Locating the ethical in the integrity branch: towards a theoretical framework for ethics in oversight bodies

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Integrity agencies investigate the decisions and actions of public sector employees and Members of Parliament. Integrity agencies include the range of agencies that have oversight across the sector, including Ombudsman offices, Auditors General, Public Sector Commissions, Information Commissioners and offices that focus on anti corruption processes, these include: ICAC (NSW), CCC (WA), ICAC (SA), IBAC (Vic), CMC (Qld) and IC (Tas.) and the Australian Government also began developing a National Anti-Corruption Plan in 2011 (Australian Government 2011). As agencies that specialise in scrutinising the behaviour of public figures, they constitute a form of accountability that is integral to the processes of modern democratic practice[1]. While most of the integrity agencies have a broad range of powers, the agencies that address corruption have extensive powers to undertake their investigations; these include: covert investigations, telecommunication intercepts, assumed identities, integrity testing and the authority to search public premises (see for example, *The Corruption and Crime Commission Act 2003*). For all integrity and oversight agencies however, these powers can result in tensions between the integrity agency, the Parliament, the public sector and the broader community. In some cases the tension exists around jurisdiction, such as between police and the integrity agency (Brown and Head 2005); for others, the tensions reside in relationship between Parliamentary Privilege and the investigative powers of integrity bodies (Sheen 2012); for the broader community however, tensions can result from legislation that authorises the covert intrusion into citizens' lives.

Oversight bodies provide a normative base for society (Manners 2008: 66), that is they reinforce particular ideals that are integral to a well-functioning democracy. As oversight bodies have considerable power they actively legitimise norms such as accountability and responsibility. They also institute a powerful legitimising force that promotes a set of principles that shapes the

[1] This is not to suggest these agencies constitute the fourth arm of government, see for example the argument put forward by Justice Spigelman (2010)

relationship between government, the bureaucracy and society in general. These normative principles include the significance of the rule of law (Ackerman 2000), the separation between powers of government (Topperwien 1999; McMillan 2010) and institutional and personal integrity (Spigelman 2010). In effect, oversight bodies reinforce the processes of democracy through their power to scrutinise the decisions and actions of the government and the public sector[2]. In undertaking these roles, their practices are informed by the ideals of democratic practice: equality, freedom and accountability.

As public agencies with considerable powers, integrity agencies' decision making practices are also open to scrutiny. For example, the *Corruption and Crime Commission Act 2003* includes the powers of the Parliamentary Inspector of the Corruption and Crime Commission in Western Australia; this position reports directly to the Western Australian Parliament through the Joint Standing Committee on Corruption and Crime. In NSW, the Committee on the Independent Commission against Corruption examines the investigations undertaken by ICAC and in Queensland, the Parliamentary Crime and Misconduct Committee reviews the operations of the Crime and Misconduct Commission. For Auditor General in Western Australia, the Joint Standing Committee on Audit has the legislative power to review the effectiveness of the Act and to examine the processes of the Auditor and the impact the power of the act to undertake its role (Auditor General Act 2006). The role of the Parliament therefore is to ensure that the statutory powers conferred on these agencies comply with the designated legislative provisions. While these processes and reviews are framed by the rule of law, and the processes of government, the unifying element that draws these practices together resides in the realm of ethics.

Ethics provides a way to situate the power of integrity bodies in relation to the key ideals of contemporary society. Ethics informs the practices of justice such as emphasising equality before the law. Ethics shapes the structures of accountability and frames the processes of governance. In terms of the former, ethics shapes how people are held to account for their actions and it ensures that respect is central to these processes of exchange; and for the latter, ethics provides guidance to the relationships that governments build, locally, nationally, and in the international domain (Bell and Hindmoor 2009). Ethics therefore provides a basis for

[2] See for example, Griffith on the different roles Parliamentary Committees undertake and the distinction between the functions each committee undertakes (Griffith 2005: 11)

emphasising respect, honesty and responsibility as integral to the actions of public servants, and this ensures that ethical responsibility is part and parcel of the interactions between all members of the public sector.

