MAKING ETHICAL DECISIONS

IN THIRD SECTOR ORGANISATIONS

the Centre for Social Impact

st james ethics centre

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Course Overview

The global financial crisis has highlighted the importance of applied ethics in all sectors of the economy. Given the increasing size and complexity of the Third Sector, it has also brought into focus the need for ethical decision-making in not-for-profit organisations. They face many challenges including issues related to fundraising, government contracts, board governance, conflicts of interest, corporate partnerships, executive remuneration and investment portfolios. This course seeks to address that need.

There are four parts to the course and we start with an Introduction to Ethics. This examines the relevance and importance of ethical conduct in Third Sector organisations. It also explores the question “What is Ethics?” and looks at the relationship between law, ethics and morality.

In resolving ethical dilemmas we explore a number of approaches. Dominating the Western philosophical tradition are the outcome-based, duty-based and character-based approaches to ethical decision making. In addition we briefly examine Justice Theory, Ethics of Care and Confucianism. The group exercise relating to Third Sector dilemmas allows participants to apply the various approaches to case studies.

Part 3 examines a holistic model of ethics. It provides a framework for the Ethical Decision Making Model, a process of questions and answers that assist in framing, understanding and resolving ethical dilemmas.

Finally we identify some of the barriers to ethical decision making within organisations. We also look at how CEOs and board members can develop an ethical culture. Participants then have the opportunity to explore a case study and resolve the ethical dilemmas.

PART A: INTRODUCTION TO ETHICS

> *Ethics is a matter of practical concern. Plato records Socrates as having asked the fundamental question of ethics, 'What ought one to do?' Whenever one seeks to answer that question, then one is operating in the ethical dimension. (Longstaff, 1997, p. 249)*

1. Why Ethics?

Those who have worked in the Third Sector would agree that there are major challenges in managing complex organisations. We have all made mistakes over the years and we are often confronted with ethical dilemmas that have no easy resolution. Ethics relates to our personal and organisation behaviour and asks the question: What ought one to do?

Some might argue that acting ethically gets in the way of managing a successful organisation. However there is a strong business case for ethics. It is based on:

- managing risk
- building capacity in our organisations
- being accountable to donors, corporate and government partners and the public
- enhancing the reputation of the sector

The following reading explains this case further.

Reading 1: 'Ethical demands on the Third Sector'.

Ethical dilemmas are often right vs. right choices. They are the hard decisions that you have to make between two good but competing options or the choice between two relatively poor options, that is, the lesser of two evils.

Rushworth Kidder (1995) states there is a difference between a moral temptation and an ethical dilemma. A moral temptation is a choice between right and wrong. An ethical dilemma is a right vs right choice.

Two brief examples of ethical dilemmas in the Third Sector follow.

Fundraising

In an appeal for youth services, some donors expect all funds to go directly to youth in need. However there are administrative costs, such as employing fundraising staff and developing marketing materials. In addition to be effective, you need skilled front-line staff with adequate resources.

The issue becomes more complex as regulations and best practice guidelines relating to the cost of fundraising vary across states and territories. However donors want to know the fundraising-administration cost ratio.

The ethical dilemma is what to disclose to the public. For a fundraising appeal do you include the costs of marketing, fundraising, employment of staff? Or do you choose to ignore the administration costs and emphasize the quality of the services provided?

Government contracts

In 2006, the Department of Employment, Education and Workplace Relations offered $650 per person to non-profit organisations to provide financial counselling for sole parents who were cut off from their income support payments by Centrelink for eight weeks for breaching job search rules.

The ethical dilemma is that, on the one hand, non-profit organisations require funding including government contracts to build their capacity and sustainability. In addition it could be argued that these organisations would be assisting sole parent households and people with disabilities to access funds and also income support. On the other hand, the principle of a government agency such as Centrelink cutting off income support payments of sole parents wtih dependent children was perceived by some organisations as too punitive. The department action appeared to be in conflict with the purpose of non-profit organisations to support and improve the well being of families at risk.

A media article on this issue is available as Reading 2 in the Appendix.

Reading 2: 'Catholics quit immoral program'.

We are often confronted in our organisations with ethical dilemmas that have no easy resolution. Ethics relates to our personal behaviour and that of our organisation and asks the question that is first attributed to Socrates: "What ought one to do?"

2. What is Ethics?

In seeking to answer the question one can easily go to a dictionary definition and find that "ethics is the science of morals", or the "study of good and evil, right and wrong." However these definitions miss the opportunity to provide a deeper understanding of ethics.

> *"Plato records Socrates as having asked the fundamental question of ethics, "What ought one to do?" Whenever one seeks to answer that question, then one is operating in the ethical dimension. There are a number of things that should be noted about this question. The first thing to note relates to what Socrates* ***did not ask****! Socrates did not begin by asking questions such as, "What is good, what is evil?" or, "What is right, what is wrong?" Rather, he asked an immensely practical question that confronts people* ***whenever*** *they have a decision to make,* ***whenever*** *they are in a position to exercise their capacity to choose. Socrates did not mark off a special area which was to be the terrain for ethical reflection.*
>
> (Longstaff, 1997, p. 249)

Simon Longstaff adds to the debate on ethics in the following article.

Reading 3: What is Ethics all About?

Let's have a look at what other people have to say about ethics:

Ethics is about relationships.

It's about struggling to develop a well-informed conscience.

It's about being true to the idea of who we are and what we stand for.

It's about having the courage to explore difficult questions.

It's about accepting the cost.

Longstaff **(**2009)

Cowardice asks the question, 'Is it safe?' Expediency asks the question, 'Is it politic?' Vanity asks the question, 'Is it popular?' But, conscience asks the question, 'Is it right?' And there comes a time when one must take a position that is neither safe, nor politic, nor popular but one must take it because one's conscience tells one that it is right.

Martin Luther King Jr (1968)

Let me give you a definition of ethics: It is good to maintain and further life. It is bad to damage and destroy life.

Albert Schweitzer (1934)

Act only according to that principle by which you can at the same time want it to be a universal law.

Immanuel Kant (1785)

It is clear that while the above comments have common areas there are also differences in the way that each individual views ethics and its application to life and work.

REFLECTION POINT

Reflect on what you think ethics is and write down your ideas.

Compare your ideas with those of the individuals above. How are they similar? How do they differ?

3. Ethics, Values and Principles

Values (good vs bad)

Our values are those qualities we have developed from our life experience which inform us as to what is good or bad and guide our decision-making. They can be qualities of character e.g. honest, dishonest, integrity or lack of integrity.

Principles (right vs wrong)

Principles emerge from questions of what is right or wrong. They regulate the means by which we decide what is good e.g. the principle of the Golden Rule: "Do to others what you would want them to do to you."

The decisions we make to take certain actions or the options we choose to resolve dilemmas are based on the values and principles that we have developed over our lives. These influences have come from a range of different people, life experiences, education and the culture we live in.

Some of the major influences on our behaviour are:

- Our family
- Our education
- Our role models
- Our peers
- Our culture
- The media and internet
- Types of challenges we face

While we may all have some common norms we will usually interpret and apply them differently depending on what values we have (Resnick, 2009) and where our life journey has taken us.

REFLECTION POINT

Consider your life journey. Identify the major influences on your life and values. These include: your family, your education, your religious experiences, your mentors, your peers, your culture, your socio-economic background...
Make notes in the space below.

In reflecting on your past you will have seen that many influences affecting your value system occurred in your family and childhood. Development psychology suggests that for better or worse we carry these values into adulthood. While they may have served us well as children and even adolescents, they may not necessarily be as relevant in the decision-making that we are involved in as adults and particularly in the complex management of people and organisations.

As result there is a need for us as adults to develop and refine our ethical decision-making capacity in the same way that we develop our skills and training in other spheres of our work and life.

Badaracco (2006) states that some business leaders today mistakenly think that the 'simple moral code' of their childhood or youth is adequate for them as leaders. This is not the case and managers need to embrace a more informed set of values and principles that assist them in dealing with the complex dilemmas that face them within organisations.

Universal Values

We make choices based on our values and principles.

The issue of whether there are universal values and principles that everyone recognizes is a difficult one. There are different interpretations of values such as justice or goodness, based on different situations and cultures. For example, one nation may view an individual as a freedom fighter pursuing a just cause, while another calls this person a terrorist. In addition, some nations would argue that principles such as the Universal Declaration of Human Rights need to be considered in different political and cultural contexts. The question of whether values and principles can be universal or whether they are relative and depend on the situation is a real dilemma.

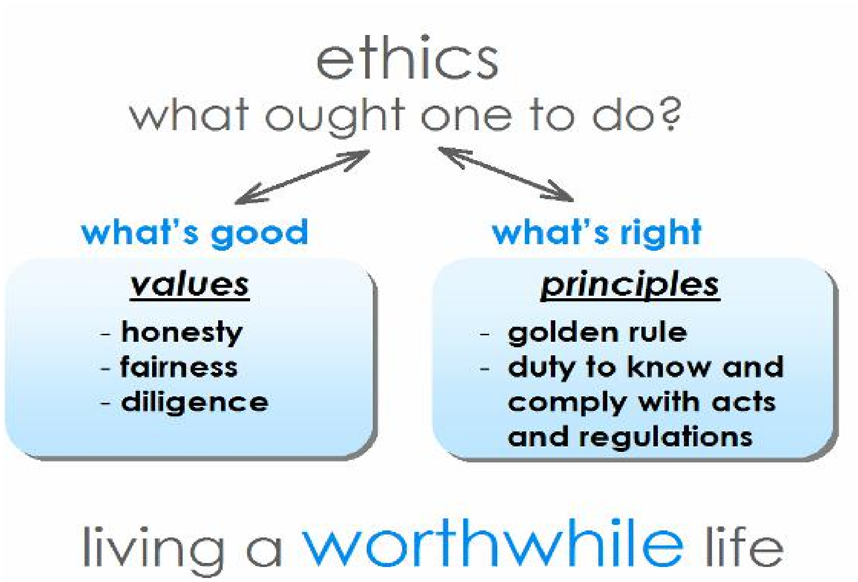
Ross (2005) states that client requests to the St James Ethics Centre regarding Codes of Ethics often assume there is a universal set of values and a code that fits all. They expect an 'off-the-shelf code' to adapt to their organisation but this is not the case. In fact the codes that emerge from the work of St James Ethics Centre in assisting organisations to develop or review their ethical frameworks are quite diverse. One code does not seem to fit all.

Hugh Mackay (1991) states that “the fact that there is no universal agreement about what is right and wrong in every case is the very reason why, in business as elsewhere, the promotion of vigorous debate about ethical issues is the only way to ensure that our capacity for moral judgement is enlarged.”

In contrast Schwartz (in Ross, 2005) argues there are “core universal moral values by which corporate codes of ethics can be ethically constructed and evaluated.” He uses three sources for his research: companies’ codes of ethics; global codes of ethics; and business ethics literature. From these he extracts six universal moral values: trustworthiness, respect, responsibility, fairness, caring and citizenship.

One universal Code of Conduct is the medical doctor’s Hippocratic Oath which states ‘First of all, do no harm.’ Another universal code is the Golden Rule: “Do to others as you would have them do to you”.

Consider the diagram below then complete the reflection



REFLECTION POINT

The diagram above highlights the inter-relationship between values and principles.

Jot down your thoughts about how values or principles influence your decisions.

4. Ethics, Morality and Law

In discussions about ethics the words law, morality and ethics are often used in similar contexts. The question then arises: What is the relationship between ethics and law or ethics and morality?

There are many examples in history of ethical people breaking the law to pursue a just cause.

In the 1960's Rev Martin Luther King Jr led the civil rights movement in organised mass protests in the Southern states of the United States to oppose State laws that prohibited African- Americans from access to education, jobs, public facilities and restaurants. King used the method of peaceful non-violence to protest unjust laws that did not follow the spirit and words of the American constitution that all men and women are created equal. The current President of the United States, Barack Obama, said in his Inauguration Speech that he was indebted to Martin Luther King and the civil rights movement for the opportunity to become President.

Nelson Mandela was imprisoned in 1962 for 27 years for his opposition to the apartheid laws implemented by the Nationalist Party in South Africa. These laws discriminated against black South Africans and prevented their access to voting, education, jobs and housing. His release from prison in 1990 and subsequent election as President in 1994 ushered in a new era of majority rule and equality before the law for black South Africans.

Both King and Mandela are regarded by most people as ethical individuals who in hindsight were justified in opposing the laws of their respective nations and confronting the morality of those who opposed them.

