

Basic Concepts And Methods In Ethics

(ESSAY #2)

Introduction

As with any other higher-order intellectual activity, resolving moral problems requires that we be both analytical and imaginative. In the **analytical** mode, we sort out the component parts of ethical problems. This activity helps us in knowing what kinds of solutions are appropriate. However, resolving ethical problems often requires something more. In the **imaginative** mode, we can think as creatively as we can about ways of resolving moral problems. This creative activity takes many forms, including imagining creative new ways of reconciling conflicting moral claims.

Factual, Conceptual, and Moral Issues

Let us begin by considering some of the analytical devices that are useful in resolving moral issues. We can begin with a case. Suppose James is a chemical engineer who changed employment from Company A to Company B. Before leaving Company A, his manager asked him to sign a document in which he agreed to keep confidential any proprietary information which he acquired at Company A. Soon after he arrives at Company B, James is assigned to solve a problem involving a new emission, Compound X, which is not regulated by the EPA. James' new manager does not know whether to be concerned about Compound X or not. However James realizes that some of the proprietary information he acquired at Company A might enable him to modify the manufacturing process at Company B so that the suspicious new product would not be produced in the first place. This information would be used in an entirely different way than it was used by Company A and would not harm the competitive position of Company A with respect to Company B, but James still wonders whether he should approach his new manager with a proposal that requires the use of this information.

There are three different types of issues in this case. It is important to distinguish them, for they can be found in most moral problems.¹

The first kind of issue is a **factual issue**, i.e. an issue having to do with the truth or falsehood of factual claims. The primary example of a factual issue in this case is the question whether Compound X really is a health hazard. If James could come up with information that Compound X really is not any type of hazard and that the EPA would not be concerned with it at all, he would not have any problem. He could simply forget the whole thing. If James cannot determine whether or not Compound X is hazardous, or if he finds out that indeed it is a serious health hazard, then he has a difficult problem. So this factual issue has a crucial bearing on the issue James faces.

A second kind of issue is a **conceptual issue**, i.e. an issue having to do with the meaning or scope of a term or concept. The primary example of a conceptual issue in this case is the question whether the use of the information gained at Company A for the new problem at Company B would constitute a use of proprietary information. What, precisely, is the scope of the term "proprietary information"? Company A might have defined this term so precisely in the agreement which James signed that there is no room for doubt in this case. However, the document may be too generally worded to provide an easy answer to this question. Yet the problem that James faces is vitally affected by the question whether the information that James would pass on to Company B would be "proprietary information."

There are many cases in ethics and in the law where conceptual issues are crucially important. One of the crucial questions in the abortion debate is whether the fetus is a "human person." A normal adult human being is unquestionably a person, but what about a fetus? If we say a fetus is a "potential person," do we want to say that "potential persons" have the rights of actual persons? George Bush was a "potential president" from the time he was born, but he did not have the rights of a president until much later.

Judges often face conceptual problems. Suppose a city ordinance excludes "four-wheeled vehicles" from the park. Does this include wagons? What about skate boards?

A third kind of issue that arises in a moral debate is a genuine **moral issue**, i.e. a question having to do with the relevance or application of one or more moral principles. Notice that there is a broad and a narrow sense of the term "moral issue." In the broad sense, the entire set of factual, conceptual, and moral issues raised by James' situation could be called a moral issue. In the narrower sense, only the issue involving determining the relevance or application of a moral principle (or principles) to the situation is a moral issue.

Sometimes the application of moral principles to particular situations is relatively uncontroversial. For example, if Compound X is a virulent carcinogen and is emitted in large quantities by Company B, then most people would probably agree that its emission should be stopped. The general prohibition against knowingly harming other people would necessitate this conclusion. But suppose Compound X produces only mild respiratory problems in a small percentage of the population and that removing the compound is so expensive that it would force the plant to discontinue a product line and lay off part of the plant's work force. Suppose, further, that there is already a serious unemployment problem in the town and many employees might have to leave town to find work. Then there might be serious disagreement over what should be done.

It is important to distinguish these three kinds of issues, because they are resolved in different ways. A factual issue is resolved by investigation or empirical research. A conceptual issue is resolved by coming to agreement over the proper definition or scope of a term. A moral issue is resolved by agreement over the proper application of one or more moral principles.

