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A Short Primer on Ethics and Moral Vision

By Stephen Pepper

Having taught lawyers' ethics for over twenty years, I was asked recently to participate on a panel discussing the topic, "Board Leadership: Courage, Candor, and Conscience," with NACD CEO Roger Raber. That topic—and Roger's thoughts—led to an effort to distill some practical guidance on professional ethics. What follows is a modest translation of "courage, candor, and conscience" into less abstract terminology that might prove useful in the boardroom.

To begin I want to clarify what I mean by ethics, and to distinguish compliance from ethics. Complying with the law is, of course, usually the right thing to do. But merely being in compliance—avoiding violation of the law—does not mean that one is doing the morally right thing in any particular situation. "Ethics" as I am using the term refers to rational deliberation about questions of right and wrong (that is, moral questions) and to the results of that deliberation. In other words, ethics is simply serious thinking about moral questions and the results of that thinking. "Ethics" in this sense is moral philosophy (one of the three main branches of philosophy), has a long secular tradition in Western culture and universities, and—in the form of professional ethics—is commonly studied in university law, business, and medical schools.

From this perspective it is clear that conduct in compliance with law may well be morally wrongful. A just debt might be blocked from legal enforcement by a statute of limitations or by the statute of frauds. It would not be a violation of law to refuse to pay the debt, yet most of us would say—all other things being equal—that refusal to repay what you justly owe is a moral wrong. Similarly, some years ago it might not have been unlawful to use off-the-books entities to create a misleading accounting representation of a corporation. Yet most of us would say that misrepresenting the financial situation of an entity to one who will rely on it is a moral wrong, even if the technique by which it is accomplished is not legally prohibited. Thus, if one is interested in doing the right thing (that is, if one is serious about business or professional ethics), compliance with the law is only a first step. The advice that follows is aside from the law. The fact that the conduct at issue is lawful is not crucial; we are out of (or, perhaps, before) the realm of legal advice.

Director Summary: The author brings the topic of ethics to the day to day workings of the boardroom. Conscience, candor, and courage are defined as moral intuition, honesty with yourself about that intuition, and self-confidence in regard to what you're seeing. Listen to your inner voice, and have the courage to bring it out.

Realizing There Is A Question

Ethics is problematic not so much in the deciding what to do, but in being aware that our conduct involves an ethical problem to begin with. For most of us, if we run into ethical difficulty the problem will originate in not noticing that there is a moral question before us. Seeing (observing, perceiving) is thus the first and crucial step in morality. And this step—always difficult—is more difficult in organizations because of the dilution of responsibility: there are others to notice, others one can rely on. In the winter of 2005 a remote mountain lodge in southwest Colorado was destroyed by a propane gas explosion; three children died. In the hours before the explosion many guests and employees smelled the odd odor of the gas. One guest asked an employee, and the response was the supposition that it was just "sewer gas." No one acted to find the leak, identify the odor, evacuate the lodge.

If seeing is the key moral art, courage, candor, and conscience can be the foundation for moral vision.

The Inner Knowledge

First, let me suggest translating "conscience" into something a little more tangible

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and close to home. By conscience I would suggest we understand simply everyday "intuition" about right and wrong. Each of us has a sense of right and wrong, it is near at hand, part of us. Yet often the further we go in life, the more we tend to find ourselves in situations where we suppress that intuition, where we think: (a) we're grown-ups now, out in the big "real" world; or (b) we're in a "hardball" business or litigation or negotiation situation with large stakes for our corporation or client and for our professional or financial advancement; or (c) we're part of a smart, savvy, mature organization; these people know what they're doing. Here lies the danger for suppression of moral intuition; for distancing ourselves from ourselves; or, if you will, from our integrity. The answer is to cultivate—not ignore—your intuition about right and wrong. Ask yourself, how would I feel about telling my spouse (or child, or parent) about this situation in ordinary language? Would I want to have it reported in the newspapers? Notice when thinking about a situation causes a little queasiness in your stomach. For example, if your organization is, for some arguable reason, resisting paying a just debt: notice the queasiness; pay attention when the thought drifts by that you're contemplating "stiffing" a creditor who is really owed the money.

Imagine some conduct other than the debt closer to home for your particular work; let's call it "Q." Q is attractive from a business perspective; Q is not prohibited by law. Nobody else seems bothered by Q. To cultivate your intuition (or conscience) you need to go further. Is Q the right thing to do? Or is there some perspective from which Q is the wrong thing to do? Will it harm people who don't deserve to be harmed? Is it dishonest (although not unlawful)? For ethics it is important to go beyond your business or professional identity to recall what you as an ordinary moral person think about the proposed conduct. The somewhat lofty and elusive concept of "conscience" can be understood in this way as simply your intuition about right and wrong. But to make it accessible and useful you have to cultivate it, pay attention to it, listen to it.

The Group Mentality

There is a great deal of empirical evidence that our moral perceptions are worse when we are in groups or when there are possible authority figures participating. In such contexts it is easy to assume that if there were really a problem, somebody else would be noticing it and mentioning it. "I'm here with a lot of smart, talented, experienced people. If they aren't bothered, there must not be anything bothersome," is the natural assumption. This is reinforced—or heightened—if the group has a leader or is otherwise hierarchical. There is a natural tendency to defer in one's mind to the leader: "If George doesn't see a problem with this, there must not be a problem."