The relationship between ethics and institutional processes, especially those with significant statutory powers also includes areas of tension. There is on one level an uneasy relation between the ideals of honesty, respect, accountability and responsibility and the structures that watch over human behaviour. This disquiet resides in the ways in which respect is operationalized during investigations into the actions and decisions of public officials. Tensions also emerge through recognising the rights and welfare of people; how these are taken into account during an investigation and the manner in which honesty and responsibility are framed also raises questions regarding ethical decision making. These tensions and questions do not provide straight forward responses; they do however raise important points around what it means to be ethical and what happens to the ideals of ethical practice in an administrative setting.

These questions also raise important considerations about the relationship between a philosophical exploration of ethics and the capacity for these ideals to be rendered operational. This paper is based on the assumption that the philosophical and practical realms of ethics require reflection. Importantly, this includes considering the tensions between the theoretical view of ethics and the practical application of these ideals. It is the purpose of this paper to consider this relationship with a view to expanding the conceptual frameworks that inform ethics in the contemporary world and the application of ethical practices within oversight and integrity agencies. The paper provides an initial step towards locating 'the ethical' within these structures so as to reflect upon our understanding of ethical responsibility as an integral component of instrumental and administrative practices.

In order to develop these ideas this paper makes a distinction between what we might understand as acting with ethical intention, and the very concept of 'the ethical'. The distinction serves two purposes, first, identifying what can be seen as being ethical aids with our attempts to grasp individual and collective moral responsibility; and second, reflecting on the ideals of ethical responsibility aims to assist us to become ethical. The paper presents these ideas and reflections over three sections. The first section outlines the ideals that point to being ethical. Section Two builds on these points so as to flesh out the concept of the ethical as this will assist

with expanding the conceptual view of ethical responsibility. The final section situates these ideas in relation to the functions and processes of integrity and oversight bodies.

Ethics and being ethical: rationality and duty

Being ethical is not a simple, straightforward or agreed upon set of values that informs how we live or a quality that provides a clear understanding of right and wrong. For example, what is right in one context may not be right in another such as lying to protect the lives of people in a war situation. Ethics has been understood in many different ways, and therefore being ethical also has many different interpretations. The most common philosophical approaches to understanding ethics refer to duty bound ethics, or deontological ethics; a consequentialist ethics referred to as teleological ethics, virtue ethics which emphasises human capacity to develop good character traits and a relational based ethics that understands being ethical as acknowledging our debt to 'the other'. These four views provide a basic standpoint that situates being ethical as a multidimensional process. This involves four dimensions: the importance of duty and respect for position; that consequences and outcomes should aim to enhance the ethical basis of the collective, accepting that human agency is intrinsically good with society acting to increase our capacity for virtuous action and that being ethical is directly bound to our relations with others.

Each one of these dimensions situates different character traits as the basis for being ethical. For the duty bound, deontological framework, being ethical is tied to the features of human decision making and consequently human action. Immanuel Kant's approach to ethics provides the main position in this view of acting with ethical intention. For Kant, being ethical is a direct result of the human capacity for rationality, that is, our capacity to act, to think and choose between various positions (Kant 1959). Rationality, in Kant's view provides the principles from which we live, and the framework for our decision making. Kant's point regarding being ethical is not that we will always choose the ethical option due to our rational capacity, rather it is simply that as humans we have this capacity for reason, and this provides the basis for autonomous decision making that is tied to being ethical.

In Kant's ethics, the 'categorical imperative' is the basis for ethical decision making. This functions on three levels: first, that human rationality frames our capacity for 'good will', by adhering to the laws of rationality our actions will be based in line with moral responsibility. For

Kant, good will emerges in our decisions to fulfil our duty for no other reason that it is our duty (Kant 2001). Good will is not conditional on other aspects of our welfare, it does not relate to our happiness, the wellbeing of friends and family or the advancement of careers. As a rational being, the importance of duty sets the rules by which a rational and therefore moral person lives. The most effective way to consider whether one's duties adhere to the rules of rationality is to cast the rule as a universal law that would govern all rational actors (Kant 1964). The second level that explains acting with ethical intention refers to our relations with others. To be ethical in our relations with others requires that we do not treat others as a means to an end (Kant 1959). That is as rational beings we should not use people to advance our own position in life. The third aspect of the categorical imperative refers to humanity such that the relevance of duty, universality and our relations with others must be based on principles that engender harmony and a 'possible kingdom of ends' which views society as the state of fully rational agents who are equal under the common laws of that society (Kant 2001).

