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Codes of Ethics

Towards a Principlist Justification

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Abstract

The subject of this article is the “ethical justification” of a code of conduct. How does a code of conduct become an ethical code? The article focuses on the principlist approach in a broad sense, assessing its comparative advantages. Many scholarly critics are unhappy with the chaotic methods of grounding and writing ethical codes. They therefore stress the necessity of reducing this harmful abundant diversity. This paper does not support the monistic (single principle only) justification of an ethical code; instead, it proposes a pluralist justification based on “principlism”. The core of the article is a sketch of the conceptual and managerial complexity generated by the principlist justification of an ethical code. It is mainly a conceptual and future-oriented approach, suggesting ways of building codes of ethics that are not yet practically enacted on a large scale and which, for this reason, may seem impractical. Lest they remain so, we have to keep an open mind with regard to their real, and not only their potential, practicality.

Key words: code of conduct, code of ethics, ethical infrastructure, principlism, moral justification of a code.

The subject of this article is a philosophical problem generated in the managerial context of ethics management. This is the “ethical justification” of a code of behaviour: identifying the source of or grounds for the *moral* character of an institutional code. Most people believe that there is no relationship either between ethics and management or between philosophy and codes of ethics. My theory is that we can identify a nascent philosophy of ethics management and that the problem of how to morally justify a code of conduct is one of its topics.

From another point of view, this is an issue of institutional rather than professional ethics: it is related to a system of ethical principles that apply to all the members of an organization – whether a hospital, research institute, university or firm, for example – irrespective of their professions. It is a systematic statement of special rules, which are characteristic of that organization but may in part be shared with other organizations, and some of which also cover the

relationship with external stakeholders. These moral rules concern not only professional activities but also interpersonal human relationships – individuals’ connections with the institution they belong to and with its external stakeholders. Examples of institutional ethics include academic, business and research ethics, in contradistinction to professional ethics such as nursing or engineering ethics.

There are experts in professional ethics who say that an institutional code of ethics is not a philosophical product and, consequently, that the general ethicist (or moral philosopher)¹ has relatively little to say about what should be the content of a particular code of ethics. Nevertheless, a course on professional ethics might comprise elements of code-building, such as how to interpret a code of ethics, the constituents of a

¹ I shall use the terms “ethics” and “morality” interchangeably. For the opposite option see Davis, M., “What can we learn by looking for the first code of professional ethics?”, *Theoretical Medicine and Bioethics*, 2003, 24(5): 433-454.

professional code and similar.² But, even if we agree, this does not imply that it makes no sense for experts in ethics management to use theories or other ethical frameworks to ground ethical codes. Before starting to set up a concrete ethics code we have reasons to choose between various ethical backgrounds, adopt an architecture of the code, inductively determine the main immoral behaviours as perceived by the personnel and extract from them the relevant moral rules, sketch other provisions of the code by statistical analysis of similar codes, and so on. These all enter the first draft of the code and experts in code-building have thus the chance to tell local professionals what their code should and should not include.³ I completely agree with Limentani, who states: “Most ethical codes cover a range of topics. They usually include some specific prohibitions, for example forbidding euthanasia, or disclosure of secret information, but mainly they describe general attitudes and expected forms of conduct. ... Ethical codes work in a similar way to ethical principles, the use of which has received much attention in recent years.”⁴

Indeed, such a code is not a piece of moral philosophy but I shall not hesitate to repeat that it is, nevertheless, based on moral philosophy. Its use does not presume a form of management in its classical shape, but a new kind of management of the moral life of an organization. It does not belong to applied ethics in its original sense – of philosophical analysis of moral issues on the public agenda – but it belongs without doubt to a recent kind of applied ethics, which sells its services and instruments on its own market and is similar to quality assurance management. The expert who is best fitted for managing such a system (including the ethics code) is not the moral philosopher, nor even the specialist in applied (professional) ethics, but the interdisciplinary specialist in ethics management.⁵ A course on ethics management, in intensive forms, is most fitted for those professionals who want to become ethics managers, but it also satisfies the interests of graduate and postgraduate students engaged in applied ethics studies. This article is mainly written for those who do not accept that, although this

practice of setting up ethical codes is not philosophical, it nevertheless has a philosophical side and origin and may be taught at its best by the philosophy departments (where various ethical disciplines are developed) rather than by business schools. In a world in which there is a significant trend of hiding the word “ethical” in the phrase “ethical codes” behind a variety of neutral labels – such as “codes of conduct”, “business codes”, “codes of rules and regulations”, “standards of conduct”, “professional guidelines” or “statements of values” – can we help genuine ethical codes to survive? Do we have the means to give an undeniable moral profile to a code of behaviour? What is the root of such a code’s moral content? Unfortunately, the moral justification of codes constitutes an issue that is rarely present in the literature of ethics management, although we often speak about “codes of ethics”, which are made for guiding moral behaviour rather than professional behaviour in general. But we have to admit that sometimes these codes are not “sufficiently ethically grounded”.⁶

This article does not describe an empirical procedure for writing a code of institutional ethics⁷ either, because it purports to present a rather philosophical approach to how to ground an ethical code. The problem, more exactly, is that of ethical justification of a code of conduct – of answering the question: “What makes a code of conduct a moral code?” or investigating how to explain the ethical character of the code and the constraints required by the option for a given ethical foundation (such as foundation on principlism or utilitarianism).

Various authors have considered that the use of the “justification relation” is able to assure a better conceptual underpinning to a code of ethics, “strengthening both its ontological and its ethical status”.⁸ The moral justification of a code is usually seen as a relationship between an ethical code and its justifying background, the latter usually provided by an ethical theory,⁹ since it may be supposed that an ethical theory is the best explanation of what morality is and therefore the best source of a demarcation criterion for

2 Davis, M., “Professional ethics without moral theory”, *Journal of Applied Ethics and Philosophy*, 2014, 6: 2-3.

3 For the opposite point of view – that of “never supposing that there are experts on what a code should say” – see Davis, M., “Eighteen rules for writing a code of professional ethics”, *Science and Engineering Ethics*, 2007, 13(2):171-189, Rule 16.

4 Limentani, A., “The role of ethical principles in health care and the implications for ethical codes”, *Journal of Medical Ethics*, 1999, 25: 394-398, at p. 394.

