Codes of Ethics – Towards a Rule-Utilitarian Justification

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ABSTRACT. This paper attempts to provide a conceptual underpinning for codes of ethics in business and the professions. Rule-utilitarianism is a theory of ethics which I believe can successfully do this. Business persons and professionals, hopefully, will be able to develop codes of ethics in a manner consistent with a well-formulated general ethical theory. This will help enable codes of ethics to be a bridge between general ethical theory and specific ethical decisions made in business and the professions.

I

There has been some discussion of codes of ethics in recent business ethics literature. These articles have been helpful in showing the potential benefits of such codes for industry and the professions. They have also pointed out the limitations of codes of ethics and have warned against expecting them to be an ethical cure-all for business practices. Codes of ethics have been justified on grounds of efficiency, 2 as a binding ideal for a profession, 3 as in the public interest, 4 as consistent with rational self-interest, 5 and as an effective tool towards self-regulation. 6 In a more negative manner, codes of ethics may be an effective substitute for increased government regulation which neither business nor the professions generally find attractive. 7 They may help regulate both employee and employer 8 as well as assist in developing some sort of ethical consistency in business and the professions. 9

There are problems with codes of ethics as well. Can they be effective? Some authors are sceptical. 10 They fear codes cannot be properly interpreted, or if properly interpreted, cannot or will not be rigorously enforced. There is a fear that in the final analysis codes of ethics will take a lower priority to maximizing profits. So, when there is a conflict between the two, profit maximization will take precedence over the code. (Be ethical unless it costs you something.) There is also a belief that codes of ethics are a public relations gimmick designed to ‘show’ the public and government how serious it is about ethics. Yet it may be well known within the company, industry, or the profession, that the provisions of the code do not actually have to be applied all that much.

With respect to the difficulties of enforcing codes of ethics and the relatively easy way in which one can sometimes ignore them if one is so inclined, there is an interesting parallel between codes of ethics and international law. International law is extremely difficult to enforce even when there are clear violations of it. Wars are fought, human rights are violated, and hostages are taken even though these sorts of actions are against various provisions of international law, whether it is customary international law, treaty law, or United Nations law. Nevertheless, in spite of these real and significant limitations which are applicable to international law, few jurists or legal philosophers would say international law is of no significant value to achieving stability and peace. In fact quite the contrary! To take on example, consider the international law of diplomatic immunity. This concept in international law has been upheld with a remarkable degree of consistency and regularity. The illegal Iranian departure from

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diplomatic immunity is all the more striking because it has blatantly disregarded this fundamental principle of international law. While quite rightly in the very recent past our focus has been on the one time it has not been upheld, we should remember how many thousands of occasions it has been upheld by the world community. Note that this adherence to the concept of diplomatic immunity has occurred even in the absence of effective enforcement procedures.

Now in a somewhat similar way codes of ethics can be a valuable tool for improving the ethical atmosphere of business and the professions. They can provide an ethical standard to which one can aspire. They can provide a way to expose code violators as those who at least prima facie do not take ethics seriously. They can provide a degree of stability and consistency in ethical decision making in industry or the professions. Thus, even though the enforcement problem is significant and at times can be overwhelming (or 'underwhelming'), one should not make the mistake of inferring from this fact that codes of ethics are of no significant value. This is false. Not only that, it is not at all clear that the enforcement problem is as staggering as some have suggested. I shall say more about some of these issues in Section III.

II

I have suggested in the previous section that much of the literature on codes of ethics has concerned itself with discussing their potential or real value to industry, the professions, or the public, as well as the enforceability problem. However, little attention has been given to the relationship of codes of ethics and ethical theory. I would like to focus on this issue. If such a connection can be made, codes of ethics will be given conceptual underpinnings which may strengthen both their ontological and ethical status.

Rule-utilitarianism is the view that the performance of an act is justified if it is in accord with a given binding rule. The rule is ethically justified if it is in accord with the principle of utility. Thus, rule-utilitarianism turns out to be a three stage sequence. I believe this is the position Mill holds in Utilitarianism when he states:

Whatever we adopt as the fundamental principle of morality, we require subordinate principles to apply it by: the impossibility of doing without them, being common to all systems, can afford no argument against any one in particular; but gravely to argue as if no such secondary principles could be had, and as if mankind had remained till now, and always must remain, without drawing any general conclusions from the experience of human life, is as high a pitch, I think as absurdity has ever reached in philosophical controversy.

For Mill, the principle of utility is to be invoked when there is a conflict of moral rules.

If utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible.... We must remember that only in those cases of conflict between secondary principles is it requisite that first principles should be appealed to. There is no case of moral obligation in which some secondary principle is not involved; and, if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognized.

Rule-utilitarianism was developed as an alternative to act-utilitarianism for three reasons. First, act-utilitarianism requires a separate decision process for the commission of each act that one performs since there are no binding rules available for one to apply in a given case. Second, there is a lack of consistency and stability in act-utilitarianism given this unavailability of binding rules. Third, because of this lack of consistency and stability, act-utilitarianism per se can never provide any sort of coherent public social policy to help a society in its affairs. At a societal or institutional level, it would be inconceivable to not have a set of binding legal rules or principles to which all citizens are subject. Social policy requires such a set.

This is also the case with a theory of ethics. If an ethical theory is to be applicable to a group or to a society, four requirements must be met. First, the rules and principles of the theory must