The implications derived from Kant's position on being ethical refer specifically to the centralising feature of rationality. To act with ethical intention suggests that through reason we can determine for each action our moral responsibility and thus our being ethical. Certainly Kant's work emphasises discrete acts and the capacity for action, and while his work highlights emotions, especially those that benefit others, rationality and the obligation to duty still provide the ground to a Kantian version of being ethical. On the one hand, this framework enables a more systematic approach to being ethical in that it advocates for a transparent decision making system, especially for the individual. On the other hand however, to act ethically in this framework, minimises the importance of human characteristics that also engender morality, such as love, empathy and friendship (Foot 2001).

Ethics and being ethical: reason and consequences

Another version of acting ethically derives from an outcomes based view of decision making. Ethics here is based on the claim that goodness is determined by the rightness of an action, and the latter is determined by the overall outcome, one that enhances the good for society in general (Pettit 1991). Based in part on the work of Jeremy Bentham and John Stuart Mill, being ethical refers to our capacity to examine the consequences of our decisions and weigh up the outcomes in terms of maximising good results (Pettit 1991: 231). This can mean

deliberating between acting and not acting and deliberating between the benefits that may be derived for society in general and any harm that may ensue. In other words, ethics in this frame requires one to consider whether the benefits to society outweigh the harms that may be engendered.

This consequentialist approach to ethical action also emphasises the role of rationality. However, in this approach rationality provides the means to identify the range of possible options available, to attach values to these possibilities in terms of their impact on people and the broader society (Pettit 1997). In effect, acting ethically requires that we make our decisions through promoting the greatest good for the greatest number (Postema 2002). It is rationality that we rely upon to make these ethical decisions; and that we can readily identify the consequences of not acting in an ethical manner. For the consequentialist, being ethical requires that we focus on the ends of our decision making, or in other words w need to become utility maximisers (Postema 2002).

Ethics and being ethical: the virtuous life

Virtue is another version of a teleological approach to being ethical. Similar to the consequentialist version, virtue ethics emphasises the end result of ethical decision making. To be ethical in this conceptual framework begins from the assumption that people are morally good, and that the acts we undertake are viewed in terms of what a good agent would or would not do (Louden 1986). Drawn from the work of Aristotle and Thomas Aquinas (Oakley and Cocking 2001), virtue ethics shifts the focus away from emphasising duty and consequences for the greater good, to one's agency as a morally good person. Rather than viewing ethical decision making as an action that is always tied to the laws of rationality and obligation, acting with ethical intention emphasises many human characteristics that generate moral ends.

Virtue ethics focuses on inner human qualities that enable actions to be virtuous. A virtue is a character trait that is good for a person and through habit becomes internalised as a normative disposition to govern behaviour (Rachels 1999: 178). Virtues assist people to become ethical, virtue ethics therefore focuses on human potential by emphasising that through reflection we develop character traits such as honesty, generosity, fidelity, integrity, compassion and so forth (Oakley and Cocking 2001). Virtue ethics emphasises the importance of education which enables people to continually reflect upon and build their character. Accordingly this is a life-

long project which enables one to develop a deep level of happiness, and wellbeing (Oakley and Cocking 2001).

While virtue ethics shifts focus from specific acts to the development of character traits, rationality is still of central importance. While reason is not the driving force for being ethical, reason enables the virtuous person to use virtues, to decide which virtue is required in particular circumstances (Foot 2001). Being rational is not the impetus to develop virtuous life, rather it is our innate moral goodness, or in other words, the imperative to be virtuous for virtue's sake that we indeed act ethically. Rationality is integral to the acquisition of virtues, but it is recast as our capacity for wisdom (Oakley and Cocking 2001). Therefore virtue ethics takes a broader approach to understanding ethical actions, as a conceptual framework, it situates ethics as emanating from our capacity for goodness, as opposed to our capacity for rationality.