5 This is the management of the ethical life of an organization, no matter the profession, by creating and managing “ethical infrastructures” inside organizations (see the work of D. Menzel, M. Kaptein, L. Trevino, G. Rossouw, etc.).

6 Schwartz, M.S., “Universal moral values for corporate codes of ethics”, *Journal of Business Ethics*, 2005, 59(1-2): 27-44, at p. 30.

7 As is, for instance, Michael Davis’ “Eighteen rules for writing a code of professional ethics”, *Science and Engineering Ethics*, 2007, 13(2):171-189.

8 Kaptein, M. and Schwartz, M.S., “The effectiveness of business codes: a critical examination of existing studies and the development of an integrated research model”, *Journal of Business Ethics*, 2008, 77(1): 111-127.

9 A review of the literature on the ethical codes can be found in Wood, G. and Rimmer M., “Codes of ethics. What are they what should they be?”, *International Journal of Value-Based Management*, 2003, 16: 181-195 at p. 181.

the moral code. What is thus justified as a moral entity – the code – is an instrument of institutional ethics management. The justifying background is, in general, something heterogeneous. But even if the background includes several entities there is a core element, which varies from case to case: a theory, an ethical framework, a moral principle or similar. In addition to this core element, the code may likewise use legislation on human rights, a contextual selection of social values, individual virtues and methods of education, and so on. All these different features may contribute to the configuration of the ethical code.

The relationship between theory and code may be one of direct transfer (of principles, for example) or it may be deductive (for which the “theory”, as well as the code, must be conceived as coherent sets of true propositions – e.g. Mill). It may be an approximation to the limit relation (in which the “theory” is seen as a hierarchy of quasi-mathematical models – e.g. Kant) or, more frequently, as a relation of analogical reconstruction. What we justify in all these cases are not particular moral judgements but a whole ethical code, with all its distinctive ingredients and characteristics: moral values, moral principles, moral rules, moral virtues, the moral character of the whole code, admissible methods of ethical decision-making, means for obtaining good moral judgements and specific instruments for enforcing them. The number and profile of these ingredients depend on the professional and institutional context in which the code is built.

In general, the moral justification procedure has to both establish the moral content of an ethical code and justify why the elements that form this content have a moral nature. The qualities and principles transferred through analogy from a Kantian basis to the code, for example, are as follows. The idea of autonomy is presented under the form of the personnel general participation to the adoption of the code and under that of an autonomous Kantian code-maker, for whom a moral rule is self-imposed, not imposed by the top management; the Kantian principle of publicity may be found here under the form of the requirement to adopt the new rules only after their public debate; etc.¹⁰ To have a utilitarian moral code we must transfer all the relevant ingredients and characteristics of a utilitarian theory to the code, including its global distinctive property of being able, if generally respected, to maximize general utility. The distinctive moral characteristics of the background are transformed into strategies for building the moral code. Similar tactics are also at work when using other ethical theories, pluralist backgrounds or unified theories (like Hare’s “Kantian utilitarianism”).

Some other strategies are also at work. Which are the best strategies of moral justification? This is one of the questions I attempt to answer.

There are at least three phenomena against which those who work with ethical codes have to fight. The first is the discouraging variety in the manner of writing ethical codes, without any regard for a coherent methodology. Adoption of a largely agreed background of moral justification – like, for instance, that of principlism – could diminish this problematic diversity. The second issue at stake, which must seriously be countered, is a kind of satisfaction with superficial (since arbitrary) justifications of ethical codes; these create the illusion that they are well grounded, although they are not. The result is an incapacity to see and grasp clearly the genuine foundation, which is usually in such cases situated at a more basic level. The moral justification of a code should never be ad hoc, since an arbitrary justification is not a genuine one. This does not refer to the improvement process of the content of the code of ethics, which in reality is open-ended until it is arbitrarily cut off, but to the habit of arbitrarily establishing the deepest source of morality at one level when one knows that its original root is still deeper. The third phenomenon is the tendency among researchers and consultants to abandon their professional exigencies in favour of market requirements. The “code of ethics” was almost killed by the massive invasion of “business codes”, “codes of conduct”, “codes of good practice” and so on, which are in reality mixtures of moral and (mainly) non-moral rules. It is preferable to have ethical codes dominated by ethical rules, not by efficiency or pragmatic rules. Otherwise, they will not be – as intended – instruments of regulating moral behaviour. Paradoxically, the word “moral” tends to be quasi-prohibited. If we want to guide morally the behaviour of our personnel we need ethical codes; the justification relation helps precisely to establish whether a code is sufficiently ethically grounded.

My aim in this article is to justify an ethical code by appealing to the principlist background in a broader sense, and to assess its comparative advantages. I shall begin by exemplifying what I have called above the chaotic ways of writing ethical codes and I shall show how they dwell on an only apparent justifications. Then I shall compare the relative advantages of the monist vs. pluralist codes, thereby providing arguments in favour of the latter. The most important part of the article is a sketch of the principlist justification of ethical codes, which deserves to be broadly and reliably embraced by code-makers for its comparative advantages. Another outcome of my analysis will indicate that an ethical code should be not merely an organized system of moral standards but moreover a kind of machine: a complex

10 L’Etang, J., “A Kantian approach to codes of ethics”, *Journal of Business Ethics*, 1992, 11(10): 737-744.

mechanism, which needs experts in ethics management to be made functional.

Freedom or Chaos?

If we look at a collection of ethical codes, the most striking feature is its abundant diversity. Its only reigning rule seems to be the lack of any rules. Some codes are sets of moral rules whereas others are a mixture of moral and non-moral prescriptions (business codes).¹¹ Some are sets of social values while others are moral rules based on universal human rights. They may be sets of obligations classified by the kinds of responsibilities or codes based on the moral values embedded in a particular institutional culture. Other codes are founded on several universal principles stipulated at random or, conversely, on a single classical principle. Some have universal moral principles as starting points, others have ad hoc local principles. Further, some codes do not seem to be based on anything with a recognized moral significance; for example, the code of ethics of the American Institute of Chemists begins, surprisingly, with the imperative: “Uphold the law”, which is neither a moral principle nor a particular moral rule, and goes on to demand: “Avoid associating with any enterprise of questionable character”. These may constitute good advice but they are not widely recognized moral principles. Significantly, the words “ethics” and “morals” do not appear in the text. In general, I don’t believe we can speak about professional moral principles without indicating a justificatory background for them (usually a theory, a moral framework, a professional ethical tradition).