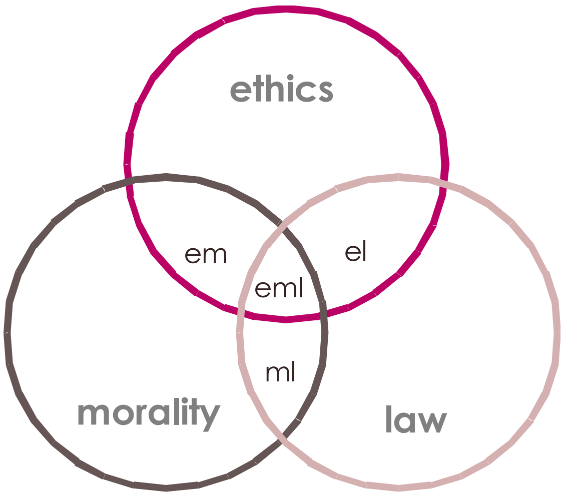
In making a distinction between morality and ethics, Simon Longstaff (1997) uses the following analogy:

> *The distinction can be demonstrated by using the analogy of a conversation. If one imagines that the field of ethics is a conversation that has arisen in order to answer the question, "What ought one to do?" then moralities (and they are various) are voices in that conversation. Each voice belongs to a tradition or theory that offers a framework within which the question might be contemplated and*

answered. So there is a Christian voice, a Jewish voice, an Islamic voice, Buddhist voice, Hindu voice, Confucian voice and so on. Each voice has something distinctive to say - although they may all share certain things in common.

Longstaff (1997, p. 250)

The three concepts of ethics (E), morality (M), and law (L) impact our ethical decision making. The diagram below shows that ethics, morality and law are all distinct entities yet each impacts the other.



REFLECTION POINT

In your own words define the terms found in the diagram above.

Draw the configurations in the way you consider best reflects these relationships.

Discuss your ideas with other participants.

5. Group exercise and report

What do ethics mean in your organisation?

You will be broken up into groups and each group given an exercise to complete. You will report your discussion and thoughts back to the group.

Group 1: Ethics presentation

You are the Ethics consultant to this group. You have five minutes to brief them on key concepts relating to ethics and ethical decision-making. Define the terms and use practical examples from your organisation or the Third Sector.

Group 2: Ethics, Morality and Law

What is the relationship between ethics, morality and law? Define the terms and show their relationships. In your group report include some practical examples related to your organisation or the Third Sector.

Group 3: Ethics and Universal Values

Is it possible to have a universal set of values or Code of Ethics for your organisation or the Third Sector? Who and what process would determine the values to include in the Code of Ethics?

PART B: ETHICAL PERSPECTIVES

> *Ethics is about relationships. It is about struggling to develop a well-informed conscience.*
>
> *It's about being true to the idea of who we are and what we stand for.*
>
> *It's about having the courage to explore difficult questions.*
>
> *It's about accepting the cost."*
>
> Dr Simon Longstaff, (2009)

For the majority of people in Australia, ethical principles and values come from a western philosophical tradition that goes back to the Greek philosophers, has been shaped by the Judaeo-Christian religious tradition, the Enlightenment and philosophers that have produced new ethical theories to meet the complex issues of their societies.

Western philosophy has given rise to three key ethical theories, the Outcome-Based, Duty-Based and Character-Based Approaches. In addition there are other ethical theories that have emerged such as Justice Theory proposed by John Rawls and Ethics of Care proposed by Carol Gilligan. There are also Indigenous traditions as well as Eastern traditions such as those embedded in Buddhism and Confucianism.

Philosophy has a number of different branches. The branch of philosophy which concerns itself with the actions of human beings as members of social groups and asks questions, such as, "How is one to lead a good life?" and "What ought one to do?" is called Ethics or Moral Philosophy.

Socrates (469 BC – 399 BC) was one of the founders of western philosophy. He is also an enigmatic figure known only through the writings of his students, including Plato, Xenophon and Aristotle.

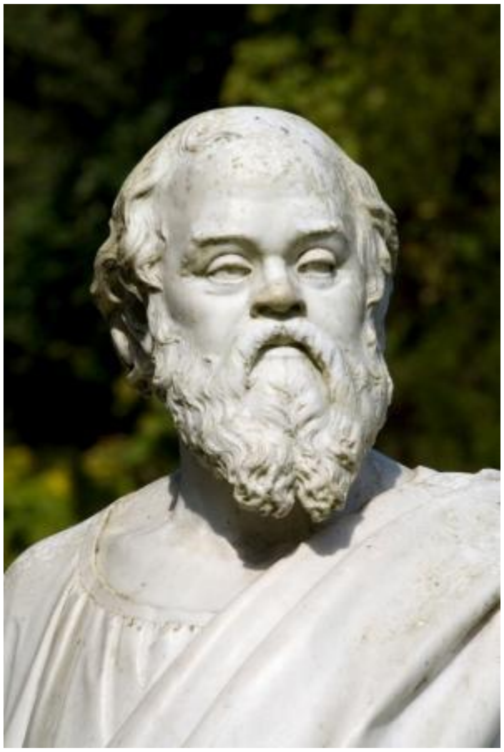
His style of teaching gave rise to what is called the Socratic Method. This technique of questioning draws out alternative perspectives from participants in order to encourage wide ranging debate and gain insight into the issue at hand. A series of questions are posed to assist a person or group to determine their underlying beliefs and the extent of their understanding.

In Athenian society he was a social and moral critic and criticized the establishment with his reflections on various social and political issues including justice and the pursuit of goodness. He was found guilty of corrupting the minds of the youth of Athens and sentenced to death by drinking a mixture containing poison hemlock.

We will explore the three classical approaches to ethical decision-making in the Western philosophical tradition. These are:

- Outcome-based approaches, including Utilitarianism
- Duty-based approaches
- Character-based approaches

We will also briefly examine Justice Theory, Confucianism and Ethics of Care.



1. OUTCOME–BASED APPROACHES TO ETHICAL DECISION-MAKING

The technical term for an outcome-based approach to ethics is consequentialism.

Consequentialism is sometimes associated with the philosophical approach of Aristotle because he was concerned with defining the purpose of things (their "ends" or "telos").

However, it is useful here to distinguish between philosophers such as Jeremy Bentham, who founded modern Utilitarianism in which an act is considered right if it maximizes happiness, compared to Aristotle who saw the purpose of life to be in flourishing ("eudaimonia"). Aristotle is discussed below in the section on character-based Ethics.

The outcome-based approach to ethics is understandably concerned with the outcome and consequences of an action. It is popularly expressed as "the end justifies the means."

In seeking outcome-based ethical theories, we need to ask: what is the outcome we are seeking? In the Western philosophical tradition the notion of "happiness" is central to our understanding of human motivation.

Today most commercial companies are outcome-based in their decision-making and practices. The good they pursue is increasing profit and improving shareholder value. Support for this approach comes from people like the monetarist economist Milton Friedman who stated that the responsibility of a business is to make a profit, and that business has no social responsibilities. Friedman says that when business makes a profit, the share of wealth is expanded, more jobs are created and more taxes are paid by the company and its employees. (Harrison, 2001)

Friedman's views are in contrast to those of John Maynard Keynes (1883-1946) who argued in his "General Theory of Employment, Interest and Money" (1936) that in a market-based economy, government had a role to play in intervening in the economy to reduce unemployment.

The response of global governments to the 2008 global financial crisis in introducing an economic stimulus is a prime example of Keynesian economics. The financial crisis has certainly called into question the free market concepts of Friedman. Without the intervention of governments around the world the global economy and many global financial institutions would have failed.

UTILITARIANISM

The concept of Utilitarianism was developed by individuals such as Jeremy Bentham, John Stuart Mill and today by Peter Singer.

Bentham (1748-1832) introduced the concept of "Utilitarianism which is "the greatest good for the greatest number of people". It is a form of consequentialism in that the ethical worth of an action is determined by its outcome. Utilitarian ethics as a guidance for government and personal action is based upon creating the best outcomes for the greatest number.

Bentham was an English philosopher and social reformer. He argued in favour of social issues such as individual and economic freedom, the separation of church and state, freedom of expression, equal rights for women and the end of slavery.

Bentham's follower John Stuart Mill (1806–1873) systematised the utilitarian doctrine in his work "Utilitarianism" (1836). Mill states that the morality of an action is the net amount of happiness it brings, the number of people it brings it to, and the duration of the happiness. He argues that cultural, intellectual and spiritual pleasures are of greater value than physical pleasure because the former would be valued higher than the latter by competent people.

A modern day advocate of utilitarianism is Peter Singer. In his work "The Expanding Circle: Ethics and Sociobiology" (New York, Farrar, Straus and Giroux, 1981), he argues that utilitarian ethical reasoning has existed from the time that primitive man cooperated, compromised and made group decisions to survive. He believes that reason compels the equal consideration of all people's interests. Among the more important human interests are those of avoiding pain, in developing one's abilities, in satisfying basic needs for food and shelter, in enjoying warm personal relationships, in being free to pursue one's projects without interference. (Singer, 1993)

The attraction of utilitarianism is that it provides a simple principle for making decisions and claims to be democratic. Critics say that it is not democratic, and in promoting the interests of the majority, it discriminates against minority groups.

2. DUTY- BASED APPROACHES TO ETHICAL DECISION-MAKING

This is commonly known as deontology (from the Greek “deon” or duty). Deontology focuses on what individuals ought to do in a given situation, and not the consequences of an action. It looks to principles to guide behaviour, regardless of the situation or the consequences.

A simple definition of deontology is one that says that “we should do the right thing, because it is the right thing to do”.

Divine Command

One of the earliest examples of deontological ethics is the principle of “divine command”. This refers to the Ten Commandments of the Judaeo-Christian tradition, an ethical system attributed to God and based on principles. For example, one of the commandments forbids stealing. If we accept this commandment, we should not steal, even if we are poor, hungry and have others dependent on us. In other words, we should not steal irrespective of the consequences for us or others. An obvious problem is that many people question these commandments and see them as open to debate or conditional on the situation.

Kant and the Categorical Imperative

Immanuel Kant (1724-1804) believed in the primacy of reason. He argues that it is the function of reason to produce an act that is “good in itself”. In order to act ethically, people act from principle. He also states that it is not the consequence of an action that makes it right or wrong, but the motive of the individual who carries it out.

Kant proposed the “Categorical Imperative” which is a means of assessing whether an action is ethical. It has three key principles:

1. Act only according to that norm or rule which you would want to be a universal norm

2. Act in such a way that you treat people, whether yourself or others, always as an end and never as a means only.

3. Do not act according to any universal norm from which you are exempt

In Kant's Categorial Imperative an action is only morally good if:

- it can logically become a universal law

- it treats other people as ends, not means

- it applies just as much to the individual making the decision as it does to others

There are weaknesses inherent in the duty-based approach. A purely Kantian approach does not allow for exceptions e.g. there are times in our lives when we tell lies to avoid hurting someone's feelings or even to protect someone else. In other words there are times when the outcome of an action is a relevant consideration. Another problem is that Kant assumes a faith in the power of reason. However humans do not always act out of reason. They can act out of emotion or passion.

Kant and Rights

From Kant's works, ethicists have argued that the Categorical Imperative extends certain rights to individuals. These rights are often divided into two groups: negative rights and positive rights. Negative rights include freedom of speech, of religious worship or of association. They require that others do not interfere with the exercise of these rights. Positive rights imply that there is a duty on the part of government or society to ensure these rights are implemented. For example, the right to education requires that government, private enterprise or third sector organisations establish educational institutions and employ teachers.

Duty – based approaches to ethical decision making continue to be influential. On the global stage the United Nations Declaration of Human Rights is a standard used by United Nation entities and governments, as well as Third Sector organisations such as Amnesty International. Most professions have Codes of Ethics. Similarly in the Third Sector there are Value Statements and Codes of Conduct. A Code of Conduct spells out what attitudes and behaviours an organisation expects of its workers while a Code of Ethics encourages people to follow the organisation's values and ethics.

3. CHARACTER-BASED APPROACHES TO ETHICAL DECISION-MAKING

This approach emphasizes the character of the individual rather than principles or outcomes in ethical decision-making. Character ethics is relative because what are perceived as good qualities vary according to time and culture.

For Aristotle (4th Century BC) and the ancient Greeks there were four primary qualities: courage, justice, prudence and temperance. Aristotle asos stressed the importance of practical wisdom ("phronesis"). To these Augustine, in the early centuries of Christendom, added the Christian qualities of faith, hope and love. Adam Smith spoke of self command and justice as suitable qualities for a man of commerce.

When we talk about good character we refer to qualities like honesty, integrity, good judgement and social responsibility. A contemporary writer on virtue ethics, Alistair MacIntyre, says virtues are "dispensations not only to act in particular ways but also to feel in particular ways." (MacIntyre,1984).

Golden Mean

Aristotle introduced the concept of the golden mean which is the desirable, middle path between two extremes e.g. courage is the mean between recklessness and cowardice.

Aristotle's assumption that human beings all seek "eudaimonia" (happiness) is subject to debate. In our world it is common to see how, for example, the pursuit of power and wealth drives some individuals. The global financial crisis has also highlighted how greed is a driver of individual and corporate behaviour.

4. Justice Theory

John Rawl's work "A Theory of Justice" (1971) examines the concept of distributive justice. The resultant theory is known as "Justice as Fairness."

Rawls formulates two key principles in his theory of justice:

- Each individual has an equal right to freedom compatible with a similar freedom for others

- Social and economic inequalities are to be arranged so that they are (a) to the greatest benefits of the least well-off members of society and (b) offices and positions must be open to everyone under conditions of equal opportunity

The first principle is clear in that it offers maximum freedom to an individual as long as it is similar to the freedom offered to everyone else in society e.g. freedom of speech, freedom to vote, freedom of conscience etc.

The second principle is less straightforward. It assumes that society will have inequalities of wealth and opportunity.

