral awareness that prevented the problem being identified. In contrast, if the problem is occurring at the decision-making stage, the solution may be more along the lines of an advice hotline or a plain language code of conduct. By identifying the stage at which the moral issue occurred, more targeted solutions can be developed to fix the problem going forward.

25. The impact of instituting an ethics regime is to create a space where the professionals are better empowered to act on and pursue their moral obligations. In different environments, there will be different pressures and opportunities for people to do the right and wrong thing. In each situation, the institution must consider how it can empower its professionals to work their way through from moral awareness to a successful moral result.

BIOGRAPHY

Dr Hugh Breakey

Research Fellow, Institute for Ethics, Governance and Law, and Law Futures Centre, Griffith University

Dr Hugh Breakey is a research fellow in moral philosophy at Griffith University's Law Futures Centre (Institute for Ethics, Governance and Law). His work spans the sub-disciplines of political philosophy, normative ethics, moral psychology, governance studies and applied philosophy. Hugh's work explores the ethical challenges arising in such diverse fields as peacekeeping, institutional governance, climate change, sustainable tourism, private property, professional ethics and international law. He has taught philosophy and ethics at several universities, and is the President of the Australian Association of Professional and Applied Ethics.

Tayla Gee

Benchmark Producer, AR Conolly & Company

BIBLIOGRAPHY

Focus Article

Dr Hugh Breakey, Building Ethics Regimes: Capabilities, Obstacles and Support for Professional Ethical Decision-Making, (2017) 40(1) *UNSW Law Journal* 322. Available online at: http://www.unswlawjournal.unsw.edu.au/sites/default/files/401-13.pdf