Some codes are called “codes of ethics” but are a recognized mixture of ethical and non-ethical provisions, which is reason enough for not attaching the label “of ethics”. One example is the Software engineering code of ethics and professional practice¹² adopted by two international administrative bodies. (Why not by a competent ethics committee?) Moral principle 3 in this code is: “Software engineers shall ensure that their products meet the higher professional standards possible”. This is undeniably a professional rule. I might agree that it can have the whiff of an ethical flavour if it is related to the ethical principle of responsibility, but I am not able to understand how it could be a moral principle. I don’t see how it is possible that each

profession can invent its own morality – its distinct ethical principles – each time it writes its code, without falling into an unacceptable relativism. The history of discovering and establishing various professional and institutional moral principles (from the *Belmont report* to the *Final report on basic ethical principles in bioethics and biolaw* and the UN’s *Putting ethics to work*) shows a different way of approaching this subject. For example, the decision to adopt a certain set of principles is taken by ethical experts and representative political groups, openly supported by lay people, and enjoys high social recognition at the regional or global level; it is not the decision of an ad hoc panel of professional experts nominated by certain administration councils. Moreover, it is worth mentioning that the principlist code of ethics, as I see it, is not a professional code, but an institutional one. And a third point: if ethics is – as some experts say – “a set of morally permissible standards of conduct governing the members of a group because they are members of that group”, and if this meaning is “implicit in the claims that a profession has a code of ethics”,¹³ then such a code cannot morally guide the professionals’ behaviour. To say that action X is “morally permitted” means that it is not immoral (forbidden) – that it does not raise moral problems. “Morally permitted” does not mean simply “moral” or “X is a duty” (that is, “morally obligatory”). Morally permitted means morally obligatory or morally indifferent. And morally indifferent means that both doing an action and not doing it are equally permitted. When I say “this action is permitted (and not obligatory)”, it does not suggest a weaker form of “moral”, but that which is “morally indifferent”. Thus, doing an action which is morally permitted (but non-obligatory) does not mean that the action is moral and the nonaction is immoral, but that doing the action is preferable on non-moral criteria. Therefore, a code composed of a set of morally permissible standards of conduct does not help us in choosing the moral action, but only in choosing how to act on non-moral criteria (on expediency or on economic or geostrategic criteria, or similar). If an ethical code is formed of obligations and prohibitions, it can be of help in deciding what to do morally. But if the action is morally indifferent (merely “permitted”), then both doing it and not doing it are neither morally prohibited nor obligatory; we therefore don’t have a moral reason to choose between doing and not doing that action. Morally indifferent actions do not offer criteria for moral choices, and consequently cannot be our moral guides.

The following example is that of a professional community of worldwide psychologists, which was

11 Kaptein, M. and Schwartz, M.S., “The effectiveness of business codes: a critical examination of existing studies and the development of an integrated research model”, *Journal of Business Ethics*, 2008, 77(1): 111-127.

12 *Software engineering code of ethics and professional practice*, New York: Association for Computing Machinery, 1999.

13 Davis, M., “What can we learn by looking for the first code of professional ethics?”, *Theoretical Medicine and Bioethics*, 2003, 24(5): 433-454 at p. 443.

able – after some years of debate going from national to international levels – to elaborate a professional code of ethics for the whole community based on certain largely recognized moral principles, adapted to the profession. The authors refused to invent ad hoc principles or accept that some psychologists may have distinct moralities grounded on different principles, although they may have the same principles coupled with distinct specific moral rules.

“Psychology as an organized and a responsible discipline develops codes of ethics to guide its members in behaving respectfully, competently and appropriately when engaged in research, teaching and practice. Some codes are based on clearly articulated principles, values, and standards while others are based on rules, regulations, and proscriptions/prescriptions. There are tremendous variations in the form, the content, the usefulness and the rate of development of codes of ethics in psychology. For example, some codes provide a statement of moral principle that helps the individual psychologist to resolve ethical dilemmas whereas others do not. As a result, psychologists in different parts of the world are provided with different levels of ethical support and guidance for their behaviour. Furthermore, persons and peoples in these parts are given different levels of protection from the misuse of psychology [...]. The rationale for developing a universal declaration of ethical principles for psychologists was at least two-fold: to provide a generic set of moral principles to guide psychological associations worldwide in the development and revision of their own codes of ethics, and to provide a universal standard against which to evaluate the ethical and moral development of psychological progress worldwide”.¹⁴

The purpose of the psychologists’ associations was to reduce these “tremendous variations” in the form and content of ethical codes and to establish a worldwide universal standard for estimating the moral progress of the psychologists’ community during a certain period of time. They selected, after a long study period, five principles: respect for a person’s dignity and of her rights; the principle of well-being maximization; the competence principle; the principle of integrity; the principle of professional and social responsibility. All subordinated associations use the same principles, although the system of moral rules varies according to the specificity of the workplace. Today, there are intense preoccupations at the level of the EU and UN with

setting up universal frameworks to help member states or professional communities to build more and more homogenous codes to guide their moral behaviour.

It is clear that one way to reduce the diversity in institutional codes is to ground them on the same moral basis. The problem is that there are several equally respectable ways of doing this. For example, they could use Kantian codes of ethics,¹⁵ rule-utilitarian codes,¹⁶ feminist codes, contractarian codes,¹⁷ virtue-based codes, Hare-utilitarian codes, and so on. How to choose the best one? If we speak about the distinction between ethical and non-ethical codes, we must say that the ethical nature of a code has its origin in the ethical character of its background. The choice of one by the writers of a code depends, pragmatically, on the moral culture of the host institution, on the competence of the code-makers and on the consequences estimated before starting the work. As Beauchamp remembers, the formulation of the three moral principles for the Belmont Report was influenced mainly by the “common morality”,¹⁸ not by the writings of philosophers. Thus, the specific professional moral culture was decisive: in this institutional culture the doctrines of philosophers were also combined.

