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PROFESSIONAL ETHICS

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Preface

The ethics of professional conduct is being questioned as never before in history. Lawyers, physicians, engineers, accountants, and other professionals are being criticized for disregarding the rights of clients and the public interest. Perhaps society is reconsidering the role of professions and professionals. In any event, many difficult ethical challenges are being faced by both professionals and the public. Given the important roles professionals are playing in society during these last decades of the twentieth century, everyone is concerned with professional ethics.

When I first taught professional ethics to undergraduates in 1978, no general materials were available. In particular professions, especially law and medicine, some good materials on ethical issues did exist, but no book provided an overview of ethical issues in several professions. The first aim of this book is to fill that void. While emphasizing law and medicine, its principles apply to all professionals who are in a consulting role. Many of the principles also apply to professionals in nonconsulting roles. Examples from a number of professions are provided, and readers should try to apply the principles to still others.

A second major aim of this book is to examine professions from the viewpoint of the average citizen in a liberal society. Much literature on professional ethics adopts the viewpoint of practicing professionals. This book instead adopts the perspective of clients and other members of society. The overriding consideration is to determine the ethical norms citizens in a liberal society have good reason to accept. A liberal society and its citizens are devoted to the values of governance by law, freedom, protection from injury, equality of opportunity, privacy, and welfare. This approach to the issues, then, renders the discussion relevant to those who are not planning to become members of professions as well as to those who are.

A wide conception of ethical issues is adopted. It includes issues of fees, advertising, and social organization to provide services, as illustrated by national health insurance, as well as professional discipline. Although some people deny that these are strictly ethical topics, they involve significant value choices confronting professionals and society. Elements of political, social, and legal philosophy are thus pertinent.

The first two chapters are primarily introductory and provide a background for those that follow. The first chapter discusses the scope of professional ethics, what can be expected from its study, and possible causes for the present concern with professional ethics. It then defines professions, distinguishes consulting from scholarly professions, and notes significant characteristics of professions in the United States during the last part of the twentieth century. Chapter 2 addresses the relations between professional norms and ordinary ethical norms applicable to everyone, the justification of professional ethical norms, and the distinctions between various types of norms.

Chapters 3 through 6 analyze the substantive obligations of professions and professionals. Although these chapters can be read in any order, it is preferable to read them in the order presented, especially Chapters 4 and 5. Chapter 3 primarily concerns access to professional services. The first section discusses economic norms, such as those relating to unauthorized practice, fees, and advertising, which have often hindered access to services. The next section focuses on social organization, as illustrated by group services, national insurance, and national service, to provide medical and legal services. The chapter concludes with a discussion of the ethics of accepting clients who have unethical purposes. Chapter 4 considers the ethical obligations that arise from accepting a client. The first section considers the ethical nature of the professional–client relationship, and the second section professionals' obligations to clients that result from viewing the relationship as fiduciary. Chapter 5 discusses the obligations of professionals to people who are not their clients and how these obligations are to be balanced against conflicting obligations to clients. Chapter 6 analyzes obligations professionals have to their profession, even though ultimately for the benefit of society, such as research, reform, and maintaining respect for the profession.

The last chapter discusses methods of ensuring that professionals conform to ethical norms. It reviews criteria for admission to professions and the success of self-regulation. After criticizing arguments for professional autonomy, the chapter considers issues of lay participation in the professions, improvement of disciplinary mechanisms, and professional education in ethics.

This book is intended for use in a wide variety of courses. I have tried to present enough information about professions and to avoid technical philosophical vocabulary so that it can be used in lower division undergraduate courses. At the same time, I have tried to provide sufficient depth and detail so it can be used in upper division courses and in courses on the ethics of particular consulting professions, especially law and medicine. For the latter use, teacher and students in classroom discussion should be able to supplement the examples with others from their particular profession.

Throughout the book, I have offered my own opinions about the obligations of professionals. Readers are encouraged to question and challenge my assumptions and arguments. One problem with traditional education in professional ethics has been that accepted norms, especially those enshrined in professional codes of ethics, have not been questioned. Only by challenging

assumptions and reflecting on them can one come to understand the reasons for ethical norms and conduct.