Ethics and being ethical: *our debt to the other*

Any consideration of ethics requires exploring what it means to live well in society. Living well is not simply something to do with our well-being, living well informs both a sense of self and our relations with those around us. Acting with ethical intention in this conceptual framework begins from a different set of assumptions from those discussed above. This approach to being ethical emerges from a group of authors who sit loosely within the philosophical tradition of phenomenology. The aim of this approach is to articulate the basis for ethical responsibility. In other words, what motivates our capacity for reason, obligation and goodness? This phenomenological position does not accept the primacy of reason as the force that enables our capacity for ethical decision making (Levinas 1969). Rather, it is what occurs prior to the functional aspects of reason, and prior to the implementation of goodness that accordingly provides the basis for ethical action. This conceptual framework begins from the assumption that our existence is always dependent on an unspoken relation with the other.

Drawn in part from the work of Emmanuel Levinas, this relational ethics emphasises the connections one has with the world around them. In Levinas's approach, the ethical relation stems from the fact that the self cannot survive by itself alone, cannot find meaning within its own being-in-the world within the ontology of sameness (Levinas and Kearney 1986: 23). The ethical relation resides therefore in the realisation that one's subjectivity or agency is tied to an otherness, an essence that exceeds one's comprehension. For example, one can never fully

experience another person's pain, sorrow or joy; I can as a rational and virtuous person, understand and empathize with another, but I have no direct way of knowing what another is experiencing. This emphasises the very fact that there is this 'unknowable' aspect of humanity; it is this essence that cannot be contained by one's own rationality that in effect provides the impetus for being ethical.

To be ethical therefore requires acknowledging that an unconditional relationship forms the basis of our identity (Levinas 1969). It is the force of this relation that interrupts our rationality and social mediation that institutes categories and judgements. Rather than situating ethics as a form of responsibility: to duty, or to outcomes; to be ethical is seen in our ability to respond to the other. Levinas employs the concept of 'face' to build this view of ethical relations. As the face is always moving it represents the excess or the unknowable quality of another person. This emphasises the possibility of an encounter with an essence that is beyond oneself, as such, it marks the limits of the very idea of an autonomous self and establishes the debt we owe to the other for our identity. On one level therefore, to act with ethical intention requires accepting the disturbance and unease the face instils in our lives (Levinas 1969).

To be ethical from this perspective is not simply about our individual response to the call of the other, nor is being ethical something we can rationally choose to do. As the ethical relation enables our agency, it sits below our cognition but the force of the relation is always evident. It erupts in every moment and challenges us to acknowledge the debt we owe to an essence that is beyond our comprehension (Critchley 2004). When we deny this relation or ignore the call we limit our potential and constrain the possibility to live well. This is not to suggest that acknowledging our debt to the other comes easily. It requires that in each moment when faced with another we will be unsettled by an essence that exceeds our comprehension. To acknowledge this otherness, requires, in the first instance, we hold open our perceptions and judgements as these render people into a faceless populace resulting in an isolated and individualistic community (Levinas 1989: 212). In order to step into this relational ethics and to acknowledge the significance of the other the characteristics of compassion, kindness and sincerity are integral to living well with others (Levinas 1981).

The ethical: moving beyond ethics

As the above conceptual frameworks emphasise different characteristics to understand what it means to be ethical, the overarching position that draws these ideals together refers to the centrality of humanity. The human capacity for rationality, goodness and sincerity all indicate that being ethical aims to bring about the continual betterment of society (Critchley 2004). When considered theoretically, these positions highlight tensions around the relationship between rationality, our capacity for goodness, how we relate as individuals and how a multitude of individuals make up the broader community. While there is certainly disagreement within the realms of philosophy as to which approach provides the most effective view of grasping the ethical, when situated together each position provides some insight into the importance of ethics and they all reinforce the imperative of ensuring an ethical basis for modern society.

The insights derived from these conceptual frameworks suggest that the ethical is both dynamic and dimensional in nature. The dynamism refers to the capacity of the ethical to engender the possibilities for change, and the dimensional component indicates that the ethical operates both in the ontological as well as pre-ontological realms. Each framework highlights that to be ethical instils within us, whether through acknowledging the significance of the other, or through the application of reason, the capacity to reflect upon our actions and take necessary steps to remedy inconsistencies. The significance of realising that being ethical emphasises our ability to change requires that for the ethical to flourish the conditions that enable reflection, learning and deliberation are integral to any approach to being ethical.