To conclude, one of my hypotheses is that if we have good reasons to adopt a broadly agreed moral background in which we could really invest our beliefs, we might reduce the arbitrary variation in the ways ethical codes are elaborated and managed. It would be preferable if the selected moral background, to which a lot of moral agents would give their consent, were the expression of several moral principles. By enlarging this background in a pluralist manner (using a plurality of moral theories¹⁹), we can give a clearer moral identity to the code. But to do this we need such a widely recognized pluralist background.

14 Gauthier, J., *Toward a universal declaration of ethical principles of psychologists: a progress report*. Hove: Psychology Press, 2005.

15 L’Etang, J., “A Kantian approach to codes of ethics”, *Journal of Business Ethics*, 1992, 11(10): 737-744.

16 Starr, W.C., “Codes of ethics: towards a rule utilitarian justification”, *Journal of Business Ethics*, 1983, 2(2): 99-106.

17 Sacconi, L., “Codes of ethics as contractarian constraints on the abuse of authority within hierarchies: a perspective from the theory of the firm”, *Journal of Business Ethics*, 1999, 21: 189-202.

18 Childress, J., Meslin, E.M. and Shapiro, H.T. (eds), *Belmont revisited*, Washington, DC: Georgetown University Press, 2005, p. 14.

19 Muresan, V., “A pluralist ethical decision-making procedure”, *Journal of Applied Ethics and Philosophy*, 2012, 4: 11-21.

Pseudo-justifications of Ethical Codes

Chaotic diversity is not the only troublesome characteristic of some collections of ethical codes. The fact that many of the principles used to justify a code are only apparently starting points is another worrying issue. For example, grounding ethical codes on human rights seems *prima facie* to be a plausible procedure. It requires the code-makers, however, to ignore the fact that the system of rights is based in its turn on a universal ethical principle – that of respect for human dignity.

The preamble of the *UN Declaration on Human Rights* (1948) recognizes “the inherent dignity [...] of all members of the human family” as a “foundation of freedom, justice and peace in the world”. Art. 1 states: “All human beings are born free and equal in dignity and rights”. In other words, all human beings “endowed with reason and conscience” have autonomy – the capacity to decide for oneself – and this is the source of their dignity. It is a supreme value which is the same for all, irrespective of identity. The system of universal human rights is a means to protect the value of human dignity: the principle of justice (issues concerning equity, fairness, equality, non-discrimination and so on) ought be “in accordance with human dignity” (Art. 23(3)) and the principles of freedom, autonomy and moral integrity are “indispensable for human dignity” (Art. 22). In this scheme, the principles of justice, autonomy and integrity are subordinated to the principle of respect for dignity. The same can be said of the *Charter of Fundamental Rights of the European Union* (2007), where dignity is both a fundamental right and the “real basis of fundamental rights”.²⁰ My intention is to show that the level of rights is not the deepest level for grounding a code, since charters of rights are based on moral principles, which can thus be considered a deeper level. For those who base their codes on a selection of rights, the *Charter of Fundamental Rights of the European Union* (2007) can be seen as a kind of ethical meta-code. But they neglect a detail of this document: the *Charter* itself stresses that the dignity of the person represents “the actual basis of the fundamental rights”. Thus, the supposed principle derives its ultimate validity from another principle, which is the true principle of the code. This is, in fact, the single principle of such a code of rights. Therefore, we can conclude that a code apparently based on human rights is actually grounded not on human rights but on a hidden, more basic moral principle. The justification in terms of moral principles is

more fundamental than that in terms of rights²¹.

Something similar happens with the codes based on some core social values (usually moral and professional). It is common to discuss value-based codes and to consider that values are more basic than principles. This is usually claimed by the supporters of a bottom-up justification strategy. Moral values are ideal states of affairs, which are never completely tangible, like justice, happiness and dignity. They are culturally objective standards – aspirational qualities that are intrinsically valuable or desirable.²² Their content being usually compact and difficult to be rendered operational, these moral values are not, therefore, direct “guides to behaviour” but heuristic devices that help us choose lower-order norms for moral guidance²³. No matter how we define it, happiness is a value that does not tell us what to do. “Maximize happiness!” is a principle that does not tell us what to do either, because it does not refer to any concrete action or type of action. Moral principles are universal normative propositions that do not outline specific actions for us to follow but protect and promote basic moral values. Moral rules tell us what we ought to do, even if nobody does it. In a pluralist approach like mine, both value- and principle-based codes melt into the same picture: the values concerned here are tacitly absorbed in the proposition that formulates a moral principle. The “value statement” is not an independent axiological ground, since it is implicitly contained in the system of moral principles which is the foundation of codes. It is identical neither to the code nor to the most basic layer of it. The derived moral rules (derived by specification, balancing, maximizing coherency, and similar) borrow their moral character from that of the background principles. This is one of the major advantages of grounding a moral code on well-known principles of ethics: in this way, we have a relatively indisputable criterion of demarcation for the term “moral”.

Let us return to integrity. An interesting way to define the value and principle of integrity is found in *Basic Ethical Principles in Bioethics and Bio law* (1995-1998):

Integrity accounts for the inviolability of the human being. The idea of integrity expresses the

²⁰ “Charter of Fundamental Rights of the European Union” (2007/C 303/01), *Official Journal of the European Union*, 14.12.2007.

²¹ For a broader criticism of the justification of a system of rules on rights, see T. Beauchamp, J. Childress, *Principles of biomedical ethics*, Oxford: Oxford University Press, 2001 (fifth edition), p. 374.

²² Schwartz, M.S., “Universal moral values for corporate codes of ethics”, *Journal of Business Ethics*, 2005, 59(1-2): 27-44, at p. 29.

²³ Mureşan, V., *Managementul eticii în organizații (Ethics Management in Organizations)*, Bucharest: Editura Universității din București, 2009, chap. 5.4.

untouchable core, the inner nucleus of life that must not be subject to external intervention.... Thus it refers to the coherence of life that should not be touched and destroyed. Vulnerability concerns integrity as a basic principle for respect for and protection of human and non-human life.

If we define the value of integrity as “the inner nucleus which assures the coherency of life”, it is difficult to grasp the concrete ways of behaving that this very vague definition might have in store for us. But as a principle, it is obviously a prescription which requires us to create or select rules that guide our specific behaviour. For example, the principle of integrity:

obligates us to choose those norms that protect in all we do a sphere of intangible values and qualities through which human beings identify their way of being, living or working, in face of any external intervention²⁴.