In (a) Rawls is arguing that this is just only when those who are least well of are better off as a result of those inequities. In (b) he is arguing that all people in society should, if they choose, be able to access positions of power and wealth.

The issues in the second principle are contentious. On the one hand there are those who argue that the wealthy have no responsibility to raise the standards of the poor. They maintain that as long as there is equal opportunity in terms of education and career then people will rise to the level they are capable of.

On the other hand there are those who state that Rawls does not go far enough in redistributing wealth and opportunity for those who are poor. The disparity between rich and poor in society appears to increase and concepts like the trickle-down theory of redistribution of a society's wealth do not change the relative position of those who are poor.

5. Ethics of Care

Carol Gilligan's work in moral psychology ("In A Different Voice,"1982) challenged justice -based approaches to moral discussion and proposed an Ethics of Care that focuses on responsiveness in an interconnected network of needs, care and prevention of harm. Taking care of others is the key concept.

While outcome-based and duty-based ethical theories emphasize impartiality and universal standards, ethics of care emphasizes the importance of relationships.

The basis of the theory is the recognition of:

1. The interdependence of all individuals for achieving their interests

2. The belief that those particularly vulnerable to our choices and the resulting outcomes deserve extra consideration based on

   (i) their vulnerability to our choices

   (ii) the impact of our choices on them

3. The need to see the situation in context

From the perspective of medical ethics, the care perspective is especially relevant for roles such as parent, friend, physician and nurse, in which responding to the situation and the deepening of relationships are likely to be more important morally than impartial treatment.

Proponents such as Virginia Held (2005) argue that values such as justice, equality and rights can be linked with values such as care, trust, mutual consideration and solidarity. She links the ethics of care with the rising interest in civil society.

6. Confucianism

The core values of Confucianism are still central to Chinese life both in China and in expatriate communities around the world. Confucius (c551-479BC) was a Chinese scholar who lived in the Shandong Province during the Zhou Dynasty. In a time of civil unrest, Confucius sought to promote a return to order, and a respect for tradition, wisdom and authority. He advocated a version of the Golden Mean similar to Aristotle. He stated that for the moral order to prevail, it must be inspired by enlightened rulers who live according to its norms. The values implicit in the Confucian vision are those of harmony, stability and hierarchy.

WHAT'S IN A HANDSHAKE?

From our previous discussion let's examine what a handshake might mean based on the three approaches.

APPROACH	MY HANDSHAKE MEANS …	I MIGHT CONSIDER BREAKING OUR AGREEMENT IF THERE IS A ….
Outcome based /utilitarian optimal results	Collectively we will be better off if we both keep our word"	An opportunity of getting a better outcome
Principle- based	"I have a duty to keep my word and so do you"	a conflicting, higher order principle
Character based **trustworthy character**	"I will keep my word"	Another competing virtue which I believed more strongly about which represents my character better

Based on work by A. Simon, St James Ethics Centre

This picture represents two individuals from totally opposite political backgrounds shaking hands. One is about to lose office as President of a nation his National Party has ruled for over 50 years. The other has been imprisoned by the National Party for 27 years and is the first black person to become President of South Africa.

What do you think the handshake means to each individual?

7. Group Exercise

The following case studies will pose some interesting ethical dilemmas. In each case, put yourself in the position of CEO and **u**se the outcome-based, duty-based and character-based approaches to ethical decision-making to discuss your response. Consider using also Justice Theory and Ethics of Care.

Case Study 1

You are the CEO of a not-for-profit organisation in Australia. The organisation has a range of services and expertise in working with young people and families at risk, homeless people as well as education and training services.

The Board and executive team have made a decision to develop an innovative service for indigenous youth in the Northern Territory. While there are major issues in a number of the communities with young people and children abusing alcohol, drugs and tobacco, there are also positive signs of young people finding pathwaystt to education in other communities. The Aboriginal Land Council is led by an outstanding leader who is supportive of the project. Your research also shows that similar types of services have been successful in getting good outcomes for young indigenous people in terms of education and jobs.

The capital and ongoing costs for the service and its facilities are substantial. Your organisation has launched a $500,000 appeal to raise funds. You have been in discussions with state and federal ministers and they have provided a total of $100,000 towards the project. You have also approached high-net-worth individuals, foundations and corporations for support. The response to date has been disappointing.

Unexpectedly you are approached by an international tobacco company which states that it is interested in making a substantial donation of $250,000 towards the project. However there are strings attached. They want there to be a national press release from your organisation praising them for their corporate citizenship. In addition they are in discussions with you regarding naming rights for the building.

Case Study 2

You have been recently appointed as the CEO of a small foundation whose aim is to provide funding and resources for start up ventures in the arts, namely drama and music groups. The foundation has been established for over ten years. You recently attended an Australian Institute of Company Director's course and have become informed about best practice in corporate governance. You are also familiar with the ASX Best Practice Corporate Governance principles. You have gradually become aware of a number of practices in the organisation which are giving you cause for concern.

For example, recently during a special funding meeting, one of the board members strongly supported the funding of a music group with which you know his daughter has a strong association. His interest was not declared and he participated in the discussion. While there was a case for funding, you argued in the board discussion that there were other groups that were new, innovative and would greatly benefit from the funds. However you were over-ruled by the Chairman. You are also concerned that the members of the Board are friends or former work colleagues of the Chairman. While they appear committed to the arts, there is a lack of diversity in terms of skills, gender and expertise.

In addition there are a range of management issues of concern: there is no strategic plan, no evaluation of funding outcomes and no board discussion about the long-term sustainability of the foundation, given that the investment portfolio has lost value following the global financial crisis.

However you are new to the position. You need the job as you have a mortgage, family and children to educate. You also don't want to alienate the Chairman or the board members all of whom are successful businessmen who are accustomed to getting their way.

Case Study 3

You are the CEO of a not-for-profit organisation that specializes in family support services. You are dependent on government funding and it is always difficult to balance resources for staff and services with income from fundraising and government grants. Your fundraising capacity is limited because the organisation has limited administration and fundraising resources. The compliance demands on your organisation from government funding contracts are also demanding as they take a considerable time to administer.

You have a good reputation in the sector for your work with sole parent households. You also play an advocacy role on ACOSS committees and have been a member of delegations to meet with the Minister and her staff on issues facing low income households. You are keen to establish a good working partnership with the Government.

You personally support the principle of sole parents participating in training and part-time work in order to earn additional income and develop workforce skills. However you are also aware of the costs associated with childcare, transport and clothing if a sole parent is to enter the workforce.

Your organisation has been approached by the Department of Employment, Education and Workplace Relations which has offered $650 per client to non-profit organisations. In return you are to provide financial counselling for sole parents who have been cut off from their income support payments by Centrelink for eight weeks for breaching job search rules.

A major non-profit organisation has already published a media release criticising the government action as immoral and refusing to participate. ACOSS has also stated that it opposes the government action. In your conversation with some peers, you are aware that some organisations are intending to accept the contracts.

Part C: Ethical Decision- Making Model

> *"CEOs and senior executives sometimes have to make a decision where the right course of action is not self-evident. Values may be in conflict, facts may be contested and options limited. This is the "casus perplexus" or difficult case that has no easy resolution. While there may be no definitive right answer, some will appear more right than others, that is, more informed by available information, more consistent with principles and more responsive to the interests involved. Where there is no consensus about ethical conduct, leaders should strive for a decision-making process that is informed, transparent and responsive to stakeholder interests".*
>
> (McClure, 2010)

Ethics relates to our personal and organisation behaviour and asks the question: What ought one to do?

Applied ethics assists us to examine the quality of our relationships with staff, clients, partners and the broader community. It also involves us reflecting on our own work practices and seeking to develop a culture where staff and clients are respected and there are mechanisms for staff to express dissenting views and raise concerns about unethical activities.

Ethics means that our organisation and staff comply with the law, relevant regulations and codes of conduct. It is also about ensuring that we follow the mission and values of our organisation.

Two of the enemies of ethics are hypocrisy and unthinking custom and practice. We have often heard managers say that "this is the way we have always done it." One striking example of hypocrisy and unthinking custom and practice is the systematic abuse of children by government and church institutions in Australia as outlined in the Senate Report on the "Forgotten Children." Under the guise of providing quality care in institutions where there was no questioning of authority or custom, innocent children's lives were destroyed by the abusive practices of so-called "carers".

For further information on this Senate report follow the link below: http://www.aph.gov.au/senate/committee/clac_ctte/recs_lost_innocents_forgotten_aust_rpts/report/c01.htm

REFLECTION POINT

Think of an ethical dilemma that has confronted you in your workplace. Reflect on the decision- making process you used to resolve the dilemma. Jot down your thoughts below.

We will now examine a model of ethics which incorporates four key aspects:

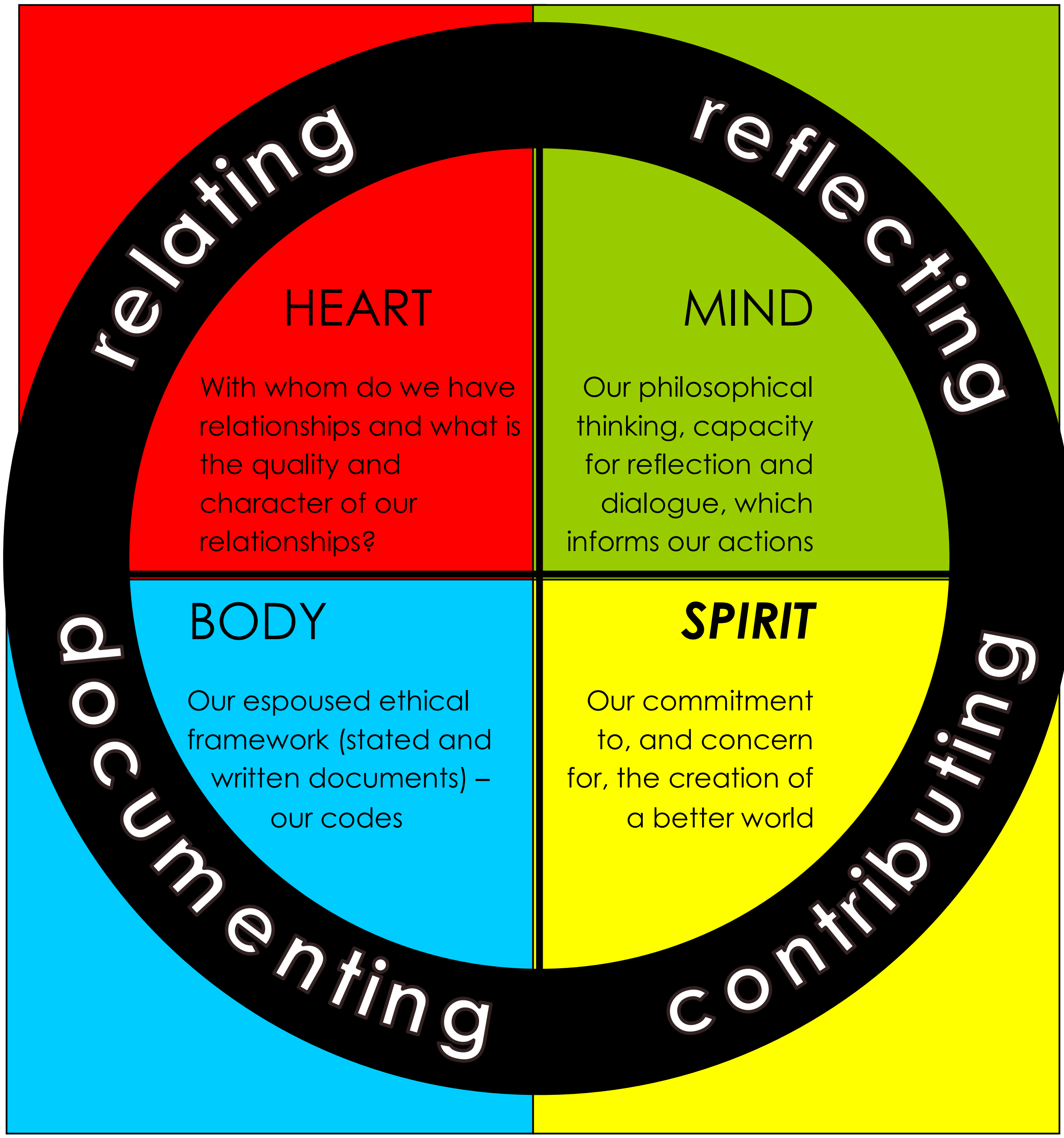
i) Relationships with stakeholders

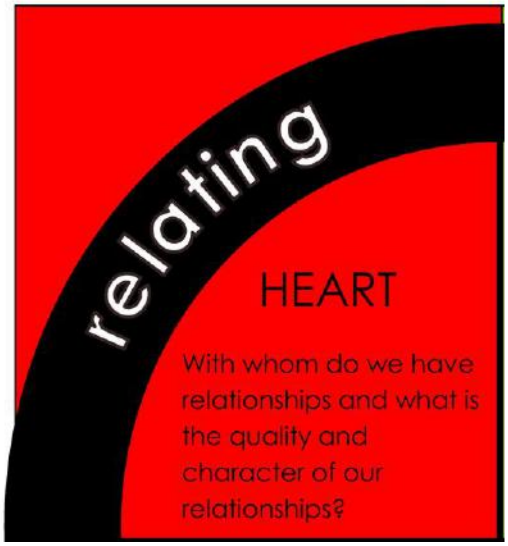
ii) Reflection and dialogue

iii) Laws, regulations and codes

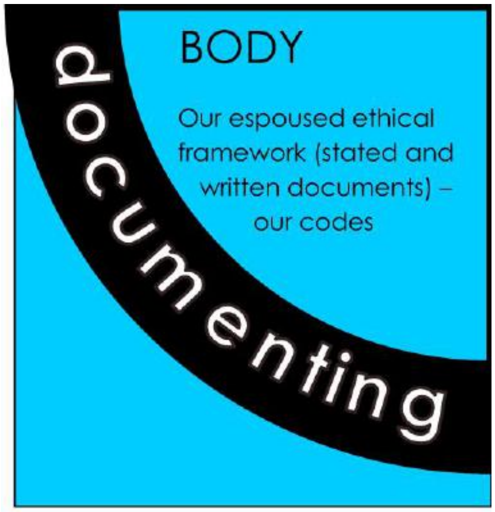
iv) Mission and values

THE HOLISTIC MODEL OF ETHICS © ST JAMES ETHICS CENTRE





With whom do we have relationships?
Who are the major stakeholders?
How do we balance commitments to various stakeholders?