This book developed out of lectures to upper division undergraduates who were planning to enter professions, especially law and medicine. In response to classroom discussions, it went through several revisions—some topics were deleted, others were added, and those that were retained were clarified. A previous version was also used at Western Michigan University in Professor Michael Pritchard's course on professional ethics. He kindly sent me useful comments based on this experience.

Contents

1 Problems of Professions

In their daily practice, professionals confront a wide variety of difficult ethical and value problems. Consider the following cases and the types of problems they present.

Clients may ask for help that requires conduct professionals consider ethically wrong. For example, a physician practicing in a remote Alaskan community is approached about an abortion by a seventeen-year-old woman who is three months pregnant. The physician is ethically opposed to abortion except to save a woman's life. This woman's health is not good, but she is likely to survive the pregnancy. She is unmarried and lives at home with her family. Her employment prospects are poor, and her father cannot easily support another child. After much discussion, she finally admits that her father is responsible for the pregnancy. If the physician does not perform the abortion, the young woman will probably not be able to afford the expense of traveling to another community to have one. Does the physician have an obligation to perform the abortion despite personal moral opposition?

Professionals also confront problems about the appropriate scope of their services. An architectural firm is temporarily short of clients and will have to let several employees go if it does not obtain more work. The local government is looking for a consulting engineering firm to design a sanitary sewer extension project. Although the architectural firm has not previously designed sewer systems, and such work is not usually considered appropriate for such firms, it believes it can do the job. Should it approach the government to try to secure a contract to design the sewer extension?

There are also problems about the types of fees professionals charge and arrangements for collecting them. A vice president in charge of production at a large corporation wants to build a new plant. To present his idea to the board of directors, he needs a rough design. He asks a friend who is a consulting engineer to make one. If the board approves the plant, the vice president assures his friend that he will get the design contract as well as payment for the rough design. Should the board not

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approve the new plant, then unfortunately the engineer will not be paid. Can the engineer ethically agree to make the rough design? Would it be fair to other engineers to obtain business by such a contingent fee agreement? Is it ethical for the vice president to make such an agreement?

Conflicts of interest raise still other questions. A member of an accounting firm serves without pay on the board of directors of a local nonprofit organization. If the director is not involved, may his firm ethically audit the books of the organization?

Other kinds of problems involve conflicts of interest between clients. For example, a large law firm has two clients being handled by separate legal teams. Their cases are in different courts within the state. The case for client A requires arguing for a particular point of law, but the case for client B involves arguing against the same point of law. Can the firm ethically represent both clients?

Obligations to inform clients also create problems. A dentist has a patient who constantly smokes a pipe. Clenching the pipe between his teeth has caused some teeth to shift, slightly affecting the alignment of his bite. The smoke badly stains his teeth and has caused some minor precancerous sores of the type that rarely become malignant. The patient is concerned about the sores. To try to get the patient to stop smoking, can the dentist ethically tell him that the sores are "precancerous lesions" without further qualifications?

Professionals also have problems about their obligations to others. A family physician sees one spouse and diagnoses a venereal disease. The patient requests that the other spouse not be told of the disease because it might destroy the marriage, which the patient still wishes to preserve. Should the physician advise the other spouse to be tested for venereal disease?

Another example is a criminal defense attorney whose client tells her he has concocted an alibi and wishes to take the stand to present it. What should the lawyer do? Should she place her client on the stand to perjure himself? Should she withdraw from the case? If so, will the client then simply not tell the next lawyer that his alibi is false? Should she simply put the client on the stand, let him tell his story without direction, and then not argue that evidence? If so, will not the jury conclude that the client is lying?

Other problems revolve around the ethics of research. For example, a university computer science professor is contacted by a government security agency. The agency would like her to develop a system for accessing computers when the codes are not known. Can the computer scientist ethically undertake this task?

Problems about informing on the ethics of colleagues also arise. A nontenured university faculty member learns that the department chairman frequently visits female graduate assistants at home and suggests that they sleep with him. Does the faculty member have an obligation to report the chairman's actions to the dean or another university authority? Another example is a junior member of an accounting firm who learns that one of the senior partners spends two to three weeks each year at a lodge owned by a corporate audit client. Does the junior accountant have an obligation to report this activity to the appropriate disciplinary committee?