It is also important to keep in mind that the resolution of factual and conceptual issues may be just as controversial and just as difficult as the resolution of moral issues--sometimes even more so. In many situations it is difficult or impossible to determine the relevant facts, especially when the factual issues have to do with the prediction of the likely consequences of events in the future. Scientists may simply disagree over the likelihood of a meltdown in an atomic power plant or the probable effects of storing toxic wastes in a particular location. Similarly, arguments over the definitions of "bribe" or "proprietary" may be very difficult to resolve. Nevertheless, people can disagree over moral issues, so let us examine these disagreements in more detail.

Relevance and Conflict Problems

A moral issue involves a dispute about the proper application of one or more moral principles. There are two common problems that we face in applying moral principles: relevance problems and conflict problems.² In a **relevance problem**, we are not sure whether a principle applies in a particular situation. Whether James' applying the process he developed at Company A to the new situation in Company B is a use of proprietary information is a relevance problem. Its resolution depends on the prior resolution of the conceptual issue as to how we define "proprietary." In a **conflict problem**, we are faced with two or more principles which seem to apply to a particular situation, and yet the two principles require different and incompatible actions. For example, suppose an engineer feels that she has an obligation both to stay with an employer who has been supportive of

her over a number of years and an obligation to move to another company where she could participate in the development of a new line of environmentally safe products. Here she faces a conflict problem, because apparently her obligation to her old employer and her obligation to contribute her special expertise to the development of environmentally safe products cannot both be honored.

Often, the answer to a conceptual issue provides the answer to a relevance problem as well. For example, the question whether the information James used to help Company B was "proprietary" is a relevance problem, but it depends on the definition of the term "proprietary." Once we know the definition of "proprietary" we will probably know whether James' action was a form of theft.

A Method for Resolving Relevance Problems

Since relevance problems are created because we have encountered a situation in which the application of a concept is unclear, it makes sense to go back to a situation in which the application of the concept is clear. Then, by comparing the similarities and differences between the cases in which the application of a concept is clear and the cases in which the application is unclear, we can come to some conclusion about the propriety of applying the concept in the questionable case. This method involves three steps.³

First, set up a series of cases, ranging from a case where the concept clearly applies, through a series of ambiguous cases, to a case in which the concept clearly does not apply. Consider James' problem again. Since the question whether using the information gained at Company A to help Company B with a new process is "theft" (and therefore wrong) amounts to the question whether the information passed on is really "proprietary," James should imagine a case where there is a clear transfer of proprietary information. We can call this the positive paradigm case, because it is a case in which the use of the term "proprietary" to describe the information that is transferred is clearly appropriate. Then he should imagine a case in which the term "proprietary" clearly is not appropriate as a description of the information that is transferred. We can call this the negative paradigm case, because it is a clear case in which the term in question does not apply. Then we can imagine a series of intermediary cases between the two extremes, starting with cases only slightly different from the positive paradigm case and ending with cases only slightly different from the negative paradigm case. One of these intermediary cases should be the case in question, which we can call the **test case**. The situation would look like this:

Positive Negative

Paradigm Paradigm

Case Intermediate Cases Case

C-P+ C-1 C-2 C-3 C-4 C-5 C-P-

Let us assume that C-3 is the test case. The number of intermediary cases can vary, of course. In some instances, it may be not be necessary to have any intermediary cases except the test case. In other instances, the complexity of the issues may require a number of intermediary cases.

Second, the morally relevant similarities and differences among the various cases must be enumerated. There is no magic formula for determining what is and is not morally relevant. Rather, you must rely on your own sense of what is morally relevant. In James' case, for example, one of the characteristics of the positive paradigm case

would probably be that it would give Company B a competitive edge over Company A. This is morally relevant because it relates directly to the fundamental reason that a company would want to keep certain information secret. Another characteristic of the positive paradigm case would be that exactly the same process is being transferred from Company A to Company B. By contrast, a negative paradigm case might be one in which there is no possibility of the transferred information putting Company A in an advantageous position with respect to Company B, and in which in fact the only transfer of "information" is in the limited sense that the original process started a chain of ideas in James' thinking that finally led to a new and creative process for Company B.