Examine the body of ethics in the organisation

Consider the norms, laws and regulations

What are the relevant laws, statutes, regulations and codes which govern the organisation?

Review the organisation's documents to see if there are examples of the following:

Outcome-based approaches e.g. just process, fair outcomes

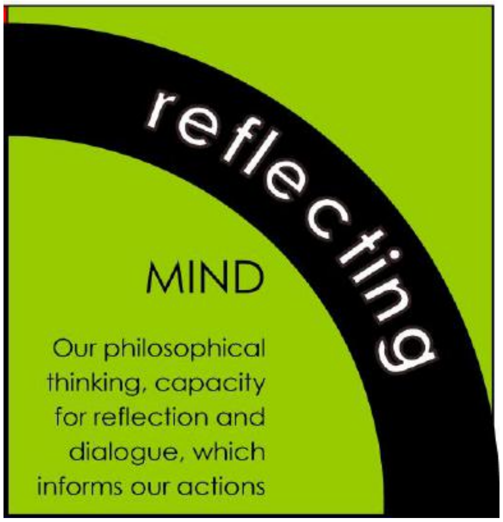
Duty-based approaches e.g. do no harm, duty of care, rights and responsibilities

Character-based approaches e.g. courage, wisdom, integrity, compassion

Note that codes of conduct and codes of ethics do not guarantee that management and staff will behave ethically. However the process of developing these codes can have a positive impact on the culture of an organisation.

Our commitment to creating a better world

This relates to the core purpose or mission of the organisation, its “raison d'être’ or reason for being. It is the spirit that motivates the organisation and is different from the strategic plan and action plans.



This is our capacity for reflection and dialogue which determines our actions.

It leads into the Ethical Decision-Making Model, a process of question and answer that leads us to the conclusion of “what ought one do?”

ETHICAL DECISION - MAKING MODEL

FRAME
SHAPE
EVALUATE
REFINE
ACT

FRAME the choice

What's the story?

- What are the facts?
- Are there any assumptions?

Voices in the Conversation

- Are there any non-negotiables?
- Who are the significant stakeholders?

  What would they want?

  Do their needs compete?

  If so, who should get priority and why?

Frame the dilemma

- Frame as A versus B
- Choice between options

SHAPE the options

- Brainstorm the options – be creative, include all ideas

EVALUATE

Consider the following:

- Norms: what is usually done in this situation?
- Laws/codes: do any apply in this situation?
- Duties: what duties do you have in this situation?
- What outcomes are desirable for each stakeholder?
- What means would be desirable to reach your end?
- What rights are relevant in this situation?

REFINE your decision

Principles:

1. Which alternative generates the best outcome i.e. maximises benefit over harm?
2. Which alternative makes a good general rule for people to follow?
3. Which alternative would a person with practical wisdom choose?
4. Which alternative best promotes the common good of stakeholders?
5. Which alternative could you live with if it was done to you?
6. Which alternative would you be prepared to support in public?
7. Which alternative reflects your organisation's values and principles?
8. Which alternative best promotes a just outcome?
9. Which alternative best effects an ethic of care?

CONCLUSION

What is your decision?

What are your reasons for this decision?

'Devil's Advocate'

Can your position be modified to reduce any weaknesses?

FINAL CHECK

Sunlight Test

Would you be happy to defend your decision if it was printed on the front page of the newspaper?

Integrity test

Imagine someone who is very close to you e.g. your child, mother or partner. How would you feel if someone else did to your loved one what you are about to do?

Mentor/Model test

Would your mentor choose this option?

THEN …

ACT

Part D: Making Ethical Decisions

"Third Sector executives and board members should be willing to ask uncomfortable questions: Not just "Is it legal?" but also "Is it fair?" "Is it honest?" "Does it advance societal interests or pose unreasonable risks?" and "How would it feel to defend the decision on the evening news?" Not only do leaders need to ask those questions of themselves, they also need to invite unwelcome answers from others. To counter self-serving biases and organizational pressures, people in positions of power should actively solicit diverse perspectives and dissenting views. Every leader's internal moral compass needs to be checked against external reference points."

Rhode and Packel, (2009)

In Part 4 we look at some of the barriers to ethical decision-making. We also examine some of the ways that Board members and CEOs can develop an ethical culture, as well as exploring current examples of ethical issues that confront third sector organisations. You will then develop a case study for resolution by the group.

1. Barriers to Ethical Decision-Making

Rhode and Packel (2009) state that there are barriers, both internal and external, which impact our ability to make informed ethical decisions. Some examples:

Cognitive bias

The way we "see' or interpret the world around us shapes our perception of it. All of us from time to time are subject to cognitive bias which causes us to selectively hear and distort information to suit our interests. For example, those in leadership positions can have an inflated view of their own ability and importance. This can lead them to ignore dissenting opinions, refuse to put in place checks and balances on their own behavior and cover up mistakes by denying or destroying information.

Cognitive dissonance

When we hold two related contradictory ideas we experience an uncomfortable feeling called cognitive dissonance, which makes us anxious, guilty or stressed. This can lead us to discount evidence of the harm caused by our actions.

For example, smokers know that smoking is bad for their health. The dissonance occurs because they know that smoking causes lung cancer. This is likely to be in contrast to their belief that they are smart and competent decision makers. They can choose to give up smoking. Or they can rationalise their behaviour by finding information that supports the belief that smoking helps reduce stress levels and reduces weight.

An example of cognitive dissonance in an organisation is when there is the choice between running operations in the customary way because it is easy and maintains the status quo or accepting a change management role that will probably be in the best interests of the organisation in the long term. Senior management may be aware of the options but decide to do nothing.

Obedience to authority

Stanley Milgram's obedience to authority experiment (Yale University, 1963) showed how good people carry out bad actions under situational pressure. When asked to administer electric shocks to another participant in the experiment, about two thirds of subjects complied up to levels marked "dangerous", despite the victim's screams.

As an example, staff can often be placed in a difficult dilemma, particularly in times of recession or poor performance, when a manager instructs them to act in a way that in normal circumstances they would regard as unethical. The question arises: How far do you go to obey the instructions of a manager? What do you do if there is the threat of punishment or losing your job?

Reward structures

An individual's ethical conduct is affected by an organisation's reward systems. Skewed reward systems can lead to a preoccupation with short-term profit or growth at the expense of long-term values and sustainability. For example, bonus systems, fee structures and remuneration packages that rewarded risky, short-term returns were part of the explanation of the irresponsible behaviour in the finance industry resulting in the global financial crisis. In Third Sector organisations managers and staff who feel excessive pressure to meet budget or fundraising targets may engage in unethical conduct in order to get a performance bonus.

2. Ethical Dilemmas in the Third Sector

We now examine five ethical dilemmas facing organisations:

Executive Remuneration

Executive salaries and packages in the Third Sector can potentially cause major problems in the public domain especially if the organisation works with disadvantaged groups. In the United States there have been a number of high profile cases involving what are perceived to be very high CEO remuneration which have caused public outrage and damaged both the organisations involved and the wider sector (Rhode & Packel, 2009).

Take the example of the CEO of a large NFP hospital, or employment organisation which competes with commercial companies in a privatised market such as health care or employment. The NFP CEO manages a complex organisation and is required to achieve similar targets in a competitive industry as peers in commercial companies in the same industry. Should the NFP CEO be on a similar remuneration package and performance bonus as his peer in the commercial company?

Currently in Australia there are no Third Sector benchmarks to guide organisations in setting remuneration. In addition the general public are not informed about what is appropriate remuneration. There should be a requirement to disclose executive remuneration across the Third Sector, such as already exists for listed companies and universities. In addition organisations need to establish clear policies regarding performance bonuses, expense accounts, business travel and hotel accommodation costs.

Conflicts of Interest

Conflicts of interest occur, for example, when an organisation offers preferential treatment to board members or their affiliated companies. A recent survey in the United States (Ostrower, 2007) showed that 20% of NFP organisations reported buying or renting goods, services or property from a board member or an affiliated company within the past two years. The issue raises a number of questions: Should board members obtain contracts or donations for their own or affiliated organisations? Is a board member's disclosure and abstention from a vote sufficient? Should a board member or major donor receive special privileges such as a job for a family member? The issue is difficult because some organisations rely on supporters to provide donations or goods and services at reduced rates. Yet such relationships can jeopardise an organisation's reputation for integrity in its financial dealings.

To maintain public trust Third Sector organisations need clear conflict of interest policies, including requirements that board members and executives disclose all interests in companies that may engage in transactions or receive funds from the organisation.

Board Governance

Board members volunteer their time and experience in Third Sector organisations. As a result there are often not the same standards set as in a commercial company. However the Board directors' duties are similar and they are responsible for the overall performance and compliance of the organisation.

Some of the questions that need to be asked in Third Sector organisations are: Does the Board follow ASX Best Corporate Governance Principles? Do board members understand the business? Is there diversity on the Board in terms of skills, gender and experience? How are board members selected and nominated? Is there an Audit and Compliance Committee? Is there a risk management plan for the organisation? Are there regular performance reviews of board members?

Corporate Partnerships

Third Sector organisations face dilemmas regarding donations or services in kind from corporations whose services are not aligned with the mission of the organisation. For example, if you are running a capital campaign to raise funds for an innovative service that has no government funding, and you are offered funding from a corporation in the tobacco industry do you accept the funds? You know that smoking causes cancer and many of your clients smoke causing them long-term health problems. You are aware that it may damage your organisation's reputation for some supporters to know that you have accepted funds from the corporation. However you are unable to access funds from other sources and the outcome of funding will be an innovative service for disadvantaged people. Does the outcome of receiving funds for a good purpose offset the principle that the funds have come from a corporation that does not display corporate responsibility? This is an ethical dilemma that has no easy resolution. There is no black and white answer and you need to be wise in balancing both the reputation and the sustainability of your organisation.

It is helpful if there are some clear guidelines for Third Sector organisations regarding the principles of engagement with corporations, government or individuals. Some of the questions to be posed might be: Is the partnership consistent with our vision? Does it produce goods or services that are detrimental to the health and well-being of our clients? Does the partner demonstrate a commitment to corporate responsibility? Would an association be detrimental to our reputation?

Fundraising

Choice magazine surveyed its members regarding charities and found that 81% of respondents did not know what proportion of their donation reached the charity's clients. It compared financial reporting by nine charities and found that fundraising ratios (e.g. that the percentage of donated funds used for administration is 10%) are calculated inconsistently.

For example, in an appeal for homeless people, some donors expect all funds to go to homeless people. However there are administrative costs, such as employing fundraising staff and developing marketing materials. In addition to be effective, you need skilled front-line staff with adequate resources.

The issue becomes more complex as regulations and best practice guidelines relating to the cost of fundraising vary across states and territories. There are different definitions of fundraising income and expenditure in Victoria and NSW. NFP organisations also use different accounting protocols and large NFPs can use economies of scale to reduce administration cost ratios in fundraising across various products compared to small NFPs.

However donors, corporate partners and foundations want to know the fundraising-administration cost ratio.

The ethical dilemma is what to disclose to the public. For a fundraising appeal do you include all of the costs of marketing, fundraising, employment of staff? If you are a large organisation do you use economies of scale across e.g. appeals, bequests and corporate partnerships to reduce fundraising ratios? On the other hand do you ignore the costs and focus on the quality of services provided to clients?

The Fundraising Institute of Australia (FIA) has developed Principles and Standards of Fundraising Practice that serve as a useful guide. These may be found on the FIA website:

Government contracts

The Third Sector's relationship with government is a major issue. Complex compliance obligations often apply to government contracts that take up a large amount of administrative time. Reporting frameworks can also limit the capacity of not-for-profit organisations to innovate. In addition, in pursuing government contracts, a not-for-profit organisation can lose sight of its original mission and the people it serves.

For example, in 2006, Department of Employment, Education and Workplace Relations offered $650 per person to non-profit organisations to provide financial counselling for sole parents and people with disabilities who were cut off from their income support payments by Centrelink for eight weeks for breaching job search rules.