THE PROBLEMS

These cases, some of them among the most debated in professional ethics, illustrate the types of ethical problems professionals face and also provide some idea of the scope of professional ethics as a field of study. Some people restrict professional ethics to ethical dilemmas faced by particular professionals, so that matters of fees, advertising, the specification of the separate spheres of practice of professions, and social schemes to make professional services widely available are not, in their view, properly a part of professional ethics. The preceding cases indicate the broader scope of professional ethics adopted here.

Broadly construed, professional ethics encompasses all issues involving ethics and values in the roles of the professions and the conduct of professionals in society. Three broad areas of concern can be distinguished. First, the goal of making professional services equally available to all raises questions about the legitimacy of advertising, the cost of services, and the appropriateness of restricting certain services to particular professions. The question of the desirability of insurance or legal services corporations are also part of this concern. The second area of concern is the relationship between clients and professionals, in which problems such as taking advantage of client dependence, withholding information, and disregarding confidentiality of information can arise. The third area of concern is the effects on others of professional conduct in behalf of clients. These others may be either a specific individual, as in the example of a physician telling a patient's spouse of the risk of a venereal disease, or society more generally, as in a lawyer's client committing perjury (which is a crime against society's interest in the legal process). Thus, professional ethics is not simply an application of narrow ethical theory. It involves aspects of political, social, and legal philosophy as well.

The study of professional ethics will not automatically make one an ethical professional or enable one to always know what is right or wrong. Although intellectual study cannot develop a motivation to ethical conduct, most people most of the time want to do what is ethically correct. Sometimes, however, they fail to see the ethical questions surrounding a course of action. The study of professional ethics will hopefully sensitize one to the ethical dimensions of professional practice and help one think clearly about ethical problems. In addition, conflicting considerations often make many ethical choices difficult. The study of professional ethics can enable one to develop some general principles to use in difficult or unusual cases. Finally, consideration of the social or political aspect of professional ethics will enable one to better understand the role and importance of professions in contemporary society.

Historical Perspective

Why has professional ethics become such a popular and important topic in recent years? The reasons for its popularity may not be the same as those for its importance, but they are closely related. The popularity of professional ethics largely stems from dramatic, widely publicized cases. Watergate stands out as the most spectacular of recent examples of unethical professional conduct, largely by

lawyers. Watergate also brought with it exposures of corporate fraud and bribery that accountants and investment advising firms failed to detect or covered up. Physicians have been exposed and criticized for unnecessarily prescribing brand name drugs in exchange for benefits from the pharmaceutical industry and accused of defrauding the government in Medicare and Medicaid programs by billing for services that were not performed.

Historically, the professions have controlled admission to their ranks, regulated the conduct of their members, and defined their role in society. The lay public regarded professionals with respect and entrusted their lives and fortunes to their judgments. Although antipathy and suspicion have occasionally been directed towards individual professions, such as the attacks on lawyers in Charles Dickens's novels, by and large people concurred in professionals' self-judgment that all the decisions in and about their respective fields should be exclusively theirs. Now, however, criticism has become widespread and is directed at almost all professions.

Contemporary discontent with professional conduct may be deeper than professionals believe and may be based on more than the occasional ethical aberrations of a tiny minority of professionals, as the professions themselves are apt to see it. An eminent sociologist has written that "the professional complex, though obviously still incomplete in its development, has already become the most important single component in the structure of modern societies."[1] In the twentieth century, the number of professions and their members has grown dramatically. Although their origins date back several centuries, accounting, psychiatry, and many branches of engineering are largely twentieth-century professions. In 1900 there were 1,234,000 professional and technical workers in the United States, constituting $4\frac{1}{4}$ percent of the working population. By 1970, the number of such workers had vaulted to 11,561,000, constituting 14$\frac{1}{2}$ percent of the working population.[2] And the increase is even greater than these rough figures indicate. The figures for 1970 do not include college teachers and groups such as musicians, artists, and entertainers, which are included in the data for 1900.

