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A Rational and Universal Structured Approach for Resolving Conflicts of Interest Between the Right to Know, the Right to Privacy, and Other Interests in the Media

1. Introduction

The general purpose of this paper is to examine the practical role that reason plays in the moral decision-making process. The specific purpose is to demonstrate how that role can be applied in Media Ethics to resolve potential and actual conflicts of interest between the Public's Right to Know, the Right to Privacy and Other Interests.

The paper comprises of three main sections, including this brief introduction. Section two will address the necessary conditions that must be present in the rational choice process which guides or should guide moral decision-making. Finally, in section three the application of rational choice in moral decision-making will be illustrated by reference to an actual case study in media ethics, on the basis of an ethical theory selected for that purpose. The further object of the illustration will be to demonstrate the theoretical and practical adequacy of the ethical theory selected, in guiding rational choice in moral decision-making.

2. Two necessary conditions for rational choice.

Two necessary conditions for rational choice are (a) justification and (b) motivation.

(a) Justification

Justification is intended to provide convincing if not conclusive rational reasons for selecting one course of action rather than another. In ethics these are conclusive or at least convincing reasons why one should act morally when one has alternative choice(s) for not acting morally or for acting immorally.

(b) Motivation

Justified reasons alone, however, are not sufficient to guide rational and moral action. That is because, rational action, and moral action specifically, requires that the rational reasons of justification must also be motivating reasons. For if justificatory reasons are not motivating reasons they can't be practical and if they can't be practical they are not action-guiding and hence cannot play a role in the decision-making process. Thus, the decision-making process requires reasons for action that are at once justificatory and motivating.

A crucial point with regard to motivation, however, is that justificatory reasons need only be capable of motivating action. They need not and cannot also be expected to motivate action in every single instance. For consider the psychopath or the sociopath who though given adequate justificatory and motivating reasons for acting morally is, due to his dysfunctional psychological condition, unable to be guided by practical reason. In such cases, the fault lies not with reason but with the psychopath's or sociopath's dysfunctional psychology. In more ordinary situations persons may also, for various contingent reasons, choose not to follow the justified requirements of moral rationality, even when recognizing that they have adequate justificatory and in principle motivating reasons for doing so. A possible response from such a person may be "yes I know I have got to do the right thing but I am not going to, because I

just can't be bothered!" In short, although capable of motivating action in normal rational agents, motivating justificatory reasons may nevertheless fail in some instances to motivate particular agents into moral action who though recognizing the authority of reason for moral action in those instances may nevertheless choose to act contrary to those requirements.

In sum, justificatory reasons will count as motivating and thus practical and action guiding if they are *capable* of motivating a normal rational person to act in a certain way, specifically, a moral way.

I define a 'normal rational' person as one who is capable of minimally understanding and performing inductive and deductive reasoning: With regard to inductive reasoning, the requirement that the normal rational person is capable of learning from experience; with regard to deductive reasoning, the requirement that a normal rational person is able to recognize and understand the implications of the principle of non-contradiction, namely, the logical requirement that one does not assert "A" and "not A" (a putative assertion and its corresponding negation) at the same time and in the same respect. For example, the assertion that "Canberra is the Capital of Australia" and the corresponding contradictory assertion, "Canberra is not the Capital of Australia".

3. A Contemporary Ethical Theory that is Adequate in Providing both Justificatory and Motivating Reasons for Ethical Conduct

I will now briefly examine and critically assess the adequacy of a contemporary ethical theory that at least in principle, appears to offer both justificatory and motivating reasons for ethical conduct. In selecting this particular theory I am simply applying the principle of theoretical

economy without excluding the possibility that other ethical theories might also be adequate in providing both justificatory and motivating reasons for ethical action. The ethical theory chosen for evaluation with regard to theoretical and practical adequacy as a model for ethical decision-making is Ethical Rationalism¹.