The ethical dilemma is that on the one hand, non-profit organisations require government funding and contracts to build their capacity and sustainability. In addition the outcome of this funding contract would be to support disadvantaged groups, in this case, sole parents and people with disabilities. On the other hand, the principle of a government agency such as Centrelink cutting off income support payments of vulnerable groups such as sole parents and people with disabilities appears very punitive and in conflict with the mission and values of non government organisations working with these groups..

Investment Portfolios

Advocates of socially responsible investments argue that Third Sector organisations should have investment portfolios that are consistent with their values. A UK EIRIS Foundation survey (2008) found that 83% of the public would be less likely or unwilling to give to a NFP organisation if they found out it was not investing ethically. The survey illustrates the growing public interest in the finances of Third Sector organisations, and the risks to both income and reputation organisations face by not investing in line with their values. The counter argument is that maximising the financial return on investment is the best way to further an organisation's mission.

A recent Australian example relates to the Sydney Anglican Archdiocese. The Sydney Morning Herald (October 16, 2009) reported that the Archdiocese lost $160 million during the global financial crisis and was forced to cut back on staff and services. It stated that the losses had come from a highly leveraged investment portfolio. The ethical dilemma is how to balance investments with the values of the organisation. It also raises the question of what level of leveraging and risk, if any, a third Sector organisation should employ in its investment portfolio?

Rhode and Packel's article can be found in the Appendix as Reading 4

Reading 4: Ethics and Nonprofits, Rhode, D. L. & Packel, A. K., Stanford Social Innovation Review, Summer 2009.

3. Promoting Ethical Decision-Making

These are two ways that Third Sector organisations can take steps to enhance ethical decision making:

Organisation culture

Boards and senior executives set the standards of ethical behaviour in an organisation. They do this by introducing into the organisation codes such as the ASX Best Practice Corporate Governance Principles, a Code of Ethics and Code of Conduct and implementing and practising them. They also set standards through the Human Resource Policies and Procedures, anti-discrimination and EEO policies as well as their adherence to good practice in recruitment, performance review and remuneration of staff.

The introduction of a complaints mechanism where individual staff members are able to air grievances in a confidential setting is a useful tool. Staff often judge an organisation according to how they are treated by management. They perform better if they consider they are treated with fairness and dignity and are rewarded for good work performance. In organisations with strong ethical cultures, staff engage in far less misconduct, feel less pressure to compromise ethical standards and are less likely to experience retaliation for whistle-blowing. A critical determinant of workplace culture is ethical leadership. Staff members take cues about appropriate behaviour from those at the top.

CEOs and senior executives sometimes have to make a decision where the right course of action is not self-evident. Values may be in conflict, facts may be contested and realistic options may be limited. This is the “casus perplexus” or difficult case that has no easy resolution. While there may be no definitive right answer, some will appear more right than others, that is, more informed by available information, more consistent with widely accepted principles and more responsive to the interests involved. Where there is no consensus about ethically appropriate conduct, leaders should strive for a decision-making process that is transparent and responsive to competing stakeholder interests. For guidance in this areas particularly consider using the ASX Principles listed in the Reading below.

Reading 5: ASX Best Practice Corporate Governance Principles

Promote Effective Financial Management

In order to foster ethical behaviour and promote public trust, organisations need to be transparent and responsible in their financial reporting.

Many small not-for-profit organisations have no compliance or reporting requirements. This is a problem if they are receiving public funds. Management and directors are often not aware of best practice corporate governance principles. There may be no checks and balances to ensure that the organisation is run well and allocates its funds appropriately.

Across the sector there is support for the Standard Chart of Accounts (SCOA) developed by the Australian Centre for Philanthropy and Non Profit Studies. This aims to streamline financial accounting and reduce costs and time for not-for-profit Organisations and government departments. It is currently being adopted by some state and federal departments.

GROUP EXERCISE

Participants are divided into groups.

Each group is to design a one page case of an ethical dilemma(s) facing a Third Sector organisation.

The case study may be based on an actual situation but it is to be presented in such a way as to not cause harm to any individual or organisation.

Each group then gives the other group its case study

Each group acts as consultant to the other, answering questions and providing clarification on the dilemma

Group members then work through the questions in the Ethical Decision-Making Model to present the dilemma and reach a conclusion

Both groups present their cases to the wider group

References

Badaracco, J. L., 2006, Leadership in literature – A conversation with business ethicist Joseph Badaracco, Harvard Business Review, March, 47-55.

Catholics quit immoral program, 2006, The Australian, 18th August

EIRIS Foundation, 2008, GFK NOP Poll, August, UK.

The Ethics of Caring in a Good Society: a national conversation 2009, initiated by Carers NSW, sponsored by Macquarie Group Foundation with facilitation of the conversations, collection of data and writing of the narrative being the responsibility of St James Ethics Centre

A Framework for Thinking Ethically, 2008, Markula Centre for Applied Ethics, Santa Clara University, accessed 4/1/2010 from http://www.scu.edu/ethics/practicing/decision/framework.html

Gilligan, C., 1982, *In a different voice: Psychological theory and women's development*. Cambridge, MA, Harvard University Press.

Harrison, J., 2001, *Ethics for Australian Business*, Pearson Education, Frenchs Forest, NSW

Held, V., 2005, *The Ethics of Care, Personal, Political and Global*, New York, Oxford University Press.

Kant, I., 1785, *Groundwork of the Metaphysics of Morals,* (*Grundlegung zur Metaphysik der Sitten*).

Kidder, R., 1995, *How Good People Make Tough Choices*, Wm Morrow, New York.

Keynes, J. M., 1936, *General Theory of Employment, Interest and Money*, Cambridge University Press.

Longstaff, S., 2009, *The Ethics of Caring in a Good Society: a national conversation*, St James Ethics Centre, Sydney.

Longstaff, S., 1997, *Hard Cases, Tough Choices*, McMillan, Sydney.
Longstaff, S., 1994, *What is Ethics All About?*, St James Ethics Centre, Sydney.
Longstaff, S., 1994, *Values, Principles, Codes of Ethics and Codes of Conduct*, St James Ethics Centre, Sydney

MacIntyre, A., 1984, *After Virtue*, University of Notre Dame, Indiana.

McClure, P., 2009, Ethical Demands on 'Third Sector', Canberra Times, October 6.

Ostrower, F., 2007, Nonprofit Governance in the United States, Washington D.C., The Urban Institute.
Resnick, D. B., 2009, *What is Ethics in Research & Why is It Important?* Accessed on 1/1/2010 at http://www.niehs.nih.gov/research/resources/bioethics/whatis.cfm
Last Reviewed: November 12, 2009
Rhode, D. L. & Packel, A. K., 2009, Ethics and Nonprofits, *Stanford Social Innovation Review*, Stanford Graduate School of Business.

Schweitzer, A., 1934, Religion and Modern Civilization, *Christian Century*, November 28.

Senate Community Care Committee, Executive Summary: "Forgotten Australians: A Report on Australians who experienced institutional or out of home care as children", Parliament of Australia, 30 August, 2004

Singer, P., 1981, *The Expanding Circle: Ethics and Sociobiology*, Farrar, Straus and Giroux, New York.

Singer, P., 1993, *Practical Ethics*, Cambridge University Press.

Readings

Reading 1: Ethical demands on the Third Sector, McClure, 2009

Reading 2: Catholics quit immoral program (2006)

Reading 3: What is Ethics all About? Longstaff (1994)

Reading 4: Ethics and Nonprofits, Rhode & Packel (2009)

Reading 5: ASX Best Practice Corporate Governance Principles

Reading 1: Ethical demands on the Third Sector
By Patrick McClure
Canberra Times, October 6, 2009

The global financial crisis has highlighted the need for regulation and the importance of applied ethics across the economy. But it has also brought focus to the strong case for an independent regulator of the not-for-profit sector, which faces particular challenges of governance, accountability and transparency.

The not-for-profit or third sector plays a significant role in the Australian economy and society. There are about 700,000 not-for-profit Organisations. Of these, 380,000 are incorporated in some form and 41,000 are relatively large; most are small and dependent on volunteers. Altogether they employ 900,000 people and receive $76 billion in income.

They include schools, hospitals, nursing homes, child, youth, family, aged and disability services, international aid, employment and training, culture and sporting Organisations as well as small Organisations addressing various needs in the community.

In not-for-profit Organisations the need to act ethically in day to day operations, and to be seen to be doing so, is greater than ever: to ensure they contribute to a good society, develop well managed, sustainable Organisations, build capacity in individuals and communities across Australia and enhance the reputation of the sector.

Transparency in reporting needs to be enhanced. Choice magazine surveyed its members regarding charities and found that 81% of respondents did not know what proportion of their donation reached the charity's clients. It compared financial reporting by nine charities and found that fundraising ratios (the percentage of donated funds used for administration) are calculated inconsistently.

For example, in an appeal for homeless people, some people expect all donated funds to reach clients on the streets. However for the not-for-profit Organisation there are administrative costs, such as employing fundraising staff and developing marketing materials. To be effective, services for homeless people also need to pay for skilled front-line staff and provide them with adequate resources. Most donors readily accept this, once it is fully explained to them. To ensure creditability and ongoing trust in not-for-profit Organisations, donors need to know how their funds are spent. Agreed standards and greater transparency are needed.

This is also true for the level of executive remuneration in not-for-profit Organisations. Take the example of the CEO of a large hospital, or employment Organisation which competes with commercial companies in a privatized market such as health care or employment. The not-for-profit CEO managing a complex Organisation is required to achieve similar outcomes to colleagues in commercial companies in the same industry. Should he/she be on a private sector-equivalent package? We need, but lack, published not-for-profit industry benchmarks as well as a requirement to disclose executive remuneration across the not-for-profit sector, such as already exists for listed companies and universities.

Many small not-for-profit Organisations have no compliance or reporting requirements. This is a problem if they are receiving public funds. Management and directors are often not aware of best practice corporate governance principles. There may be no checks and balances to ensure that the Organisation is run well and allocates its funds appropriately.

As well as governance and transparency, the not-for-profit sector's relationship with federal and state governments is a major issue. Complex and inefficient compliance obligations often apply to Organisations receiving government funding. Reporting frameworks can limit the capacity of not-for-profit Organisations to innovate and achieve outcomes for their clients. In addition, in pursuing government contracts, a not-for-profit Organisation can lose sight of its original mission and the people it serves. It is important that the current consultation for a National Compact between government and the third sector addresses these concerns.

The size and complexity of the sector as well as the challenges outlined above point to a strong case for an independent regulator. It is currently on the government agenda and needs to be publicly debated. Its functions would include a register of not-for-profit Organisations, ensuring compliance with relevant legislation, investigating complaints, implementing standard reporting requirements and advising on governance and practice standards. The test of its success would be greater transparency and accountability in the sector. Without it, we may find ourselves even more vulnerable when the next financial crisis comes around. Patrick McClure, AO is Ethics Fellow, Not-for-Profit Sector, for the Centre for Social Impact and St James Ethics Centre and former CEO of Mission Australia

Reading 2: **Catholics quit immoral program (2006)**
2006: The churches say No!

Catholics quit 'immoral' program
The Australian
August 18, 2006

THE welfare arm of the Catholic Church has withdrawn from a government deal to help unemployed people who are punished by Centrelink, claiming the system is immoral.

The Government pays charities $650 to manage each eligible unemployed person cut off from payments for eight weeks. Charities assess the person's essential expenses and notify Centrelink, which would pay the bills.

But the board of Catholic Social Services Australia has decided that it would be immoral to help the Government "police" its new system.

The decision leaves the Hillsong Church as the biggest religious-based non-government provider of services to unemployed people.

Catholic Social Services Australia executive director Frank Quinlan said two of his agencies had signed up to the system, but had now informed the Government they no longer believed it was right to do the work.

"We decided not to sign up nationally. We think vulnerable people will not be adequately protected," he said.

Mr Quinlan said he was outraged when he saw a Centrelink description of a typical person, who was described as mentally ill, with children and on medication.

"Our question was how on earth could we be contemplating a system that sees somebody who is mentally ill ... suspended from income support for eight weeks."

The biggest charities have refused to take part in the program to financially case-manage the most vulnerable unemployed, including sole parents and disabled people, who will be left without income.

National Welfare Rights Network president Michael Raper said it was not surprising that the established churches did not want anything to do with it.

"Financial case-management is a deeply flawed, impractical and very paternalistic system, designed to cover up for an even worse social security penalty system where people can have payments stopped for eight weeks," Mr Raper said.

"Many people would be reluctant to deal with such an avowed evangelical outfit as Hillsong and there are legitimate concerns in the community about the blurring of an organisation's religious pursuits and its relationship with their welfare services."

Reading 3: **What is Ethics all About?**
Dr Simon Longstaff (1994)

It is sometimes surprising that, for all the attention currently being paid to the subject of 'ethics', there is so little fundamental understanding of what 'ethics' is all about. This lack of understanding seems to continue despite (or is it **because of**) the fact that dictionary definitions are offered on a regular and frequent basis. Such definitions usually tell the keen enquirer that ethics is the science of morals, or the study of 'good' and 'evil', 'right' and 'wrong'. While such definitions must be taken as strictly correct, they seem to miss the opportunity to provide a slightly deeper understanding of the matter. That which follows may be a little idiosyncratic in its formulation. However, it provides a reasonable point of access for those who wish to come to grips with the **practical** aspect of ethics.