A further aspect of the dynamic nature of the ethical resides in the unsettling character being ethical brings to humanity. Again the frameworks, albeit differently, emphasise that to act with ethical intentions incorporates a sense of unease into our decision making. For the deontological approach, the unease is indicated in the imperative to review every action in relation to the rules and laws of rationality that shape our behaviour. For the consequentialists, the disruptive nature of the ethical is indicated in the distinction between the collective over and above oneself. In virtue ethics, the unsettling nature of the ethical is indicated in the significance of human emotions and for relational ethics, the ethical continually interrupts our position as an autonomous subject.

The philosophical positions above also clearly demonstrate that the ethical functions on many levels: from the pre-ontological with its insistence on the debt owed to the significance of

the other; to the realm of human emotions with the imperative for goodness and connection to others, and to the ontological with its emphasis on the dictates of rationality. By viewing the ethical as a dimensional concept broadens the perspective and provides the possibility to rethink how we understand ethical decision making. This expanded view of the ethical enables an exploration of the links between human agency, human sensitivity and our ability to affected by and respond to world around us. This indicates that a range of practices are needed to address the ethical twinges that erupt across these dimensional components of the ethical.

Locating the ethical in the integrity branch

One of the primary implications of attempting to locate this expanded view of the ethical within the integrity branch is that it challenges some of the normative institutions that these agencies reinforce. For example, norms such as accountability and responsibility can be recast in relation to the characteristics of the ethical. This would see accountability not simply as a relation that involves authority and exchange, but one also based on the continual betterment of society. Integrity bodies provide a key role around public accountability, which often emphasises procedural and administrative accountability, for this to take up the ethical dimension, accountability would be situated as a quality that balances procedures that focus on what is 'right' with those procedures that equally emphasise the endless betterment of society.

A similar position can be considered for the importance of responsibility. There is no doubt that integrity agencies rely on various conceptions of responsibility: from ensuring that those under review are responsible for their actions, to being particularly attentive to the rule of law, situating these ideals in relation to the ethical raises questions about how to ensure that responsibility moves beyond the realm of the legal. For ethics involves more than adhering to a set of legal requirements that may be coercive in nature and constrain the possibility for humans to flourish. This is not to suggest that locating the ethical would amount to transgressing the rule of law, it does however require an exploration into the relationship between the law, justice and ethics in order to balance the legal with the ethical.

Locating the ethical in integrity structures would also see an encouragement of the unsettling resonance that the ethical entails. As the primary act of being ethical is to engage with humanity in order to live better, working with the disturbance that the ethical instils could generate alternative approaches to managing the 'integrity requirements' of modern society. On

the one hand integrity bodies act to ensure cohesion between politics, Parliament, the bureaucracy and society. On the other hand however, modern democracy is the site for questioning, disagreement, discussion and deliberation. To bring these together around the ethical would ensure that each aspect is continually open to question, to revision and reflection.

As the ethical is multidimensional in nature to locate these dimensions within integrity bodies requires that, in the first instance, an agency would need to acknowledge the pre-ontological relation with the other as well as human qualities for sincerity, goodness and rationality. By taking into account all dimensions of the ethical when making decisions and judgements would provide the possibility for integrity agencies to question and reflect upon their motives. This is not meant to suggest that being ethical reduces our capacity to make judgements; it does however require that each decision and judgement does not cover over the ethical by reducing a person to an act, and one that is then judged as transgressing the rules of society. To locate the ethical therefore in these practices may require rethinking the way in which decisions are made and processes through which integrity is indeed understood.

Conclusion

This paper has provided an initial step towards locating the ethical within integrity bodies. The paper has argued that developing a broader perspective to ethics provides the possibility to build upon the conceptual frameworks that inform the functions, practices and roles of integrity agencies and oversight bodies. The paper has outlined some of the ideals of being ethical drawn from the realms of philosophical inquiry. By highlighting these ideals the paper has suggested that being ethical functions in a dynamic and dimensional manner. The implications derived from this initial excursion suggest that further work could be undertaken to grasp how the ethical could be embedded with integrity agencies and oversight bodies.

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