Ethical Rationalism (ER)²

ER is based on Alan Gewirth's argument for the Principle of Generic Consistency (PGC). The argument for the PGC is intended to demonstrate that the PGC, on pain of self-contradiction, rationally requires moral conduct³. The argument attributes dialectically the following premises to any a particular agent which the agent has to consider from within his own individual subjective perspective. The quotation symbols at the beginning of premise (I) and at the end of premise (VIII), are intended to indicate the dialectical structure of the argument whose premises are dialectically attributed to a particular agent's own individual subjective perspective.

¹ Alan Gewirth in *Reason and Morality*, (Chicago: University of Chicago Press, 1978)

² "Ethical Rationalism" is the title given to Gewirth's ethical theory in the book by Edward Regis Jr., ed., *Gewirth's Ethical Rationalism: Critical Essays with Reply by Alan Gewirth* (Chicago: University of Chicago Press, 1984).

³ The premises of the argument are statements attributable to the internal subjective perspective of each individual particular agent.

The argument for the PGC⁴

- I. “Freedom and Well-being (F and WB) are the necessary conditions for action. For without having some minimal degree of F and WB, I will not be able to act.
- II. Hence, I need F and WB to act for purposes which in some minimal sense I consider valuable.
- III. To do so, others ought not to interfere with my F and WB.
- IV. I therefore recognize that I have a right to my F and WB. This right is a prudential right⁵ which I claim instrumentally from within my own subjective perspective.
- V. I recognize that I have this right in virtue of being a purposive agent (where ‘in virtue of’ stands for a sufficient condition).
- VI. I also recognize that others too, by virtue of being purposive agents, have a right to their F and WB.
- VII. Therefore, I must logically allow that all purposive agents have a right to their F and WB, for if I claim that right for myself and deny it to others, I involve myself in self-contradiction.
- VIII. Hence, I must respect the rights of freedom and wellbeing of all other agents as they must respect mine”.

⁴ This is my own abridged version of the argument for the PGC. Although abridged, the argument as presented does illustrate in outline the key premises and their entailments in the derivation of the PGC. For a full and comprehensive account of the argument for the derivation of the PGC, see Alan Gewirth, *Reason and Morality* (1978), pp.129-198.

⁵ “Prudential rights” are rights that refer only to the benefit and interest of one’s own agency.

Having established through the above argument that all purposive agents have rights to freedom and wellbeing, every agent must rationally accept for himself a moral principle, the Principle of Generic Consistency:

Act in accord with the generic rights of your recipients as well as yourself

Does (ER) through the PGC satisfy the two conditions of Rational Choice (RC)? It does so for it provides both justificatory and motivating reasons for rational as well as practical moral action.

- (i) Justificatory reasons, because a failure to comply with those reasons involves one in self-contradiction.

- (ii) Motivating reasons because the argument for the PGC addresses each agent within the *context* of his own particular agency, not as a de-personalized idealized abstract agent but as an actual and particular self- interested agent. It is the initial appeal to the agent's own instrumental self-interest which motivates or is at least capable of motivating the agent to claim prudential rights to his F and WB (premises I to IV). However, having claimed those prudential rights for himself, the logical implications of that initial prudential claim rationally compels the agent to grant those rights to other purposive agents on pain of self-contradiction (premises V to VIII).

In sum, the reasons offered by the PGC are at once justificatory and motivating and thus adequately action-guiding in the moral decision-making process.⁶

4. The Rational Resolution of Conflicts of Interest between the Public's Right to Know, the Right to Privacy and Other Competing Interests.

4.1 One of the fundamental principles of Media Ethics according to the current Media Entertainment and Arts Alliance (MEAA) Code of Ethics in Australia, is the "Public's Right To Information".