Third, after enumerating the morally relevant similarities and differences in the various cases, you must determine the line of demarcation between transfers of information that should and should not be proprietary. In some instances this may be relatively easy to do, but in others no precise point of demarcation may present itself. This should not be surprising. Although we all recognize a difference between day and night, it may be difficult to say just when the point of transition from "day" to "night" occurs. Is it at 6:00 p.m.? Is it when we have to turn on the lights on our car? Is it when the evening news begins on TV.? Is it when a trained observer can see the first star? Is it when a person with 20/20 vision can no longer see more than 20 feet ahead?

There may, of course, be different criteria for different purposes, but it is important to see that a certain amount of arbitrariness may be involved in setting the precise boundaries. This is not necessarily troublesome. It is no different from the situation in which we are attempting to find the point of demarcation between day and night. There is a clear difference between day and night, and there are many times which are either clearly day or clearly night. Nevertheless the precise point of demarcation may have to be established by convention. In the case of proprietary information, these conventions are ultimately established by the courts. The conventions established by the courts may or may not be the most desirable from a moral standpoint, but in other areas there are no such conventions. In many cases, these conventions should be established by the professional community—for example, in determining how safe is safe enough.

Resolving Conflict Problems

Sue has a problem. A compound emitted from the stack of the plant where she is employed has been linked by several studies to respiratory problems which can be severe in a small percentage of the population. The compound has not been regulated by the EPA, perhaps because it is relatively rare in industrial processes. Its elimination will be expensive, and it may force the elimination of the product line that produces the questionable compound. This would lead to the elimination of a number of jobs in a small community which is heavily dependent on the plant for employment for its citizens. An added dimension is that the product line could become very successful in the future, thus adding jobs in the community, which is in need of more sources of employment.

Sue's supervisor instructs her not to bring up the issue in hearings with EPA officials. He believes he has a good chance of delaying any final action on the issue for several years at least, and by that time a modification in the process may eliminate the compound. He argues that the evidence for the health problems supposedly produced by the compound is questionable, and that the health problems are not fatal in any case. "I'm going to fight them as long as I can on this one," he says. How should Sue respond?

Sue finds herself in a conflict problem, pulled by two opposing obligations, both of which find justification in her professional code. On the one hand, the first Fundamental Canon of the code of ethics of the National Society of Professional Engineers (NSPE) says: "Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties." On the other hand, the fourth Fundamental Canon of the NSPE code says, "Engineers shall act in professional matters for each employer or client as faithful agents or

trustees."

Furthermore, the obligation to the public itself pulls her in two different directions. Sue rightly believes she has an obligation to protect the physical health of the community. But doesn't she have an obligation to be concerned with the economic health of the community as well? In fact, if the people of the community were asked to give advice to Sue, they would probably side with the manager in advocating that the new product line be continued, with its promise of more jobs and wealth for the community. They would do this, even though they would also be the ones most likely to suffer from the respiratory problems. This being the case, does Sue have a right to act in a paternalistic way toward her fellow employees, deciding that their economic well-being is not as important as their health?

Conflicts between competing obligations, both of which appear to be valid, are common features of the moral life. The conflicts that give us trouble are not those between good and bad, but between competing goods, both of which cannot be fully realized. How should we approach such conflicts? Let us consider several ways in which conflict problems can be resolved.

(1) Finding the Creative Middle Way. When faced with two conflicting obligations, both of which appear to be justified, one approach is to try to find a way to satisfy both of them. While it is often not possible to satisfy both moral requirements in their original form, sometimes it is possible to satisfy them in a modified form. Now this may not seem possible, but we must not forget that most general moral rules have an "all other things being equal" qualification implicitly attached to them. Thus the first Fundamental Canon of the NSPE code should probably read, "All other things being equal, engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties." But all things are often not equal. For example, the threat to the safety, health and welfare of the public may be both uncertain and minimal. That is, (1) whether or not the emissions are in fact harmful may itself be a matter of controversy, and (2) there is of yet no evidence that the emissions produce fatal diseases, only significant respiratory problems in a certain small percentage of the population. Furthermore, as we have seen, the obligation to the community may include an obligation to its economic well-being. So the question is what in this case is Sue's obligation to the public.