One of the most spectacular findings of my analysis is the following: in all the universities of my country (Romania), ethical codes start from a small number of core social values (called “principles”: personal autonomy, justice, merit, professionalism, honesty, transparency, responsibility and so on), which are introduced as the basis of the code. These values, I suggest, could be taken as part of only one moral principle: the principle of integrity. So, grounding a code on institutional core values is tantamount to basing it implicitly on only one ethical principle. This is a proof, one may say, of the priority of principles, not of values, in grounding an ethical code.

The classification of codes adopted in the EU is not, however, encouraging for the principlist approach. It is even less so with regard to results in the field. One EU document distinguishes between codes of ethics, codes of conduct and codes of rules and regulations. In Moilanen’s presentation²⁵, the code of ethics should be a short general document that establishes the values and principles of moral behaviour. It is associated with a management model based on integrity: an aspirational code. At the other extreme, the code of rules and regulations stipulates in a minutely detailed way the expected actions and the sanctions associated with them, connected to an ethical context dominated

by the compliance values. Half the European countries have chosen to implement a mixed kind of code that combines these, called a “code of conduct”. It contains mid-level norms that establish both aspirational values and a set of concrete expectations. One document also distinguishes between the value statement and the code of conduct. A value statement is a document aimed at establishing the (moral?) values of the organization’s culture without giving detailed rules of application in specific situations. Moilanen’s presentation shows that most European countries have introduced both value statements and codes of conduct, although EU directives claim that a good code of conduct has to include focal moral values, which thus removes the need for a separate value statement. Having in view these facts, and keeping in mind the cultural specificity of the European countries, the EU representatives involved in creating codes of ethics concluded that to impose their adoption would be excessive, since in most cases the adopted codes were nothing more than value statements, without any reference to ethical principles. However, empirical research shows that half the member countries use value statements and the other half codes of conduct. The EU seems to encourage the adoption of codes of conduct, while warning that they have to include values and principles.²⁶

The ensuing risk, which Moilanen doesn’t mention – or doesn’t see clearly – is that by choosing to focus the European policy on codes of conduct rather than codes of ethics, the purpose of setting up moral institutions is ignored. We seem to forget that the prevention of the phenomena of corruption and immorality in general requires *sui generis* measures which entail a professional ethical approach, distinct from the *post factum* legal one, or from public relations methods used to consolidate reputation and similar. The great loss, therefore, would be the actual marginalization of ethics management under the absurd justification that ordinary people are afraid of the word “ethics” and that to speak about ethical codes is just “too much”. In this way, the justification relation can be the guardian of the ethical code’s authenticity. Similar analyses lead us to the conclusion that the best justified ethics codes are those based on a set of moral principles, which tacitly contains a set of basic moral values. This explains why the principle approach is now the most generally accepted and influential way of grounding ethical codes. Consequently, we shall look in the following pages for a rule-based code of ethics, since it seems to be the most operational and the best philosophically grounded. However, a new difficulty confronts us right away: to use a single theory (whether

24 The Barcelona Declaration on Policy Proposals to the European Commission on Basic Ethical Principles in Bioethics and Biolaw (adopted in November 1998 by Partners in the BIOMED II Project)

25 Moilanen, T., “The adoption of an ethics framework in EU member states”, Conference on Public Integrity and Anticorruption in Public Service, Bucharest, May 2007.

26 Moilanen, T., “The adoption of an ethics framework in EU member states”, Conference on Public Integrity and Anticorruption in Public Service, Bucharest, May 2007, p. 8.

Christian, Millian or Kantian) implies a kind of dogmatic attitude – religious or theoretical – which is hardly convincing. For example, one may ground a code on the utilitarian theory. An unavoidable question then arises: why have you chosen this theory and not the Kantian or Christian morality? R. M. Hare gave an answer by trying to unify two of these theories to obtain an implausible “Kantian utilitarianism”. In fact, he tried to unify several theories. Pluralistic approaches (in the sense of several theories) seem much more fitted to our moral experience and cultural situation. The problems are: first, that to obtain such a unified theory as grounds for an ethical super-code is a very complex and difficult task and second, that there already exist several unifications of this kind. But is there another way out?

What I suggest here is principlism. This is a pluralist ethical framework,²⁷ which is rule-based but abandons the great theories as assessment frameworks, and which provides instead an empirical “checklist” – a set of criteria able to identify and judge situations without any direct help from theoretical input. The original basis of this methodological framework is built on four moral principles belonging to the “common morality”: autonomy, beneficence, non-maleficence and justice.²⁸ These are universal prescriptions characteristic of the so-called “common morality”, shared by all mature and normal people and articulated by various schools of Western moral philosophy. The pluralism of principles is implicitly supported by theoretical pluralism. This non-theoretical background helps us recognize a moral code. As the history of principlism shows, it is possible to extend this interpretive pattern from bioethics to business ethics and other domains; we are also free to modify its principles. In an attempt to “revisit Belmont”, the authors of the Belmont report (which apparently proposes three principles, while in reality many more are involved) suggest increasing even further the number of principles in accordance with the realities of the 21st century. The principle background of such an ethical code is, therefore, not at all rigid and fixed.

A Principlist Code of Ethics

I have shown that one of the causes of the wide variety reigning in the world of ethical codes is the small number of ethical unifiers – of pluralist ethical grounds capable of unifying the various ways of constructing

ethical codes. The definitions of “ethics” and “morality”, the ethical theories and the pragmatic ethical frameworks are all diverse; on the other hand, the lack of experts in code-building stimulates the mentality that “anything goes”. How might we stop this dispersion? The use of great theories or ethical frameworks as broadly accepted backgrounds in setting up ethics codes gives us a chance to reduce the all-too-numerous alternative ways of building them.

I shall propose here quite a strong pluralistic unifier, which is inspired by bioethical principlism but not necessarily restricted to it. This will guide the genesis of a principlist ethical code. The principlist procedure has various forms: classical principlism, ethical matrix, selection grids for scientific projects, Christian ethics seen as a form of principlism, and so on. It is the most widespread ethical tool in the biomedical field, but it can also be extended to other domains. It is grounded on certain core ethical principles, which are widely recognized standards of behaviour in a variety of fields, able to ground vast systems of moral rules. Scholarly authors are aware that the number and formulation of principles are practical problems which will generate debates forever. They have proposed “to modify and augment” the number of these principles by adding a new one: respect for communities.²⁹

What does this ethical framework teach us?