Some people hold the view that 'ethics' is first and foremost a realm of theory and arcane formulations. It is a matter of regret that some philosophers have reinforced this misconception. Others hold that ethics **is the same as** morality. Those holding this view sometimes make a further (strictly unrelated) claim. This is that morality is a personal (and therefore private) matter for individuals. While both general points are understandable, they are open to the challenge that they are based on a misunderstanding.

Ethics is a matter of practical concern

Plato records Socrates as having asked the fundamental question of ethics, "What ought one to do?" Whenever one seeks to answer that question, then one is operating in the ethical dimension. There are a number of things that should be noted about this question. The first thing to note relates to what Socrates **did not ask**! Socrates did not begin by asking questions such as, "What is good, what is evil?" or, "What is right, what is wrong?" Rather, he asked an immensely practical question that confronts people **whenever** they have a decision to make, **whenever** they are in a position to exercise their capacity to choose. Socrates did not mark off a special area which was to be the terrain for ethical reflection.

Some people find it difficult to accept the generality of Socrates' question (and hence the field of ethical enquiry). This is specially so for members of professions which operate under what they call a Code of Ethics. The difficulty arises because much of what is placed within such a Code is really better understood as rules of professional conduct; including rules of etiquette, rules to regulate competition and so on. These codes do contain (and invariably are based on) ethical principles. However, their traditional formulation and composition often tends to distort understanding of the fundamental character of the ethical dimension of life.

Ethics is not the same as morality

The other position that needs to be addressed is that which holds that ethics 'is the same as morality'. The distinction can be demonstrated by using the analogy of a conversation. If one imagines that the field of ethics is a conversation that has arisen in order to answer the question, "What ought one to do?" then moralities (and they are various) are voices in that conversation. Each voice belongs to a tradition or theory that offers a framework within which the question might be contemplated and answered. So there is a Christian voice, a Jewish voice, an Islamic voice, Buddhist voice, Hindu voice, Confucian voice and so on. Each voice has something distinctive to say - although they may all share certain things in common.

There are, in addition to the moralities that flow from the world's religions, the voices that represent the various attempts to found moral systems on the thinking of secular philosophers. Examples such as Utilitarianism and Kantian Formalism provide clear examples of philosophical theories that can give rise to moralities (so understood). As with religions, there is much that is common to the approaches adopted by the philosophers in their attempts to answer Socrates' founding and persistent question. This is not the place to go into an analysis of ethical theories except to say that, in common with all such theories (whether sacred or secular in their origin), they fail to give an absolutely 'fool-proof' guide to behaviour. No ethical theory or morality (from the West) has found a way to answer Socrates' question in a way that totally avoids the countless ethical dilemmas that seem to be a persistent feature of what might be called the 'ethical landscape'.

One simple example may suffice as an indication of the type of dilemma that might be encountered. Most people would agree (possibly for quite different reasons) that people ought to tell the truth. These same people will hold that one ought to avoid causing harm. But what happens when to tell the truth will cause another person harm? Each principle seems to be valid on its own account, but when put in combination with other values an irreconcilable tension may arise. This is not a trivial point. It tells of something that is absolutely crucial when trying to come to terms with the central question to be addressed by this paper. It is part of the argument that is to be advanced below that the shape and relationship between ethics education and training needs to address the apparently unavoidable phenomenon of the ethical dilemma.

A final point

Much of the above has been based on the discussion of what have been presented as either mistaken or incomplete conceptions of a field of inquiry called 'ethics'. However, in all this discussion one crucial point has been left unsaid. This is that ethical considerations involve an essential social element. Whether one seeks to move from religious conviction, or from a position in which one seeks to generate consequences in which pleasure is maximised and pain minimised, or from the point of view in which other persons are seen as being members of the 'kingdom of ends', the result is the same - a consideration of ethical questions involves a consideration of the quality and nature of relationships with other people.

Reading 4: Ethics and Nonprofits, Rhode & Packel (2009)

Ethics and Nonprofits

Unethical behavior remains a persistent problem in nonprofits and for-profits alike. To help organizations solve that problem, the authors examine the factors that influence moral conduct, the ethical issues that arise specifically in charitable organizations, and the best ways to promote ethical behavior within organizations

By Deborah L. Rhode & Amanda K. Packel , Ethics and Nonprofits, Stanford Social Innovation Review, Summer 2009 (pages 29 – 35)

Those who work on issues of ethics are among the few professionals not suffering from the current economic downturn. The last decade has brought an escalating supply of moral meltdowns in both the for-profit and the nonprofit sectors. Corporate misconduct has received the greatest attention, in part because the abuses are so egregious and the costs so enormous. Chief contenders for most ethically challenged include former Merrill Lynch & Co. CEO John Thain, who spent $1.22 million in 2008 to redecorate his office, including the purchase of a $1,400 trash can and a $35,000 antique commode, while the company was hemorrhaging losses of some $27 billion.[1]

Still, the corporate sector has no monopoly on greed. Consider EduCap Inc., a multibillion-dollar student loan charity. According to Internal Revenue Service records, the organization abused its tax-exempt status by charging excessive interest on loans and by providing millions in compensation and lavish perks to its CEO and her husband, including use of the organization's $31 million private jet for family and friends.[2]

Unsurprisingly, these and a host of other scandals have eroded public confidence in our nation's leadership. According to a CBS News poll, only a quarter of Americans think that top executives are honest. Even executives themselves acknowledge cause for concern. The American Management Association Corporate Values Survey found that about one third of executives believed that their company's public statements on ethics sometimes conflicted with internal messages and realities. And more than one third of the executives reported that although their company would follow the law, it would not always do what would be perceived as ethical.

Employee surveys similarly suggest that many American workplaces fail to foster a culture of integrity. Results vary but generally indicate that between about one-quarter and three-quarters of employees observe misconduct, only about half of which is reported.[3] In the 2007 National Nonprofit Ethics Survey, slightly more than half of employees had observed at least one act of misconduct in the previous year, roughly the same percentages as in the for-profit and government sectors. Nearly 40 percent of nonprofit employees who observed misconduct failed to report it, largely because they believed that reporting would not lead to corrective action or they feared retaliation from management or peers.[4]

Public confidence in nonprofit performance is similarly at risk. A 2008 Brookings Institution survey found that about one third of Americans reported having “not too much” or no confidence in charitable organizations, and 70 percent felt that charitable organizations waste “a great deal” or a “fair amount” of money. Only 10 percent thought charitable organizations did a “very good job” spending money wisely; only 17 percent thought that charities did a “very good job” of being fair in decisions; and only one quarter thought charities did a “very good job” of helping people.[5] Similarly, a 2006 Harris Poll found that only one in 10 Americans strongly believed that charities are honest and ethical in their use of donated funds. Nearly one in three believed that nonprofits have “pretty seriously gotten off in the wrong direction.” These public perceptions are particularly troubling for nonprofit organizations that depend on continuing financial contributions.

Addressing these ethical concerns requires a deeper understanding of the forces that compromise ethical judgment and the most effective institutional responses. To that end, this article draws on the growing body of research on organizational culture in general, and in nonprofit institutions in particular. We begin by reviewing the principal forces that distort judgment in all types of organizations. Next, we analyze the ethical issues that arise specifically in the nonprofit sector. We conclude by suggesting ways that nonprofits can prevent and correct misconduct and can institutionalize ethical values in all aspects of the organization’s culture.

Causes of Misconduct Ethical challenges arise at all levels in all types of organizations—for-profit, nonprofit, and government—and involve a complex relationship between individual character and cultural influences. Some of these challenges can result in criminal violations or civil liability: fraud, misrepresentation, and misappropriation of assets fall into this category. More common ethical problems involve gray areas—activities that are on the fringes of fraud, or that involve conflicts of interest, misallocation of resources, or inadequate accountability and transparency.

Research identifies four crucial factors that influence ethical conduct:

- Moral awareness: recognition that a situation raises ethical issues
- Moral decision making: determining what course of action is ethically sound
- Moral intent: identifying which values should take priority in the decision
- Moral action: following through on ethical decisions.[6]

People vary in their capacity for moral judgment—in their ability to recognize and analyze moral issues, and in the priority that they place on moral values. They also diff er in their capacity for moral behavior—in their ability to cope with frustration and make good on their commitments.

Cognitive biases can compromise these ethical capacities. Those in leadership positions often have a high degree of confidence in their own judgment. That can readily lead to arrogance, overoptimism, and an escalation of commitment to choices that turn out to be wrong either factually or morally.[7] As a result, people may ignore or suppress dissent, overestimate their ability to rectify adverse consequences, and cover up mistakes by denying, withholding, or even destroying information.[8]

A related bias involves cognitive dissonance: People tend to suppress or reconstrue information that casts doubt on a prior belief or action.[9] Such dynamics may lead people to discount or devalue evidence of the harms of their conduct or the extent of their own responsibility. In-group biases can also result in unconscious discrimination that leads to ostracism of unwelcome or inconvenient views. That, in turn, can generate perceptions of unfairness and encourage team loyalty at the expense of candid and socially responsible decision making.[10]

A person's ethical reasoning and conduct is also affected by organizational structures and norms. Skewed reward systems can lead to a preoccupation with short-term profits, growth, or donations at the expense of long-term values. Mismanaged bonus systems and compensation structures are part of the explanation for the morally irresponsible behavior reflected in Enron Corp. and in the recent financial crisis.[11] In charitable organizations, employees who feel excessive pressure to generate revenue or minimize administrative expenses may engage in misleading conduct.[12] Employees' perceptions of unfairness in reward systems, as well as leaders' apparent lack of commitment to ethical standards, increase the likelihood of unethical behavior.[13]

A variety of situational pressures can also undermine moral conduct. Psychologist Stanley Milgram's classic obedience to authority experiment at Yale University offers a chilling example of how readily the good go bad under situational pressures. When asked to administer electric shocks to another participant in the experiment, about two-thirds of subjects fully complied, up to levels marked "dangerous," despite the victim's screams of pain. Yet when the experiment was described to subjects, none believed that they would comply, and the estimate of how many others would do so was no more than one in 100. In real-world settings, when instructions come from supervisors and jobs are on the line, many moral compasses go missing.

Variations of Milgram's study also documented the influence of peers on individual decision making. Ninety percent of subjects paired with someone who refused to comply also refused to administer the shocks. By the same token, 90 percent of subjects paired with an uncomplaining and obedient subject were equally obedient. Research on organizational behavior similarly finds that people are more likely to engage in unethical conduct when acting with others. Under circumstances where bending the rules provides payoff s for the group, members may feel substantial pressure to put their moral convictions on hold. That is especially likely when organizations place heavy emphasis on loyalty and off er significant rewards to team players. For example, if it is common practice for charity employees to inflate expense reports or occasionally liberate office supplies and in-kind charitable donations, other employees may suspend judgment or follow suit. Once people yield to situational pressures when the moral cost seems small, they can gradually slide into more serious misconduct. Psychologists label this "the boiled frog" phenomenon. A frog thrown into boiling water will jump out of the pot. A frog placed in tepid water that gradually becomes hotter will calmly boil to death.

Moral blinders are especially likely in contexts where people lack accountability for collective decision making. That is often true of boards of directors—members' individual reputations rarely suffer, and insurance typically insulates them from personal liability. A well-known study by Scott Armstrong, a professor at the Wharton School of the University of Pennsylvania, illustrates the pathologies that too often play out in real life. The experiment asked 57 groups of executives and business students to assume the role of an imaginary pharmaceutical company's board of directors. Each group received a fact pattern indicating that one of their company's most profitable drugs was causing an estimated 14 to 22 "unnecessary" deaths a year. The drug would likely be banned by regulators because a competitor offered a safe medication with the same benefits at the same price. More than four-fifths of the boards decided to continue marketing the product and to take legal and political actions to prevent a ban. By contrast, when a different group of people with similar business backgrounds were asked for their personal views on the same hypothetical, 97 percent believed that continuing to market the drug was socially irresponsible.[14]

These dynamics are readily apparent in real-world settings. Enron's board twice suspended conflict of interest rules to allow CFO Andrew Fastow to line his pockets at the corporation's expense.[15] Some members of the United Way of the National Capital Area's board were aware of suspicious withdrawals by CEO Oral Suer over the course of 15 years, but failed to alert the full board or take corrective action.[16] Experts view the large size of some governing bodies, such as the formerly 50-member board of the American Red Cross, as a contributing factor in nonprofit scandals.[17]

Other characteristics of organizations can also contribute to unethical conduct. Large organizations facing complex issues may undermine ethical judgments by fragmenting information across multiple departments and people. In many scandals, a large number of professionals—lawyers, accountants, financial analysts, board members, and even officers—lacked important facts raising moral as well as legal concerns. Work may be allocated in ways that prevent decision makers from seeing the full picture, and channels for expressing concerns may be inadequate.