Why does the public have this right? What justifies this right? The Media Entertainment and Arts Alliance (MEAA) Code of Ethics does not itself provide an answer to those questions. I offer the following dialectical sketch for such an answer (1-7):

1. The public has a right to information because it is in their interest. Having this information is in the public interest.
2. Why is it in the public interest?
3. Before we can answer that question we must first define "public interest". I propose the following general definition:

⁶ For a comprehensive account in support of the validity and soundness of the argument for the PGC, see Edward Spence, *Ethics Within Reason: A Neo-Gewirthian Approach* (Maryland: Lexington Books, forthcoming 2006) and Deryck Beyleveld, *The Dialectical Necessity of Morality: An Analysis and Defense of Alan Gewirth's Argument to the Principle of Generic Consistency* (Chicago: University of Chicago Press, 1991) .

“Public interest” is whatever secures and promotes the public’s rights to F and WB both individually and collectively.

By collective rights I merely mean the total aggregate of each individual’s rights to F and WB. In Australia, the collective rights to F and WB will be the total aggregate of the rights to F and WB of all the individual persons that comprise the Australian population.

4. Using the above definition we can now answer question (2). It is in the public interest to have access to information because such information can help secure and promote the public’s collective rights to F and WB. To the extent that the public requires information to secure and promote their rights to F and WB, both individually and collectively, it is in the public interest to have such information. Informing the public about the Sydney water contamination in 1999, the Government’s plans regarding a second airport in Sydney, political, police and corporate corruption, are just some examples of how media information is in the public interest just because it helps secure and promote the public’s rights to F and WB.

5. Why does the public have those rights to F and WB?

6. Because the public comprises of particular purposive agents who individually and collectively have rights to their F and WB in accordance with the Principle of Generic Consistency (PGC).

7. In conclusion, insofar as the public needs information to be able to make informed decisions on matters of public interest that affect both individually and collectively their rights to F and WB, the public has a right to receive information from the media because it helps

secure and promote those rights, both individually and collectively, in accordance with the PGC.

4.2 One of the perennial moral conflicts in the media is the conflict between privacy and public interest. Recent cases such as the death of Princess Diana, the Clinton/Lewinsky scandal as well as the most recent Kernot/Evans political scandal in Australia (2002) are well known and publicized examples of that conflict.

What can the media do when the public's right to information comes into conflict with an individual's or a group of individuals' right to privacy, a right also acknowledged in the current MEAA Code of Ethics? How can that conflict be resolved in a principled and non-arbitrary manner?

Before we attempt to answer that question let us first attempt to answer another question:

Why does an individual have a right to privacy? What justifies this right? As with the Public's Right to Information I propose the following dialectical sketch for an answer (1-3):

1. A person qua purposive agent has a right, a prima facie right, to his Freedom (F) and Well-being (WB) in accordance with the PGC.
2. A person requires some privacy to enable one to secure and promote one's F and WB so as to enable one to function successfully as a purposive agent. For to the extent that an interference with one's privacy involves an interference with one's F and WB, a non-interference with one's F and WB requires non-interference with one's privacy.

3. Since, as a purposive agent, a person requires some privacy to secure and promote his F and WB, a person has, all things being equal, a right to one's privacy. And he has a right to his privacy in accordance with the PGC.

Specifically with regard to the Media, the above argument is intended to show that a person has a right, albeit a prima facie right, to have control over the information others have with regard to that person. If one of the necessary features of privacy is the ability that a person has in controlling the information that others have with regard to him/her, then one has a right to one's privacy in virtue of being a purposive agent with rights to F and WB.

Having defined the Public's Right to Know and the Right to Privacy in terms of rights to F and WB, actual or potential conflicts between public interest and privacy reduce to conflicts between two opposing sets of rights to F and WB: On the one hand, rights to F and WB relating to public interest and on the other, rights to F and WB relating to privacy. This is a welcome methodological reduction for it provides a common denominator for comparing two sets of conflicting rights. That is, rights to information and rights to privacy in terms of equivalent prima facie rights to F and WB.