Leaving aside the details, the initial and fundamental suggestion made by this ethical framework to those who want to use it as a guide for building and managing ethical codes is that it is good for a code to have, in an explicit manner, certain ethical principles as its basis. These should be widely recognized *prima facie* principles belonging to an influential cultural and philosophical tradition, such as the Western one, wherein one can find the utilitarian tradition, the Kantian tradition, the tradition of justice theories and others. The worst alternative would be to adopt *ad hoc* principles, without any justification. The above theories articulate our fundamental intuitions about what is morally right – intuitions that each of us is most unwilling to abandon or even revise, and in accordance with which we establish all other moral rules. The majority of actual codes of ethics ignore such a promising pluralistic starting point.

Generally speaking, because a lot of code builders invented *ad hoc* “principles”, it would be useful to gather, systematize, classify and professionally homologate, at the level of EU or UN ethics committees, a portfolio of universal or widely recognized ethical principles, given that the current list still needs to be debated. This is somewhat analogous to the list of widely accepted

27 We have here a plurality of principles. We may also have a plurality of theories: see my proposal in Muresan, V., “A pluralist ethical decision-making procedure”, *Journal of Applied Ethics and Philosophy*, 2012, 4: 11-21.

28 Beauchamp, T. and Childress, J. *Principles of biomedical ethics*, Oxford: Oxford University Press, 1979, chap. 1.1.

29 Childress, J., Meslin, E.M. and Shapiro, H.T. (eds), *Belmont revisited*, Washington, DC: Georgetown University Press, 2005, Introduction.

“universal human rights”. The principles may be analysed by specialists in ethics: it is their task to justify why these and not others are the basic moral principles. Lay people, as users of ethics codes, should participate in the debate and finally adopt the list of principles by a kind of wide social agreement. Each code designer would be able to choose from this portfolio those principles which suit his domain the best. As ethical principles are very abstract norms which defend the core moral values of human beings and tell us what morality is, it follows that it is not necessary to distinguish between a value statement and ethical principles: values are tacitly assumed in the ethical principles. For example, the value of autonomy is tacitly assumed in, and protected by, the principle of autonomy or respect for dignity (understood as autonomy). This principle requires us to protect freedom of choice and humans’ capacity to develop views and life plans without being impeded by others, even if others deem those acts to be wrong. Without such a reciprocal check of moral principles and implicit moral values, there is greater risk of postulating arbitrary non-moral basic values and principles. Not to mention the fact that it is more usual to ground moral norms on principles than on values by specification, whereas values need more effort to be transformed into rules. Difficult or not, it is the job of ethics committees to generate specific moral norms starting from principles. The employees have to apply them and should contribute to their formulation in the process of setting up the code.

These ethical principles inform specific guidelines for the users of the code, such as informed consent, risk–benefit assessment, selection of subjects, conflict of interests and so on. From the autonomy principle, for instance, we can specify the rule of informed consent for hospitals and the rule of voluntary consent to participate in research alongside the rule of abandoning the research team at will, but also the rule of freedom of expression for mass media. Even more specific rules are derivable, such as: do not force people to take a drug, inform the experiment subjects about the outcome and circumstances and protect the private data of the patients. Moral rules (duties), unlike principles, tell us what we are morally allowed to do and what we are not. They are obligations or prohibitions for the use of human subjects. The major criterion for developing the system of moral rules (the code) is the “coherence maximization” of the whole system or, more exactly, the degree of agreement of the rules with the principles. This is the main criterion for adopting new rules, and includes coherence with the principles, coherence of the rules between themselves or, eventually, some other special criteria, such as utilitarian ones.

When we speak about moral rules we miss an essential distinction which principlists teach us to emphasize. This is the distinction between “basic moral

rules” (such as do not lie, do not commit suicide – the only ones we usually take into account), “authority rules” (regarding the hierarchy of the first type of rules in certain situations or the rights of legal representatives – in general the overruling relationship) and “procedural rules” (such as what to do in the case of a patient’s temporary incompetence during a surgical intervention). The last two categories are not classic moral rules, but a kind of meta-rules (which is precisely the reason they are usually ignored); however, they are vital for the proper functioning of the system of basic moral rules.

A special kind of procedural rule which may be attached to the code is what I have called the “moral routes of the organization”.³⁰ These are well established “roads” or chains of procedural rules, along which sit institutional or technical facilities (such as a hot line and ethics desk or an ethics consultancy office) intended efficiently to resolve the repetitive, concrete moral problems of personnel and clients relative to which long experience has been accumulated. Such experience may include, for example, cases of malpractice, what to do in a case of sexual harassment, which gifts are morally permitted, where to address complaints, and so on. To this we can add a moral highway, which tells everyone how to behave correctly when confronted, for the first time, with a completely new institutional moral problem. In such cases we need to supplement the code with a new rule. This is the exclusive task of the ethics committee – a task that cannot be tackled individually by each member of that organization or by administrative bodies like boards of governors or executive councils.

We usually stop here when we characterize the codes: we say that an ethical code is a system of moral rules (and, if we don’t forget, we add that it is based on principles or on something else). The principlist method prompts us to go further than that. An ethical code may also explicitly specify the rights of the members of that community, or more precisely the rights of all stakeholders – internal and external – treated impartially. Some people see no place for rights in ethical codes, but if you make room for moral duties you have to allow the correlative rights too. Moral rights are valid claims that should be guaranteed by society to all its members; they are enforced by competent institutions and protected by sets of moral duties. The right to freedom in scientific research is protected by a set of duties (moral rules) which both forbid the unreasonable limitation of this kind of freedom and establish its reasonable limits. Of course, not all moral duties are correlative to some rights – only the duties of justice are; the meaning of moral duties in general and of the principles from which they derive is broader. This is one of the main reasons it is not possible

30 Muresan, V., “An organization’s moral topography”, *Transilvanian Review*, 2013, 22(1): 33-46.

to raise rights to the rank of principles in an ethical code: this would mean to ignore a part of morality – those moral duties which are not correlative to rights. Such correlations between rights and duties may help us select only the justified moral rules specific to organizational ethics. For example, the right to life is correlated with a set of moral duties of not killing innocent human beings, and these duties are specifications of the moral principle that requires the respect of human dignity. Therefore, a chapter of the code may specify the fundamental rights of the members of that institutional community and of its external stakeholders, these rights being by themselves a guide for selecting the proper moral duties to be included in the kernel of the code. Thus, the accepted duties suggest what (correlative) rights are relevant to be put in the code and the relevant rights tell us what (correlative) duties we have, eventually, forgotten, as we may have no criteria for introducing new rules in a code.