As society has become more complex and dependent upon technology, the professions have become increasingly central to its functioning. For years, violations of professional ethical codes were frequent and unpunished, yet did not spark the kind of criticism that is currently widespread.[3] At the least, the recent criticism reflects the development of consumerism. Concern about withholding information from clients, unnecessary surgery, advertising, fees, and the unavailability of professional services all reflect a new emphasis upon consumer rights.

Modern society has become centralized on the basis of complex technology and an increasingly complex legal system. As a result, many more decisions significantly affecting our lives are made by professionals. Control has shifted from the average individual or a political representative to professionals. Given the traditional self-regulation of the professions, democratic control, individual freedom, and other values of liberal society (discussed further in the next section) may be threatened.[4] The rise of modern industry during the late nineteenth and early twentieth centuries was accompanied by a political and social struggle to preserve and promote the well-being of the larger society. State and federal

legislatures developed laws—such as workmen's compensation—to restrict or meliorate the detrimental effects of large corporations upon employees and the public. This effort culminated in the New Deal legislation of the 1930s. With the rise of the professions, a somewhat similar struggle may be occurring to redefine the professions' role in society so as to preserve and promote freedom, welfare, and other values.

From this perspective, the study of professional ethics must be more than the application of traditional principles of professional ethics to new problems. It must be an analysis of the proper roles of professions in a liberal society. One cannot simply accept the prescription by professionals of their own roles. As one lawyer notes, "The public contempt for lawyers stems rather from their adherence to an unethical code of ethics, paradoxical though that may seem."[5] Although the responsibilities and situations of individual professionals vary, common elements stem from their role as professionals. Only against an understanding of the values of liberal society and the general role of professions can the peculiarities of ethical issues confronting the different professions be properly analyzed and perhaps resolved.

Values of a Liberal Society

If the professions are to serve society, their roles must be examined from the viewpoint of average members of society. Therefore, this book analyzes professional ethics from the perspective of the average citizen, who is a consumer of professional services and is affected by professionals working for others. The average citizen needs good reasons to accept the ethical norms that regulate professional practices. These norms must be justifiable to a reasonable person living in the society in which the norms operate. A reasonable person is one who is not mentally ill, who has sufficient intelligence to understand the norms and their implications for most concrete situations, and who obtains facts, listens to arguments, and supports his or her views by reasons. It is assumed here that such people are self-interested with limited benevolence; that is, they do not care for all others as much as for themselves.

If one assumes that a reasonable person desires life, bodily and mental integrity, and at least the wealth of personal property, then one can present arguments showing that a reasonable person has good reasons for accepting certain values of a liberal society. The chief values relevant to professional ethics are governance by law, freedom, protection from injury, equality of opportunity, privacy, and welfare. Space does not permit a full discussion of these values and the arguments for them.[6] However, rather broad agreement on these values exists in a liberal society, despite differences over the methods or bases of their justification and the details of their weighting. Consequently, this presentation is confined to a brief statement of these liberal values and some reasons why a reasonable person would accept them.

Governance by law. Public authority should be exercised in accordance with rules to which citizens can conform and that are adequately communicated to

them. This ideal extends beyond strictly governmental authority and applies also to such areas as hospital administration, public audits, and many other activities involving professionals. Without governance by law, a reasonable person would be unable to act so as to avoid possible penalties. Nor could one rely on the conduct of others.

Freedom.   People should be free from limits imposed by others to act as they desire to the extent that such freedom is compatible with other values. In general, people should be free from the control of government or others in making important decisions about their own lives. Of course, freedom must be limited to preserve or promote other justifiable values. A reasonable person would value freedom because it enhances the satisfaction of desires (the individual knows best what will do so) and because one simply wants to control and direct one's own life even if one may not decide as wisely as others might.

Protection from injury.   People should be protected from injury—loss of life, bodily or psychological integrity, or wealth—by force or fraud. This value concerns the essentials of life in society. Without protection from injury caused by others, social life is not possible.