The question that now confronts us is how to resolve, in principle, actual and potential conflicts between two sets of equivalent rights to F and WB in situations when those sets of rights are mutually exclusive. Again we can provide an answer to that question by reference to the Principle of Generic Consistency. A subordinate principle, one that is directly derived from the PGC, is the "Degrees for the Necessity of Action" principle or DNA principle.

Simply put, the principle states that in a conflict between two mutually exclusive rights to F

and WB (I'll refer to these as "generic rights") **X's** generic rights takes priority over **Y's** generic rights if the F and WB of **X** are more necessary for successful purposive action than **Y's** F and WB. Alternatively, the principle states that between two conflicting and mutually exclusive rights to F and WB the right whose violation results in the greatest harm to its agent or agents, should take precedence.

Applying the DNA principle to some typical cases of conflicts of privacy and public interest in the media, we can see how those conflicts can, in principle, be resolved. Revealing the identity of a rape victim is not in the public interest, but even if it was, any potential benefit of informing the public would be, all things being equal, outweighed by the potential harm that the rape victim might suffer as a result of revealing her identity. By contrast, revealing the identity of a convicted pedophile who let us say is employed as a teacher at a children's school would be in the public interest since the potential harm to the pedophile through the violation of his right to privacy would be outweighed by the potential harm to the children under his care. On the other hand, the publishing of close-up photographs which identify the identities of the injured and the dying in a train accident is not in the public interest, but even if it was, the potential emotional harm to the victims themselves and to their friends and relatives outweighs any potential benefit to the public. Thus in all the above cases, the DNA principle offers principled guidance based on the PGC in resolving actual and potential conflicts between public interest and privacy.

In the above analysis of the conflicts between the right to privacy and the public's right to be informed, both rights were justified by reference to the justification of rights to freedom and wellbeing. For both rights can be understood as rights intended to safeguard and promote peoples' generic rights to freedom and wellbeing.

A very important qualification with regard to the application of the DNA principle is that its application is distributive rather than aggregative. That is, the calculation of the consequential actual or potential harm which will determine the prioritization of the mutually exclusive rights in conflict will be carried out by reference to the harm to particular agents taken individually and not by reference to the maximization of some abstract overall quantity of utility. A simple example will illustrate the difference: You have an extra \$1000 to spend and two mutually exclusive choices in spending it: You can (a) equally divide a \$1000 between five friends of yours who wish to go to the Casino and have a good time or (b) you can give the money to one other person who needs it for an emergency operation that would save his life. We can assume that without your money that person is going to die for he can't otherwise afford the life-saving operation without your help. If you intend to merely maximize overall utility, you will choose to give the money to your five friends in accordance with the aggregation principle since this will increase overall utility. This would be in keeping with the aggregation principle of Utilitarianism, that is, the maximization of overall utility for the greatest number. By contrast, if you decide to offer the money for the operation that would save the life of the other person, you will be giving the money distributively in accordance with the DNA principle. For according to that principle, the harm to the person who will die without the operation far outweighs the harm that each one of your five friends may suffer by missing out on a night at the Casino. Thus, in applying the DNA principle to conflicts between public interest and privacy, that principle will always be applied distributively, since that is what is required by the PGC.

Let us now look at some specific case study and see how the application of the DNA principle can assist in resolving conflicts between public interest, privacy and other competing interest or rights. Before we proceed, notice that the DNA can be applied more generally to conflicts of interest between sets of mutually exclusive rights to F and WB and not merely to conflicts between public interest and privacy.