In addition to the sphere of rights, we arrive finally at the “periphery” – the ever-changing ambit of living moral judgements, through which we adopt new rules or morally assess novel actions and decisions. This is the zone where all supporters of a principlist code of ethics enrich the system with new duties. This also becomes a highly professionalized field because it requires competence in methods of ethical decision-making, and therefore competence in technical moral philosophy. Each code of ethics has to have one or more appropriate decision-making procedures which must be applied by the members of the ethics committee. In our case there are several procedures: specification of principles and rules, weighing of reasons and coherency maximization of the set of principles and rules.³¹

Finally, an element whose presence is more and more desirable in the architecture of ethical codes consists of the personal moral virtues characteristic of a given profession, which is seen as a moral activity. These were a later acquisition of bioethical principlism, focused as it was on rules. They must be carefully identified and people should be educated in them through special programmes of “character building”. They are dispositional qualities of character, which motivate moral behaviour and ensure that people are moral, not just acting in accordance with institutional rules. For example, a virtuous health professional should have compassion, discernment, trustworthiness, integrity and conscientiousness as professional ethical virtues (moral virtues related to a profession).³² The “compliance” ethics

management style and its corresponding punishments are never enough; they should be complemented by “integrity” measures, in which the character and a culture of integrity are central (Fig. 1).

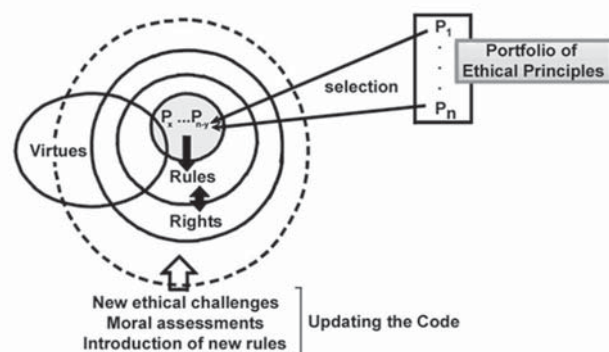


Fig. 1. The complex structure of a code of ethics based on principlism

The presence of virtues in the ethical code is almost always ignored nowadays, although I think that taking them into account is absolutely essential for transforming a mere system of rules, mechanically respected, into a genuine moral code. The problem of virtues is vital for every organization because it concerns both the motives that push us to respect a moral code and the way we achieve its implementation. A member of the organization may (formally) respect the provisions of the moral code, but act immorally (if, in fact, he has an egoistic purpose). To act morally means something more than to respect ethical rules – it means to respect them for the sake of themselves or, in other words, to follow the rules our conscience dictates and not be guided by some other hidden purposes. Therefore, having a virtuous character is a sine qua non condition for really acting morally. Making efforts to build moral character is a necessary condition of having a genuine moral life in institutions. Moreover, sometimes the way moral rules are respected is decisive, as in the doctor–patient relationship. Hospital managers acknowledge that they do not need a kind of medical robot which mechanically respects ethical rules, but rather people who believe in these rules and are able to sympathize and communicate with the patient. They are looking for something more than compliance: they are looking for people able to understand and rationally feel what is morally right. Gradually, more managers are acknowledging that what their organizations need, in order to control immoral behaviour, is not to multiply rules and punishments but to educate responsible personnel. Ethical virtues are character traits formed by a sui generis training, which guide their possessors constantly to perform worthy actions and to live a virtuous professional life. In this moral context, the simplest way to identify morally

31 Beauchamp, T. and De Grazia, D., “Principles and principlism”, in G. Khushf (ed.), *Handbook of bioethics: taking stock of the field from a philosophical perspective*, Dordrecht: Kluwer Academic, 2004, p. 69.

32 Beauchamp, T. and Childress, J. *Principles of biomedical ethics*, Oxford: Oxford University Press, 2001 (fifth edition),

“worthy actions”, as well as people’s moral virtues, is to correlate them with the moral duties specified by the code. Analysis of the rules agreed upon within the organization can result in the creation of a table of virtues and vices relevant for that organization, which it needs to inculcate in the character of all its members, given that this system of rules circumscribes the morality of that institution. That is why a living ethical code periodically requires training in ethical awareness.

The whole variety of ethical virtues could be introduced under a single new principle: that of integrity. This refers to the moral integrity of both people (i.e. the intangible kernel of personal moral virtues of the employees) and institutions (i.e. the institutional characteristics which stimulate the moral behaviour of personnel and inhibit their immoral behaviour). The part of the code that concerns virtues is also the basis of the whole moral pedagogy concerning the personal assimilation of a moral code by transforming the rules of conduct and principles (values) into moral dispositions likely to become our second nature.

What principlism suggests (see Fig.1 above) is that an ethical code is something more complicated than an institutional system of moral duties. It is a system of principles (which tacitly contain the focal moral values); a system of moral rules (of different types, including some which don’t have the appearance of moral rules); a set of profession-specific rights, correlative to a part of the moral rules; and, finally, a constellation of character virtues. In this approach, an ethical code demands a significant enforcement effort, using adequate means.

Finally, my last suggestion ensuing from the principlist doctrine is that this form of grounding the code makes clear why we have three types of ethical training. Compliance training is suitable for creating awareness and better understanding of moral rules and principles. For character building and the internalization of moral rules, the training meant to form moral dispositions is suitable: this is based on case analysis, simulations, psycho-drama and similar. To manage the periphery of the system of rules, wherein we adopt or reject new moral rules, we need training in the development of moral thinking, based on the study and internalization of ethical decision-making methods. All these forms of training are methodologically distinct.