This is not to say that Sue should unreservedly follow the instructions of her supervisor, for the same problem of specifying how the canon applies may apply to the Fourth Canon as well. What does it mean to act as "faithful agents and trustees" of one's employer? It cannot mean that the engineer is obliged to obey the employer no matter what the employer directs him to do. Virtually everyone would agree that an employee is not obligated to commit murder for an employer. Most people would probably agree that an employee does not have an obligation to vote in elections in accordance with what company management considers to be its own best interests. Many would agree that employees do not have to observe a lifestyle that the employer considers "appropriate" for its employees. However, most would probably agree that the employee does have an obligation to be faithful and punctual in work attendance, to devote his energy and attention to the work assigned, and not to steal company property or use company property without permission.

The most obvious criterion for separating legitimate obligations of employees from illegitimate obligations is that the employee has an obligation to perform his assigned function in the workplace and not to do in his or her private life what interferes in a clear and direct way with on-the-job performance, unless a violation of an obligation to the public is involved. But one of the obligations to the public is surely protecting the health and safety of the public. This further explanation of the two norms means that they can be reconciled.

According to these further specifications of the two guiding norms, if a product is a serious threat to the safety

and health of the public and the employer orders the engineer to conceal this information, the engineer is obligated to disobey the employer, even if the employer is not breaking any law by concealing danger.

However, the requirement for acting as "faithful agents and trustees" of the employer does seem to imply at least two limits on the actions of the employee. The first limitation is that the engineer should make his protests in as responsible a manner as possible. This requires respecting the corporate hierarchy where possible and making the protests in a private and non-confrontational way, if possible. The engineer should do everything possible to avoid embarrassing the employer and give the employer the opportunity to correct the problem, insofar as consideration of the well-being of the public permits. The second limitation is that the employee not protest minor risks to the health and safety of the public, if these are in what we might call the normal range of risk.

There is an obvious way to minimize the conflict of these two norms. If there were a complaint mechanism whereby employees could register ethical concerns in a way that would be confidential and not embarrassing to the company, these two norms could be reconciled. If there is no such mechanism, Sue should try to find some way of raising her concerns to higher management in a confidential manner.

It is important to keep in mind that the encouragement to finding a creative middle way between the two norms is not necessarily a moral compromise. Remember that the two norms have great importance from a moral standpoint. If it is possible to still raise the concerns while not directly confronting her manager, Sue should probably take this option. The purpose of moral thinking is not to produce martyrs, but to satisfy as many moral concerns as possible.

(2) Employing Lower-Level Considerations. Let us suppose that Sue is unsuccessful in bringing her concerns to the attention of higher management. She feels, furthermore, that her obligation to be a "faithful agent and trustee" of her employer and her obligation to refrain from unnecessarily jeopardizing the jobs of other employees is about evenly balanced against the obligation to protect the public from a somewhat harmful emission. How can she decide?

Sometimes it is permissible in such situations to take into account considerations that might seem to be less relevant otherwise. Suppose you are considering hiring two engineers, one who is more skilled in one area and one in another. When the qualifications are evenly balanced in this way, you might be justified in bringing in other considerations which would not otherwise be relevant, such as the fact that one of the engineers is an avid tennis player. Since you also play tennis several times a week, you decide to choose the person who would make a good tennis partner. Such a consideration would not ordinarily be relevant, but in this case it might be.

Now carry this same situation over to Sue's case. If Sue really believes that her obligations are evenly balanced in this case, it may be justifiable to take into consideration which option is most likely to promote her career advancement. This is not to say that she has failed to consider her own well-being all along. After all, she is one of the employees who might lose her job if the plant closed. But if she observes her professional obligations as outlined in the NSPE code, she will not have made her personal well-being the decisive factor. Now, however, she may be justified in doing just that.

(3) Making the Hard Choice. It may not always be possible to reconcile opposing obligations or to drop down to a lower-level consideration. Sometimes no creative middle way is possible. For example, Sue may find that all the managers she approaches are unsympathetic to her concerns. She may also become convinced that the danger posed by the new emission is substantially more severe than she had at first supposed. In this case she may have to bring the issue before the EPA. She may be forced to make a hard choice.

NOTES