Resisting that common reaction is the second step in moral vision, and the second translation. I suggest a very modest and close at hand understanding for the idea of courage: self-confidence. The first step is noticing that something may be wrong (conscience); the second is not burying that perception, not pushing it aside. Moral vision requires bringing that often vague perception to the surface, looking at it squarely, thinking about it directly. That requires confidence that your individual, lonely sense that something may be amiss might just be right. (And this despite the fact that no one else in the group—including the leader—seems to have noticed.) It is so easy to defer in groups, or to leaders, particularly when that deference is implicit, when the issue hasn't been raised for discussion, isn't on the agenda, hasn't been perceived. In fact it is very difficult not to defer.

Having the self-confidence to take your perception (hazy and ill-formed as it may be) seriously requires courage. There may well be several others in that boardroom who have a similar vague sense that something is not quite right, but who are also deferring, remaining silent on the issue. Moral vision requires (1) focusing on and developing that vague sense (conscience) and (2) having the courage to believe that you—alone—may well be on to something worth noticing, something that should be dealt with. When no one in the boardroom has both of those abilities—a developed moral intuition (conscience) and the self-confidence to trust that intuition (courage)—your board may be on its way to trouble.

There are many pressures and incentives not to notice a moral difficulty. Even within one's own thoughts, those incentives and pressures commonly remain unconscious and unarticulated—we don't notice the problem because it's uncomfortable to notice it. When that moral queasiness nudges, when there is a little something pushing at the edges of our thoughts, there is usually a tendency to push it back, to keep it out of focus, to half-think the queasiness is just something from lunch. And if the perception becomes a little clearer or more articulated, it is easy to decide that we are probably mistaken, or overcautious, or idiosyncratic. Most of us don't want to be the squeaky wheel. We want to move the project forward, not slow it down with imagined difficulties.

Answering The Inner Voice

Here I would translate the third element, "candor," to mean honesty with oneself. You have to be able to bring into focus and face directly your intuitions. You have to be honest with yourself about what you are seeing or feeling; you have to be able to articulate your insights—to give them a relatively clear content—before you can think them through. You have to know what you are thinking, or seeing, or feeling before you can exercise self-confidence in regard to that perception. Candor in this sense is tightly connected with developing and focusing intuition (conscience) and with self-confidence (courage). Honesty with yourself, not fooling yourself, is a necessary precondition to self-confidence about your intuition. This is much more difficult to accomplish than it sounds. Often all the incentives pull in the opposite direction; it is so much easier to just let that possibly troubling thought drift on by, or find some quick (and usually superficial) reason for dismissing it.

Courage, candor, and conscience are requisite to having and exercising moral vision. And those faculties are close at hand: (1) everyday moral intuition, (2) honesty with oneself about that intuition, and (3) self-confidence about one's moral vision.

At this point let's assume you have the moral intuition, you've been honest enough with yourself to have a fairly clear idea about what it is, and you have the self-confidence to conclude that this really may be something serious and worth being concerned about. This is the beginning, not the end. You now know there may be a problem, not that there is a problem. What now? I'd suggest two further steps. The first is to think through the problem carefully and analytically. Why do I think this may be a problem? Will people innocent or undeserving of harm be harmed? Will the market by deceived? Who will gain from the conduct, and will that gain be earned or deserved? What values are at issue: Honesty? Fair value? Transparency? Equity? From what perspective can the conduct be criticized, or justified? Which is the more truthful, or accurate, perspective? This is the process I referred to earlier as ethics: rational deliberation about right and wrong. Much of it may have already been accomplished in the process of clarifying and being honest about the initial intuition.

Now Bring It to the Forefront

Deliberation as most effectively practiced involves a second step. Obtain additional input and the benefit of a different point of view. Discuss the situation with at least one—and preferably several—people whose judgment or perspective you have reason to trust or value. This two-step process provides a check on your intuition and your analysis. It provides assistance in deciding if you are seeing clearly. Being mistaken, idiosyncratic, or over-cautious is a possibility, and these steps provide a means to measure that possibility. Often the two steps can be combined: thinking the situation through analytically can often be most effectively accomplished through conversation

Two final observations. First, if your board is relatively informal and relaxed, and if you are sufficiently comfortable with the group and confident of your position in it, the final two steps of deliberation (analysis and reflection with others) might be accomplished within the board itself. If raising a half-baked idea is acceptable in this boardroom, that more spontaneous and direct route may well be the better way to go. The more comfortable your board is with raising and considering moral questions, the less likely it is to have ethical problems. Second, modesty and tentativeness are often appropriate in raising ethical issues. The self-confidence I suggested earlier is something quite different from arrogance or self-righteousness.

Put Ethics On the Agenda

With these questions of how and where to raise ethical issues we are moving toward another topic. Some observers think we have lost the ability to deliberate together about questions of right and wrong. Boards should be concerned about that and should think through how to address it. It might well be a good idea to institutionalize ethics in the sense of moral deliberation as it has frequently been institutionalized in the sense of legal compliance. In this article, however, I have been concerned with the moral vision which precedes that deliberation.

Conclusion

Conscience we can understand as ordinary intuition about right and wrong. Pay attention to those intuitions; focus, don't dismiss. Courage can and should mean a lot more of course, but for this process to work it need mean no more than having self-confidence about what you see and what you feel. And, finally, when you think about it, think straight, be clear. Don't fool yourself by finding some easy way to dismiss what may really be a problem. Candor here need mean no more than the self-discipline required to be honest with oneself. Conscience, candor, and courage—moral intuition, honesty with yourself about that intuition, and self-confidence in regard to what you're seeing—close at hand and not so difficult, but they can make a big difference. ■

Stephen Pepper is a professor at the Sturm College of Law, University of Denver. He may be reached at spepper@law.du.edu. His website is http://www.law.du.edu/pepper/.