Lois Eveleth

Salve Regina University
Newport, RI
USA

PROFESSIONAL RESPONSIBILITY AND CONFLICT OF INTEREST

How should we tell right from wrong? Good from bad? There are four systems, four institutions, or four bodies of knowledge that pervade human societies and seek to give advice and direction on how to live one's life. These are law, religion, cultural mores, and ethics. Laws, though the most obvious, do not always give us the same advice and direction; indeed they may even be at odds on very important matters. But how are we to decide when a law does not deserve our obedience? Who is to decide when civil disobedience is the last resort? The same holds true of cultural mores, in that these may be worthy of maintaining respectfully, or not. Then, there is religion; the various religions incorporate their own codes. In our situation, though, religion is kept out of the public forum, whether for weal or woe. A basic question, obviously, is whether or not people need advice and direction. The answer is "yes"—we humans often get things wrong, make a mess of things, act selfishly when acting selflessly would be wiser and more humane, and end up locked in prison, or, worse still, racked by shame, guilt, or regret. So, yes, we humans can profit by sage advice. Some people will claim that one should rely on his personal moral sentiment, his "inner voice," his intuition, or on whatever conventions have been accepted by the mainstream of one's society. But, if human beings are fallible (and

there is every evidence that we are exactly that, fallible), then human intuition is hardly reliable enough, whether the intuitions be individual or collective.

My remarks come from a body of knowledge called *ethics*. I am putting aside the role of law, religion, and sociology here; law, because law emerges from the consensus of a community, where 51% of the people have the right to tell 49% how to live their lives. This is workable, of course, maybe better than workable. Winston Churchill was right when he once commented that democracy is the worst form of government, except for everything else that has been tried. In a democracy, people must reach a consensus; but the fragile part of that arrangement is that people may agree and still be very wrong or unenlightened, or unjust. The 49% have to go along with the 51%, if they don't want to be punished; and fear of punishment is not the most noble of motives. Statutes, regulations, and judicial decisions may be unjust, unfair, or even immoral; the questions then become: How do we know that laws are unjust, unfair, or immoral? What are the standards or criteria or values with which we are evaluating some laws as unjust, unfair, or immoral? How can you tell that a law is unjust, unfair, or immoral? And then there is ethics, which is not only an established body of knowledge but a very human tendency and need.

I am putting aside also the role of religion here, because the current interpretation of the First Amendment to the U.S. Constitution is that religion does not belong in the public forum or public life. I am putting aside the question of the influence of mores in society, because they too may at times need reformation. And reformation requires ethical ideals or principles with which to assess the mores.

And so we are left with ethics as our reasonable guide. Ethics is an organized body of knowledge that offers concepts, guidelines, and deliberation procedures to serve an individual in making decisions about right and wrong. Ethics, in this sense, has been around since the days of Socrates, Plato, and Aristotle; but only in the twentieth century

did its application to professional life generate what we have come to call *professional ethics*. The medical community has a code of medical ethics, for instance; lawyers have codes of legal ethics; and engineers, electrical and electronic engineers in particular, have their own code. We expect all professions to recognize a code of ethics unique to their work.

While the principles of a Code are not usually noticed until a serious conflict arises, I submit that such principles are far more useful than as a mere arena for debate in times of conflict. My reason for such a claim is this: that being a professional in any area is defined by such principles, so much so that ignoring them is tantamount to not knowing why one supposedly qualifies as a professional. The meaning of the term speaks to one's very identity. Presenting oneself as a professional is a bold statement that one has knowledge and trustworthiness that can be counted on. When one announces "I am a professional," the meaning being conveyed is: "I have the knowledge that you need; I have the ethical strength that you can count on. Trust me." A person is a professional only if he/she is trustworthy. A professional life, accordingly, is an ethical life.

I believe that few people will dispute that idea. Anyone reading any of the many such professional codes, will agree, for instance, that honesty is preferable to dishonesty, or that the welfare of stakeholders should be protected. In short, all such principles are ethically admirable and worthy of our acceptance. What is challenging, though, is the process of applying such principles in a real-world situation, especially when two or more principles are relevant in the here-and-now and happen to give opposing advice on what we should do. When two or more good principles lead us to different courses of action, we have a conflict of interest; in logical terms, we have a dilemma. There is, however, a strategy that can reduce such ethical conflict, a strategy that I have out-

lined elsewhere.[1] Any resolution, though, assumes an acceptance of the concept of personal responsibility. What I am claiming here is that acceptance of personal responsibility is a hallmark of the professional person, a responsibility uniquely tested by conflict of interest. What follows here, then, is, first, an analysis of the concept of personal responsibility and, then, an analysis of the term *conflict of interest* insofar as it both challenges and enhances that personal responsibility.