Equality of opportunity.   People should have the same chances to reap the benefits of society. Discrimination on the basis of sex, race, religion, or ethnic origin, for example, deprives people of an equal opportunity. So far as human beings control social conditions, only ability and effort should be relevant to social success. Self-interested people want as great an opportunity as possible for themselves and cannot accept a society in which these opportunities are restricted unnecessarily. Consequently, they do not have good reason to accept a value that would give them fewer opportunities than others. Although they can accept a value providing themselves more than others, the others would not have good reason to accept such a value, so it is difficult to have such a social ideal. Moreover, reasonable people have benevolent reasons for allowing others an equal chance at social benefits, even though they may not be as concerned for others' success as for their own.

Privacy.   People should have privacy, that is, control over the information others have about them. Privacy takes several forms—solitude, intimacy, and private or personal affairs. A reasonable person has good reason to accept privacy as a social value because lack of privacy may adversely affect one's wealth and prestige (business deals can be lost if others know of plans in advance), because privacy contributes to valuable intimate personal relationships, and because of the psychological benefits of occasional solitude to reflect and collect one's thoughts.

Welfare.   People should have welfare, or the goods needed to fulfill those self-regarding wants necessary to a minimal standard of living. A minimal standard of living refers to the conditions for normally good health, personal necessities, and

security in them. Reasonable people want more than a minimal standard of living for themselves, and it is prudent to be assured that one will never have less than such a standard. As with equality of opportunity, others will also want assurance of a minimal standard of living, and reasonable people have sufficient benevolence to desire this for others, even if they desire a much higher standard for themselves.

The role of professions in liberal society must ultimately be tested against these values. To the extent professions preserve or promote them, they are properly constituted. Professionals may affect many other values of clients or others in addition to these general social values and be held to additional ethical standards in their dealings with clients and others.

THE PROFESSIONS

No generally accepted definition of the term *profession* exists, yet a working concept is needed for our study of professional ethics. Because the purpose of this study is to consider common ethical problems raised by and within professions, a good definition will delineate characteristics of occupations with similar ethical problems. (These characteristics may prove to be related to some of those problems in important ways.) One need not characterize professions by a set of necessary and sufficient features possessed by all professions and only by professions.[7] The variety of professions is simply too great for that approach. Rather, some features can be taken as necessary for an occupation to be a profession, and others as simply common to many professions and as raising similar ethical concerns.

Three necessary features have been singled out by almost all authors who have characterized professions. First, a rather extensive training is required to practice a profession. Lawyers now generally attend law school for three years, and in the past they underwent years of clerkship with an established lawyer. Many, if not most, professionals have advanced academic degrees, and one author has plausibly contended that at least a college baccalaureate is necessary to be a professional.[8]

Second, the training involves a significant intellectual component.[9] The training of bricklayers, barbers, and craftspeople primarily involves physical skills. Accountants, engineers, lawyers, and physicians are trained in intellectual tasks and skills. Although physical skill may be involved in, for example, surgery or dentistry, the intellectual aspect is still predominant. The intellectual component is characteristic of those professionals who primarily advise others about matters the average person does not know about or understand. Thus, providing advice rather than things is a characteristic feature of the professions.

Third, the trained ability provides an important service in society. Physicians, lawyers, teachers, accountants, engineers, and architects provide services important to the organized functioning of society—which chess experts do not. The rapid increase in the numbers of professions and professionals in the twentieth century is due to this feature. To function, technologically complex modern societies require a greater application of specialized knowledge than did the simpler societies of the past. The production and distribution of energy requires activity by many engineers. The operation of financial markets requires accountants, lawyers, and

business and investment consultants. In short, professions provide important services that require extensive intellectual training.

Other features are common to most professions, although they are not necessary for professional status. Usually a process of certification or licensing exists. Lawyers are admitted to the bar and physicians receive a license to practice medicine. However, licensing is not sufficient to constitute an occupation a profession. One must be licensed to drive a car, but a driver's license does not make one a professional driver. Many professionals need not be officially licensed. College teachers are not licensed or certified, although they must usually possess an advanced university degree. Similarly, many accountants are not certified public accountants, and computer scientists are not licensed or certified.