4.3 The Cangai Siege

In a siege in 1992, Leonard Leabeater with an accomplice held hostage two children in a farmhouse in Cangai, Northern NSW in Australia. In an exclusive interview, Mike Willesee (MW) from Channel 9 (a commercial television channel in Sydney) interviewed Leabeater and the two children on the telephone for his program Current Affairs. In doing so came under a lot of criticism for interfering with the police operations and potentially endangering the children's lives. In his defense, MW claimed that he was acting for the public interest. Was he? As an answer I offer the following structured analysis:

The first question to ask is whether the public had a right to the information obtained during MW's interview of the two children. As was argued above, the public has a right to information if the having of that information is in the public interest. Was MW's interview of the children in the public interest? Again as the above argument demonstrated the having of information is in the public interest if it contributes to securing and promoting the public's rights to F and WB. In the present case it is difficult to see in what way MW's interview of the children contributed to securing and promoting the public interest. On the contrary, to the extent that the interview interfered with police operations and moreover potentially

endangered the lives of the two children, the interview undermined the public interest. It undermined it by potentially causing harm to the children and specifically, by undermining, at least potentially, the children's rights to F and WB. And since I have defined Public Interest in terms of F and WB, the analysis offered so far shows how MW's interview of the children could be construed as undermining public interest by undermining the children's rights to F and WB. For the safety and security of children in any society is or at least ought to be a matter of public interest.

But let us contrary to the above analysis assume that MW's interview of the two children was somehow in the public interest. So now we have a conflict between the public's interest in having the information obtained through MW's interview, and the rights to F and WB of the children which could have been potentially violated by MW's interview. In the worst case-scenario the children could have been killed by Leabeater who might have felt provoked into lethal violence by MW's questions. It was in fact publicly known at the time of the siege that Leabeater had shot dead in cold blood a young woman a few days earlier. Thus his disposition to violence, and potentially lethal violence, would have been known to MW. Under the above scenario just considered, the children's generic rights would have been violated in the most extreme way. Defined in terms of rights to F and WB how would the public's interest have been undermined in the absence of MW's interview? Very little if at all, would seem to be the obvious answer. Certainly not to the same extent as a violation of the children's generic rights who at least potentially faced serious harm at the hands of a psychologically unstable gunman. So even, if for the sake of argument, we allow that the public interest was in some way served by MW's interview, the children's generic rights should have taken priority over those of individual members of the public, in accordance with the DNA principle. For the

potential harm to the children, under the circumstances described above, was far greater than any conceivable benefit to the public.

4.4 Conclusion

From the analysis of the above case we can discern the following rational structure which can, at least in principle, always be used to resolve mutually exclusive conflicts of interest in practice:

1. Determine if the public has a right to information by first determining if the having of that information is in the public interest.
2. The having of the relevant information will only be in the public interest if the having of that information secures and promotes the public's rights to F and WB.
3. If according with the analysis in steps (1) and (2) above there is no public interest in having that information, that information should not be published if its publication violates other conflicting rights to F and WB of some person or persons.
4. If according to the analysis in (1) and (2) above, it is in the public interest to have the relevant information, that information should be published if there are no mutually exclusive interests whose infringement might actually or potentially violate the generic rights of the person or persons having those interests.
5. If there are mutually exclusive conflicting interests, the relevant information should only be published if the public's rights to F and WB take priority over the generic rights of F and WB with which they are in conflict, in accordance with the DNA principle, but not otherwise.

The above rational structured analysis shows that public interest should not take automatic priority over other mutually exclusive rights. It should only take priority if it is warranted by the application of the DNA principle in accordance with the Principle of Generic Consistency.

In conclusion, the approach provided by Ethical Rationalism in resolving conflicts of interest between the right to know, the right to privacy and other conflicting interests in the Media is both rational and universal. Rational, because the Principle of Generic Consistency only relies on the non-arbitrary authority of rationality, the agent's own rationality, one that he shares with all other rational purposive agents, to resolve the relevant conflicts of interests, in a determinate, systematic and structured manner. Universal, because as purposive agents all human agents have prima facie rights to F and WB, for those rights are necessary for purposive successful action in fulfilling their respective chosen purposes. And they have those rights regardless of their ethnicity, race, creed, nationality, age or gender.

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