Beauchamp and Childress do not see their principlism as a doctrine opposed to virtue ethics, narrativism or moral casuistry. They rightly observe that what is important in moral life is often not the systematic respect for principles and rules but a character on which you can rely, good sense and a certain emotional sensibility.³³

These are essential for establishing a good doctor–patient relationship, for example; therefore, the application of the code must take into account education in ethical virtues. We must be aware that paradigmatic examples of casuistry implicitly contain principles and rules if they are general enough. The most appropriate method is neither top-down nor bottom-up, but a combination: a kind of “reflective equilibrium”. “Wide reflective equilibrium occurs when we evaluate the strengths and weaknesses of all plausible moral judgements, principles, and relevant background theories.”³⁴ Contrary to its name, we can see now that a principlist code of ethics is not a mere set of principles and rules. If we want to build a code of ethics which actually works (guides and educates), we have to admit its complexity. Its mechanism consists of principles, values, rules and rights, virtues of character, decision-making procedures, ethical routes, analogies, emotions, narratives and parables, as well as enforcement measures. Suppose we have such an ethical code. To use it appropriately we must embed it in a specific managerial system, conceived just for managing the moral life of an organization – this is a functional system of ethics management (an “ethical infrastructure”) which may be quite complex, but without which it is unlikely that the code will survive.

Concluding Remarks

A code which has a utilitarian justification is associated with the following standard of assessment for creating new rules: an action is moral if it is an instantiation of a moral obligation belonging to the ethical code, and is immoral if it violates it. A rule of the code is moral if, when respected in general, it maximizes general well-being in an impartial way. A code is moral if, when respected in general, it assures the maximization of well-being of all those concerned, treated impartially. An ethical puzzle is solved by comparing the consequences.

A code which is justified by principlism relies on several principles (not necessarily just the four mentioned earlier), and an action is moral if it is in accord both with the code rules and, indirectly, with the principles. The morality criterion of a rule is coherence with the rest of the rules. A moral puzzle is solved by specification of principles or by balancing the reasons of action.

The differences between these two models of moral justification are visible. Adopting principlism has the following comparative advantages:

it strengthens the worthwhile point of view that we

33 Beauchamp, T. and Childress, J. *Principles of biomedical ethics*, Oxford: Oxford University Press, 2001 (fifth edition), pp. 14, 26.

34 Beauchamp, T. and Childress, J. *Principles of biomedical ethics*, Oxford: Oxford University Press, 2001 (fifth edition), p. 399.

need moral principles to make moral judgements and that the principle approach deserves to be our first option in writing an ethical code, although other ways of justifying an ethical code are not prohibited;

this does not ignore the organization's values (the value statement is tacitly included in the set of selected principles);

it is a pluralistic frame of moral assessment with an extra unifying force, compatible with the theory of virtues, with narrativism and consequentialism as Beauchamp and Childress showed;

it is adaptable, in principle, to several contexts (bioethics, but also business ethics, ethical matrix and others);

it is very rich in practical suggestions which are of interest for setting up a code of ethics (kinds of rules, integrated methods of decision-making, kinds of ethical training and so on);

it is based on a concept of common morality, which combines the intellectual experience given by the plurality of classic ethical theories with the know-how assured by the morality of a specific professional field – therefore, it is a “friendly” procedure from the perspective of the lay person;

principlism suggests a complex decision-making procedure fitted for the ethical code: it is a combination of what was called a top-down procedure, like specification, and a bottom-up procedure, like the casuistic method.

We may add the procedures of “maximizing the coherency” of the code when introducing a new rule and “weighing the reasons” in the case of moral puzzles. All these decision-making procedures are perfectly transferable to the moral code. It is worth mentioning that principlism approaches the principles not as a kind of unchangeable foundation from which all valid moral rules should result but as a basis that is changeable at the last instance when coherency reasons require it.³⁵ We can change a rule or even a principle under the influence of a bottom-up analysis of particular cases, the justification being in all cases the coherency on the whole of the set of norms resulted by introducing a new rule or a new moral judgement.³⁶

How does the adoption of a principlist code of ethics answer the three problems formulated in the beginning of this article? First, if we adopt such a code the moral background is not a moral theory but a moral framework, in which moral problems are projects

rather than finite products – something that must be continuously improved by reflective equilibrium. This is an approximate assessment guide, not an algorithm. It includes several moral principles, ideals, rules, virtues, judgements and so on, as well as a lot of practical and theoretical moral experiences. Common morality – in Beauchamp's and Childress' view – includes prescriptions which are universally valid and which link all people in the way fundamental human rights do. This largely shared background is a very stable assessment framework which – if adopted – can reduce the chaotic variety of codes, but at the same time maintain the plurality of principles. It combines unity at the level of principles with diversity at the local level of rules and moral judgements.

Second, a principlist code facilitates the identification of the most basic moral root of our code because the common morality contains prescriptions that are universally valid for humanity, since they are able to relate to all people universally. Thus, it is probable that the moral principles are the most stable and comprehensive norms of the system – although not absolutely invulnerable – which give a law-constitutive definition to the concept of common morality.³⁷ In this case, we transfer this basic characteristic to the ethical code without any modification.

Finally, sometimes one uses a mixture of moral and non-moral rules under the name “code of conduct” only to avoid the word “moral”. If we are certain that the principles of common morality are indeed moral, the same certainty will apply to the code's rules, which, being derived from these moral principles, are without doubt also moral. Principlism claims that the moralities of various professions belong to morality in the broad sense. These moralities and their codes are diverse, but the principlists claim that they have their own universal core of values and principles. This universal core – the common morality – is the source of the moral nature of the code and preserves its ethical purity, which is certainly a sign that we are sincerely interested in the organization's moral life.

35 Beauchamp, T. and Childress, J. *Principles of biomedical ethics*, Oxford: Oxford University Press, 2001 (fifth edition), p. 69.

36 De Grazia, D., “Common morality, coherence and the principles of biomedical ethics”, *Kennedy Institute of Ethics Journal*, 2003, 13: 220-221.

37 The law-constitutive definition of something (e.g. of common morality) is a method which requires that the definition should be considered incomplete prior to specification of the basic moral norms or principles which link all people in all places; it is completed by mentioning those norms. Thus, a necessary condition for something to be a common morality is that it should satisfy certain universal moral norms. Moral virtues are also part of common morality. The core of common morality in the biomedical field is formed by the four well-known principles: autonomy, beneficence, non-maleficence and justice.

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