Another feature common to professions is an organization of members.[10] All major professions have organizations that claim to represent them. These organizations are not always open to all members of a profession, and competing organizations sometimes exist. Some bar associations, at least in the past, did not admit all lawyers. The organizations work to advance the goals of the profession— health, justice, efficient and safe buildings, and so on—and to promote the economic well-being of their members. Indeed, one author has stated that "the ethical problem of the profession, then, is . . . to fulfill as completely as possible the primary service for which it stands while securing the legitimate economic interest of its members."[11] If this claim is even approximately correct, one must expect professional organizations to be deeply involved in securing the economic interests of their members. Nevertheless, such organizations do generally differ from trade unions, which are almost exclusively devoted to members' economic interests. One does not expect to find carpenters' or automobile workers' unions striking for well-designed and constructed buildings or automobiles, yet public school teachers do strike for smaller classes and other benefits for students, and physicians and nurses for improved conditions for patients.

A third common feature of the professional is autonomy in his or her work. Given the present concern with reconciling professions and liberal values, how far such autonomy should extend is an open question. The minimum lies perhaps in the tasks of the work itself.[12] For example, surgeons are free to use their own judgment about the details of operating procedure and lawyers to use their judgment about how to draft a contract, provided they remain within the bounds of acceptable professional practice. If professionals did not exercise their judgment in these aspects, people would have little reason to hire them. However, many professionals now work in large bureaucratic organizations in which their autonomy is limited by superiors who direct their activity and overrule their judgments. Nurses are often thought to have an equivocal status as professionals simply because their superiors can overrule their judgments about specific aspects of their work. In these cases, however, an element of autonomy remains since the professionals are expected to exercise a considerable degree of discretionary judgment within the work context. Thus, an element of autonomy is a common and partially defining feature of a profession, though it might not be a necessary feature and the extent of such autonomy is debatable.

One may bias an investigation of professional ethics by using normative features (those saying how matters *should* be) to define or characterize professions. One common bias is to characterize professionals as primarily devoted to providing service and only secondarily to making money.[13] Such claims may be legitimate contentions about what should govern professions and motivate professionals, but they do not define the professions. If lawyers are, in the words of one of the earliest American writers on legal ethics, George Sharswood, "a hord of pettifogging, barratrous, custom-seeking, money-making" persons, they nonetheless constitute a profession.[14] An extreme example of the use of normative features to define professions is the following "consideration" presented by Maynard Pirsig: "The responsibility for effectuating the rendition of these services to all that need them and in such a manner that the public interest will best be served is left to the profession itself."[15] In this one condition, Pirsig manages to assume three different normative principles. First, services should be provided to all who need them. Second, the services should be provided so as best to promote the public interest. Third, the profession itself should be the sole judge of the method for achieving the first two principles. Even if these normative principles are correct, they should not be erected into the defining features of a profession.

Distinctions among kinds of professions are usually related to the kinds of activities pursued by most but not all members of the professions. An important distinction in professional ethics is between *consulting* and *scholarly* professions.[16] The consulting professions, such as law, medicine, and architecture, have *traditionally practiced on a fee-for-service basis* with a personal, individual relationship between client and professional. A consulting professional (or a professional in a consulting role) acts primarily in behalf of an individual client. A scholarly professional, such as a college teacher or scientific researcher, usually has either many clients at the same time (students) or no personal client (jobs assigned by superiors in a corporation). A scholarly professional usually works for a salary rather than as an entrepreneur who depends on attracting individual clients. Of course, this distinction is blurred in many cases. For example, a junior lawyer in a large law firm is more like a scientific researcher, and nurses have individual clients even though they usually work for a large organization (hospital). Among the consulting professionals are physicians, lawyers, accountants, consulting engineers, architects, dentists, psychiatrists, and psychological counselors. Other persons with tasks similar to some of the consulting professions include nurses, pharmacists, stock brokers, the clergy, insurance brokers, social workers, and realtors. Among the scholarly professions are nonconsulting engineers, teachers, scientists, journalists, and technicians.

These differences between the roles of consulting and scholarly professionals are crucial in defining the kinds of ethical problems each confronts. The economic considerations of the consulting professional—fees, advertising, and so on—are not important problems for the professional employed by a large organization on a salary. Although consulting architects and accountants have many ethical problems in the professional–client relationship, research scientists or engineers in large organizations do not normally deal with clients. University teachers do have clients,