Another important influence is ethical climate—the moral meanings that employees give to workplace policies and practices. Organizations signal their priorities in multiple ways, including the content and enforcement of ethical standards; the criteria for hiring, promotion, and compensation; and the fairness and respect with which they treat their employees. People care deeply about "organizational justice" and perform better when they believe that their workplace is treating them with dignity and is rewarding ethical conduct. Workers also respond to moral cues from peers and leaders. Virtue begets virtue, and observing integrity in others promotes similar behavior.

Ethical Issues in the Nonprofit Sector

These organizational dynamics play out in distinctive ways in the nonprofit sector. There are six areas in particular where ethical issues arise in the nonprofit sector: compensation; conflicts of interest; publications and solicitation; financial integrity; investment policies; and accountability and strategic management.

Compensation. Salaries that are modest by business standards can cause outrage in the nonprofit sector, particularly when the organization is struggling to address unmet societal needs. In a March 23, 2009, Nation column, Katha Pollitt announced that she "stopped donating to the New York Public Library when it gave its president and CEO Paul LeClerc a several hundred thousand-dollar raise so his salary would be $800,000 a year." That, she pointed out, was "twenty times the median household income." Asking him to give back half a million "would buy an awful lot of books—or help pay for raises for the severely underpaid librarians who actually keep the system going." If any readers thought LeClerc was an isolated case, she suggested checking Charity Navigator for comparable examples.

The problem is not just salaries. It is also the perks that officers and unpaid board members may feel entitled to take because their services would be worth so much more in the private sector. A widely publicized example involves William Aramony, the former CEO of United Way of America, who served six years in prison after an investigation uncovered misuse of the charity's funds to finance a lavish lifestyle, including luxury condominiums, personal trips, and payments to his mistress.[18] Examples like Aramony ultimately prompted the IRS to demand greater transparency concerning nonprofit CEO compensation packages exceeding certain thresholds.[19]

Nonprofits also face issues concerning benefits for staff and volunteers. How should an organization handle low-income volunteers who select a few items for themselves while sorting through noncash contributions? Should employees ever accept gifts or meals from beneficiaries or clients? Even trivial expenditures can pose significant issues of principle or public perception.

Travel expenses also raise questions. Can employees keep frequent flyer miles from business travel? How does it look for cash-strapped federal courts to hold a judicial conference at a Ritz-Carlton hotel, even though the hotel offered a significantly discounted rate? The Panel on the Nonprofit Sector recommends in its *Principles for Good Governance and Ethical Practice* that organizations establish clear written policies about what can be reimbursed and require that travel expenses be cost-effective. But what counts as reasonable or cost-effective can be open to dispute, particularly if the nonprofit has wealthy board members or executives accustomed to creature comforts.

Conflicts of Interest. Conflicts of interest arise frequently in the nonprofit sector. The Nature Conservancy encountered one such problem in a "buyer conservation deal." The organization bought land for $2.1 million and added restrictions that prohibited development such as mining, drilling, or dams, but authorized construction of a single-family house of unrestricted size, including a pool, a tennis court, and a writer's cabin. Seven weeks later, the Nature Conservancy sold the land for $500,000 to the former chairman of its regional chapter and his wife, a Nature Conservancy trustee. The buyers then donated $1.6 million to the Nature Conservancy and took a federal tax write-off for the "charitable contribution." [20]

Related conflicts of interest arise when an organization offers preferential treatment to board members or their affiliated companies. In another Nature Conservancy transaction, the organization received $100,000 from SC Johnson Wax to allow the company to use the Conservancy's logo in national promotion of products, including toilet cleaner. The company's chairman sat on the charity's board, although he reportedly recused himself from participating in or voting on the transaction.[21]

These examples raise a number of ethical questions. Should board members obtain contracts or donations for their own organizations? Is the board member's disclosure and abstention from a vote enough? Should a major donor receive special privileges, such as a job or college admission for a child? In a recent survey, a fifth of nonprofits (and two-fifths of those with more than $10 million in annual expenses) reported buying or renting goods, services, or property from a board member or an affiliated company within the prior two years. In three-quarters of nonprofits that did not report any such transactions, board members were not required to disclose financial interests in entities doing business with the organization, so its leaders may not have been aware of such conflicts.[22]

Despite the ethical minefield that these transactions create, many nonprofits oppose restrictions because they rely on insiders to provide donations or goods and services at below-market rates. Yet such quid pro quo relationships can jeopardize an organization's reputation for fairness and integrity in its financial dealings. To maintain public trust and fiduciary obligations, nonprofits need detailed, unambiguous conflict of interest policies, including requirements that employees and board members disclose all financial interest in companies that may engage in transactions with the organization. At a minimum, these policies should also demand total transparency about the existence of potential conflicts and the process by which they are dealt with.

Publications and Solicitation. Similar concerns about public trust entail total candor and accuracy in nonprofit reports. The Red Cross learned that lesson the hard way after disclosures of how it used the record donations that came in the wake of the 9/11 terrorist attacks.Donors believed that their contributions would go to help victims and their families. The Red Cross, however, set aside more than half of the $564 million in funds raised for 9/11 for other operations and future reserves. Although this was a long-standing organizational practice, it was not well known. Donor outrage forced a public apology and redirection of funds, and the charity's image was tarnished.[23]

As the Red Cross example demonstrates, nonprofits need to pay particular attention to transparency. They should disclose in a clear and non-misleading way the percentage of funds spent on administrative costs—information that affects many watchdog rankings of nonprofit organizations. Transparency is also necessary in solicitation materials, grant proposals, and donor agreements. Organizations cannot afford to raise funds on the basis of misguided assumptions, or to violate public expectations in the use of resources.

Financial Integrity. Nonprofit organizations also face ethical dilemmas in deciding whether to accept donations that have any unpalatable associations or conditions. The Stanford Institute for Research on Women and Gender, for example, declined to consider a potential gift from the Playboy Foundation. By contrast, the ACLU's Women's Rights Project, in its early phase, accepted a Playboy Foundation gift, and for a brief period sent out project mailings with a Playboy bunny logo.[24] When Stanford University launched an ethics center, the president quipped about what level of contribution would be necessary to name the center and whether the amount should depend on the donor's reputation. If "the price was right," would the university want a Ken Lay or a Leona Helmsley center on ethics?

Recently, many corporations have been attempting to "green" their image through affiliations with environmental organizations, and some of these groups have been entrepreneurial in capitalizing on such interests. The Nature Conservancy offered corporations such as the Pacific Gas and Electric Co. and the Dow Chemical Co. seats on its International Leadership Council for $25,000 and up. Members of the council had opportunities to "meet individually with Nature Conservancy staff to discuss environmental issues of specific importance to the member company." [25]

There are no easy resolutions of these issues, but there are better and worse ways of addressing them. Appearances matter, and it sometimes makes sense to avoid affiliations where a donor is seeking to advance or pedigree ethically problematic conduct, or to impose excessive restrictions on the use of funds.

Investment Policies. Advocates of socially responsible investing argue that nonprofit organizations should ensure that their financial portfolio is consistent with their values. In its strongest form, this strategy calls for investing in ventures that further an organization's mission. In its weaker form, the strategy entails divestment from companies whose activities undermine that mission. The issue gained widespread attention after a Jan. 7, 2007, *Los Angeles Times* article criticized the Bill & Melinda Gates Foundation for investing in companies that contributed to the environmental and health problems that the foundation is attempting to reduce.

Many nonprofit leaders have resisted pressure to adopt socially responsible investing principles on the grounds that maximizing the financial return on investment is the best way to further their organization's mission, and that individual divestment decisions are unlikely to affect corporate policies. Our view, however, is that symbols matter, and that similar divestment decisions by large institutional investors can sometimes influence corporate conduct. Hypocrisy, as French writer François de La Rochefoucauld put it, may be the "homage vice pays to virtue," but it is not a sound managerial strategy. To have one set of principles for financial management and another for programmatic objectives sends a mixed moral message. Jeff Skoll acknowledged as much following his foundation's support of *Fast Food Nation*, a dramatic film highlighting the adverse social impacts of the fast-food industry. "How do I reconcile owning shares in [Coca-Cola and Burger King] with making the movie?" he asked.[26] As a growing number of foundations recognize, to compartmentalize ethics inevitably marginalizes their significance. About a fifth of institutional investing is now in socially screened funds, and it is by no means clear that these investors have suffered financial losses as a consequence.[27]

Accountability and Strategic Management. By definition, nonprofit organizations are not subject to the checks of market forces or majoritarian control. This independence has come under increasing scrutiny in the wake of institutional growth. In 2006, after a $30 billion gift from Warren Buffet, the Gates Foundation endowment doubled, making it larger than the gross domestic product of more than 100 countries. In societies where nonprofits serve crucial public functions and enjoy substantial public subsidies (in the form of tax deductions and exemptions), this public role also entails significant public responsibilities. In effect, those responsibilities include fiduciary obligations to stakeholders—those who fund nonprofits and those who receive their services—to use resources in a principled way. As a growing body of work on philanthropy suggests, such accountability requires a well-informed plan for furthering organizational objectives and specific measures of progress. A surprising number of nonprofits lack such strategic focus. Many operate with a "spray and pray" approach, which spreads assistance across multiple programs in the hope that something good will come of it. Something usually does, but it is not necessarily the cost-effective use of resources that public accountability demands.

Money held in public trust should be well spent, not just well-intentioned. But in practice, ethical obligations bump up against significant obstacles. The most obvious involves evaluation. Many nonprofit initiatives have mixed or nonquantifiable outcomes. How do we price due process, wilderness preservation, or gay marriage?

Although in many contexts objective measures of progress are hard to come by, it is generally possible to identify some indicators or proxies. Examples include the number and satisfaction of people affected, the assessment of experts, and the impact on laws, policies, community empowerment, and social services. The effectiveness of evaluation is likely to increase if organizations become more willing to share information about what works and what doesn't. To be sure, those who invest significant time and money in social impact work want to feel good about their efforts, and they are understandably reluctant to spend additional resources in revealing or publicizing poor outcomes. What nonprofit wants to rain on its parade when that might jeopardize public support? But sometimes at least a light drizzle is essential to further progress. Only through pooling information and benchmarking performance can nonprofit organizations help each other to do better.

Promoting Ethical Decision Making Although no set of rules or organizational structures can guarantee ethical conduct, nonprofits can take three steps that will make it more likely.

Ensure Effective Codes of Conduct and Compliance Programs. One of the most critical steps that nonprofits can take to promote ethical conduct is to ensure that they have adequate ethical codes and effective compliance programs. Codified rules can clarify expectations, establish consistent standards, and project a responsible public image. If widely accepted and enforced, codes can also reinforce core values, deter misconduct, promote trust, and reduce the organization's risks of conflicting interests and legal liability.

Although the value of ethical codes and compliance structures should not be overlooked, neither should it be overstated. As empirical research makes clear, the existence of an ethical code does not of itself increase the likelihood of ethical conduct. Much depends on how standards are developed, perceived, and integrated into workplace functions. "Good optics" was how one manager described Enron's ethical code, and shortly after the collapse, copies of the document were selling on eBay, advertised as "never been read." [28]

A recent survey of nonprofit organizations found that only about one third of employees believed that their workplace had a well implemented ethics and compliance program. This figure is higher than the corresponding figure for the business (25 percent) and government (17 percent) sectors, but still suggests ample room for improvement. [29] Part of the problem lies with codes that are too vague, inflexible, or narrow. Only about half of nonprofit organizations have conflict of interest policies, and fewer than one third require disclosure of potentially conflicting financial interests.[30] A related difficulty is compliance programs that focus simply on punishing deviations from explicit rules, an approach found to be less effective in promoting ethical behavior than approaches that encourage self-governance and commitment to ethical aspirations.[31] To develop more effective codes and compliance structures, nonprofit organizations need systematic information about how they operate in practice. How often do employees perceive and report ethical concerns? How are their concerns addressed? Are they familiar with codified rules and confident that whistle-blowers will be protected from retaliation? Do they feel able to deliver bad news without reprisals?

Promote Effective Financial Management. Another step that nonprofits can take to foster ethical behavior and promote public trust is to use resources in a socially responsible way. In response to reports of bloated overhead, excessive compensation, and financial mismanagement, watchdog groups like Charity Navigator have begun rating nonprofits on the percentage of funds that go to administration rather than program expenditures. Although this rating structure responds to real concerns, it reinforces the wrong performance measure, distorts organizational priorities, and encourages disingenuous accounting practices. Groups with low administrative costs may not have the scale necessary for social impact. The crucial question that donors and funders should consider in directing their resources is the relative cost-effectiveness of the organization. Yet according to a 2001 study by Princeton Survey Research Associates, only 6 percent of Americans say that whether a program "makes a difference" is what they most want to know when making charitable decisions. Two-thirds expect the bulk of their donations to fund current programs and almost half expect all of their donations to do so. Such expectations encourage charities to provide short-term direct aid at the expense of building long-term institutional capacity.

Moreover, the line these donors draw between "overhead" and "cause" is fundamentally fl awed. As Dan Pallotta notes in Uncharitable, "the distinction is a distortion." All donations are going to the cause, and "the fact that [a dollar] is not going to the needy now obscures the value it will produce down the road" by investing in infrastructure or fundraising capacity. Penalizing charities for such investments warps organizational priorities. It also encourages "aggressive program accounting," which allocates fundraising, management, and advertising expenses to program rather than administrative categories. Studies of more than 300,000 tax returns of charitable organizations find widespread violation of standard accounting practices and tax regulations, including classification of accounting fees and proposal writing expenses as program expenditures.[32]

To address these issues, nonprofit organizations need better institutional oversight, greater public education, and more transparent and inclusive performance measures. Ensuring common standards for accounting and developing better rating systems for organizational effectiveness should be a priority.

Institutionalize an Ethical Culture. In its *National Nonprofit Ethics Survey*, the Ethics Resource Center categorizes an organization as having a strong ethical culture when top management leads with integrity, supervisors reinforce ethical conduct, peers display a commitment to ethics, and the organization integrates its values in day-to-day decision making. In organizations with strong ethical cultures, employees report far less misconduct, feel less pressure to compromise ethical commitments, and are less likely to experience retaliation for whistle-blowing.[33] This survey is consistent with other research, which underscores the importance of factoring ethical concerns into all organizational activities, including resource allocation, strategic planning, personnel and compensation decisions, performance evaluations, auditing, communications, and public relations.

Often the most critical determinant of workplace culture is ethical leadership. Employees take cues about appropriate behavior from those at the top. Day-to-day decisions that mesh poorly with professed values send a powerful signal. No organizational mission statement or ceremonial platitudes can counter the impact of seeing leaders withhold crucial information, play favorites with promotion, stifle dissent, or pursue their own self-interest at the organization's expense.

Leaders face a host of issues where the moral course of action is by no means self-evident. Values may be in conflict, facts may be contested or incomplete, and realistic options may be limited. Yet although there may be no unarguably right answers, some will be more right than others—that is, more informed by available evidence, more consistent with widely accepted principles, and more responsive to all the interests at issue. Where there is no consensus about ethically appropriate conduct, leaders should strive for a decision making process that is transparent and responsive to competing stakeholder interests.

Nonprofit executives and board members also should be willing to ask uncomfortable questions: Not just "Is it legal?" but also "Is it fair?" "Is it honest?" "Does it advance societal interests or pose unreasonable risks?" and "How would it feel to defend the decision on the evening news?" Not only do leaders need to ask those questions of themselves, they also need to invite unwelcome answers from others. To counter self-serving biases and organizational pressures, people in positions of power should actively solicit diverse perspectives and dissenting views. Every leader's internal moral compass needs to be checked against external reference points.

Some three decades ago, in commenting on the performance of Nixon administration officials during the Watergate investigation, then-Supreme Court Chief Justice Warren Burger concluded that "apart from the morality, I don't see what they did wrong."[34] That comment has eerie echoes in the current financial crisis, as leaders of failed institutions repeatedly claim that none of their missteps were actually illegal. Our global economy is paying an enormous price for that moral myopia, and we cannot afford its replication in the nonprofit sphere.

Notes

1 Jay Fitzgerald, "Treasury Gets Tough: Eyes Financial Bailout Abuse," *Boston Herald*, January 28, 2009: 25; Sheryl Gay Stolberg and Stephen Labaton, "Banker Bonuses Are 'Shameful,' Obama Declares," *The New York Times*, January 30, 2009: A1.

2 Sharyl Attkisson, "Student Loan Charity Under Fire: Is One Educational Charity Abusing Their Status with Lavish Travel and Huge Salaries?" *CBS News*, March 2, 2009; Sharyl Attkisson, "Loan Charity's High-Flying Guests Exposed: Educational Nonprofi t Under Fire for Transporting Politicians with Money That Could Have Gone to Students," *CBS News*, March 3, 2009.

3 Deborah L. Rhode, "Where Is the Leadership in Moral Leadership?" D. 3 L. Rhode, ed., *Moral Leadership: The Theory and Practice of Power, Judgment, and Policy*, San Francisco: Jossey-Bass, 2006: 13.

4 Ethics Resource Center, *National Nonprofit Ethics Survey 2007*, March 27, 2008: ix, 2-4, 19.

5 Paul C. Light, *How Americans View Charities: A Report on Charitable Confidence*, Washington, D.C.: Brookings Institution, April 2008.

6 James R. Rest, ed., *Moral Development: Advances in Research and Theory*, New York: Praeger Publishers, 1994: 26-39.

7 Rhode, “Where Is the Leadership in Moral Leadership?”: 25.

8 Kimberly D. Krawiec, “Accounting for Greed: Unraveling the Rogue Trader Mystery,” *Oregon Law Review*, 79(2), 2000: 309-10.

9 See Leon Festinger, Theory of Cognitive Dissonance, Stanford, Calif.: Stanford University Press, 1957: 128-34; Eddie Harmon-Jones and Judson Mills, eds., *Cognitive Dissonance: Progress on a Pivotal Theory in Social Psychology*, Washington, D.C.: American Psychological Association, 1999.

10 David M. Messick and Max H. Bazerman, “Ethical Leadership and the Psychology of Decision Making,” *MIT Sloan Management Review*, 37(2), 1996: 76.

11 Ronald R. Sims and Johannes Brinkmann, “Enron Ethics (Or Culture Matters More Than Codes),” *Journal of Business Ethics*, 45(3), 2003: 243, 252.

12 See Panel on the Nonprofit Sector, *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations*, October 2007: 27, which advises against compensating internal or external fundraisers on the basis of a percentage of the funds raised.

13 Rhode, “Where Is the Leadership in Moral Leadership?”: 17-18.

14 J. Scott Armstrong, “Social Irresponsibility in Management,” *Journal of Business Research*, 5, September 1977: 185-213.

15 Barbara Kellerman, *Bad Leadership: What It Is, How It Happens, Why It Matters*, Boston: Harvard Business School Press, 2004: 146, 155.

16 Peter Whoriskey and Jacqueline L. Salmon, “Charity Concealed Pilfering: Auditors Had Flagged United Way Executive,” *Fort Wayne Journal Gazette*, August 17, 2003: 7; Bill Birchard, “Nonprofits by the Numbers: In the Wake of Embarrassing Revelations, High-Profile Scandals, and Sarbanes-Oxley, Nonprofit CFOs Are Striving for Greater Transparency and Accountability,” *CFO Magazine*, July 1, 2005.

17 Stephanie Strom, “Red Cross to Streamline Board’s Management Role,” *The New York Times*, October 31, 2006: A16.

18 Karen W. Arenson, “Ex-United Way Leader Gets 7 Years for Embezzlement,” *The New York Times*, June 23, 1995: 14.

19 Internal Revenue Service, *Form 990 Redesign for Tax Year 2008 Background Paper*, December 20, 2007.

20 Joe Stephens and David B. Ottaway, “Conservancy Property Deals Benefit Friends,” *The Seattle Times*, May 7, 2003: A12.

21 David B. Ottaway and Joe Stephens, “Conserving a Green Group’s Public Image,” *Orlando Sentinel*, May 18, 2003: G1; United States Senate Committee on Finance, *Committee Report on The Nature Conservancy*, Part III: 4.

22 Francie Ostrower, *Nonprofit Governance in the United States*, Washington, D.C.: The Urban Institute, 2007.

23 Birchard, “Nonprofits by the Numbers.”

24 Fred Strebeigh, *Equal: Women Reshape American Law*, New York: W.W. Norton & Co., 2009: 46.

25 Ottaway and Stephens, “Conserving a Green Group’s Public Image”: G1.

26 Matthew Bishop and Michael Green, *Philanthrocapitalism: How the Rich Can Save the World*, New York: Bloomsbury Press, 2008: 167.

27 Paul Brest and Hal Harvey, *Money Well Spent: A Strategic Plan for Smart Philanthropy*, New York: Bloomberg Press, 2008: 127-30.

28 Peter S. Cohan, *Value Leadership: The 7 Principles That Drive Corporate Value in Any Economy*, San Francisco: Jossey-Bass, 2004: 2; Lynn Sharp Paine, *Value Shift: Why Companies Must Merge Social and Financial Imperatives to Achieve Superior Performance*, New York: McGraw-Hill, 2003: 36.

29 Ethics Resource Center, *National Nonprofit Ethics Survey 2007*: 2.

30 Ostrower, *Nonprofit Governance in the United States*: 9.

31 Melissa S. Baucus and Caryn L. Beck-Dudley, “Designing Ethical Organizations: Avoiding the Long-Term Negative Effects of Rewards and Punishments,” *Journal of Business Ethics*, 56(4), 2005: 355.

32 Dan Pallotta, *Uncharitable: How Restraints on Nonprofits Undermine Their Potential*, Medford, Mass.: Tufts University Press, 2008: 41, 149-50, 162.

33 Ethics Resource Center, *National Nonprofit Ethics Survey 2007*: 1, 4-5, 10, 16.

34 Peter Goldman with Constance Wiley, “Inside the Burger Court,” *Newsweek*, December 10, 1979: 76.

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Reading 5: ASX Best Practice Corporate Governance Principles

(Adapted for Third Sector organisations - http://www.asx.com.au/about/corporate_governance/index.htm)

Lay solid foundations for management and oversight

The Board is responsible for corporate governance. This includes:

- Ensuring compliance with the Memorandum and Articles of Association and the objects for which (organisation) was established
- Setting objectives and monitoring their achievement
- Appointing and removing the CEO
- Ratifying the appointment and removal of the CEO, COO and Company Secretary
- Reviewing risk management, internal controls and legal compliance
- Approving major capital expenditure
- Monitoring and approving financial reports

The CEO is accountable to the Board for management and performance of the organisation within the delegation of authority prescribed in policy and in the Company's Strategic Plan and budget. The budget is approved annually and the Strategic Plan is reviewed and approved every three years. The CEO is responsible for the overall business strategy, ensuring the organisation conducts its affairs within the law and abides by the organisation's Code of Conduct and briefs the Board on all major business proposals and within limits set by the Board, approves the remuneration levels and bonus payments of all personnel.
The CFO is responsible for maintaining financial control across the Company.

This includes:

- Responsibility for overall organisation management reporting
- Statutory accounting
- Compliance
- Treasury
- Internal auditing
- Taxation
- Insurance
- Financial reporting
- Risk management
- Investment strategy

Structure the Board to Add Value

(Organisation name) presently has (number) independent Non-Executive Directors.

The Board is balanced in its composition with each current Director bringing a range of complementary skills and experience to the organisation.

To assist the Board in discharging its responsibilities, it has established a number of Board committees including:

- The Board Audit and Compliance Committee (BACC)
- The Remuneration Committee
- The Nominations Committee

Each of these committees has mandated operating procedures which are governed by its respective terms of reference.

Promote Ethical and Responsible Decision Making

(Organisation name) has a Code of Conduct to guide Directors, CEO, COO, CFO, all key executives and staff.

It is (organisation name) policy to conduct business according to the highest standards of honesty, integrity, respect and fairness when dealing with all its clients, donors, funding bodies, suppliers, employees and all other stakeholders.

(Organisation) takes seriously its obligations to comply with all laws and regulations and requires all employees to do the same.

Safeguard Integrity in Financial Reporting

The CEO and the CFO report to the Board Audit and Compliance Committee (BACC) and the external auditors that the financial statements present a true and fair view, in all material aspects, of the Company's financial condition and operational results and are in accordance with Australian Accounting Standards.

The BACC reports to the Board. Membership of the BACC consists of two independent Non-Executive Directors. The Chairman is not the Chairman of the Board.

Make Timely and Balanced Disclosure

The organisation is not subject to the ASX Listing Rule disclosure requirements. It does however report to its members in the form required by the Australian Stock Exchange Corporate Governance Guidelines.

Respect the Rights of Shareholders

(Organisation) does not have shareholders but has members. The organisation's member communication policy advocates communication with members and other stakeholders in an open, regular and timely manner e.g. the Annual Financial Report is circulated to all members prior to the Annual General Meeting. Members can also access communications through the use of the (organisation name) website.

Recognise and Manage Risk

The Board is responsible for the oversight of the organisation's risk management. The BACC assists the Board in fulfilling its responsibilities in this regard by reviewing the financial and reporting aspects of the organisation.

Encourage Enhanced Performance

The Board regularly monitors and evaluates the performance of its committees and the organisation's key executives against both measurable and qualitative indicators. The Chairman, with the assistance of the Board Nominations Committee, has the responsibility for facilitating the evaluation of the Board's performance.

Regular performance management reviews based on the balanced scorecard between the CEO, direct reports and other staff operate an annual basis and are assessed at least bi-annually.

Remunerate Fairly and Responsibly

The organisation has established a Board Remuneration Committee. This consists of three independent Non-Executive Directors. Its function is to review and approve the organisation's remuneration policy, and the remuneration of senior executives. Directors do not receive remuneration but are entitled to be paid all travelling and other expenses properly incurred in connection with the affairs of the organisation.

(Organisation name) pays premiums to insure the Directors against liabilities for costs and expenses incurred by them in defending any legal proceedings arising out of their conduct while acting in the capacity of Director other than conduct involving a wilful breach of duty.

To the extent permitted by law, (organisation name) indemnifies every person who is or has been a Director of Officer against any liability to any person incurred while acting in that capacity in good faith and against costs and expenses incurred by that person in successfully defending legal proceedings and ancillary matters.

Recognise the Legitimate Interests of Shareholders

(Organisation name) conducts its business within the Code of Conduct and its Values.