Responsibility

A person is said to be responsible when he/she answers for his knowledge, words, and actions and answers to other persons who have a stake in his/her knowledge, words, and actions. The term means exactly what its etymology indicates: our English word derives from the Latin verb *respondere*, to answer. The first and most accepted understanding of the concept of responsibility dates back to the fourth century B.C.E., when Aristotle offered an analysis in his *Nicomachean Ethics*.[2] His analysis still works well. To be responsible, one must, first, have sufficient knowledge for what he undertakes; second, act freely and not under coercion; and third, devote sufficient deliberation prior to the undertaking.

In the case of our representative engineer and every professional, the necessary education and credentialing are complex, difficult, and sufficiently sophisticated to assure clients, employers, or any stakeholders that s/he has knowledge sufficient for the work. To attempt to work without sufficient knowledge is grossly irresponsible and even illegal. His/her responsibility, however, goes beyond initial education

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[1] Lois Eveleth, *Managing the Uncertainty of Ethical Codes*, IEEE International Symposium On Technology and Society (2007). Available at: http://ieeexplore.ieee.org /xpl/login.jsp?tp=&arnumber=4362214&isnumber=4362198&url=http%3A%2F%2Fie eeexplore.ieee.org%2Fxpls%2Fabs_all.jsp%3Farnumber%3D4362214%26isnumber%3 D4362198, accessed on June 20, 2016.
[2] Aristotle, *Nicomachean Ethics*, trans. Terence Irwin (Indianapolis: Hackett Publishing Company, 1999), III, 1–5.

and credentialing. S/he is responsible for the knowledge that is needed by the professional in his specific area of endeavor, specialization being a corollary of expansion of knowledge; and knowledge, of course, constantly grows. This professional works in a constantly-changing technical world, and his/her commitment to a lifelong learning curve is a responsibility to be ready for constant innovation. Innovation can be risky, not only to funding but more importantly to safety, health, and welfare. Where innovation is involved, laws, statutes, and regulations are not always available as guides; and, even when they are, they may be vague, or unhelpful, or inconsistent with each other. S/he must know his/her limitations and be eager to address and resolve them. S/he is responsible for decisions, actions, creations that are based in his/her knowledge. Machines are not responsible; the creator of their programming is. In addition, there should be a humble admission that reliable knowledge comes from varied sources and people; and so that responsibility to support colleagues and to accept support is the right course of action.

What will limit his/her responsibility is coercion, compulsion, or intrusion. The O-rings on the booster rockets of the *Challenger* in 1986 have become a textbook example of responsibility being removed from the engineer by management. Political involvement may be another factor that lessens or even removes responsibility from the actions of the professional, especially when political figures are overly intrusive or do not adequately support with enabling legislation and funding. Still another challenge is the phenomenon of group decision-making in a large corporation. While it is true that management and CEOs are the official decision-makers, others in the organization and its shareholders may play a part in decisions; and some individual members of management may have contributed more to the ultimate decision; others, less. To the extent that they do, they must accept the burden of responsibility. Exactly how much of a burden is, obviously, difficult to estimate, because our understanding of the concept of responsibility has

historically been based on individual decision-making, not on group decisions. How to allot a share of the overall responsibility is still a conceptual and ethical challenge for any organization. When the decision has good consequences, everyone is willing to share responsibility. Otherwise, as one old proverb has it, *success has many fathers but failure is an orphan*.

Aristotle's third requirement for personal responsibility, deliberation, refers to the period of reflection on what is to be done, e.g., matching the means to the goal, drawing inferences from what is already known so as to anticipate the consequences of the action or project. The weightier the decision, the greater should be the deliberation; and spur-of-the-moment decisions lie closer to irresponsibility on the continuum of responsibility. Oddly enough, a person may be the physical cause of the deed or outcome and yet not hold ethical responsibility, either because s/he was unable to take time for deliberation or was incapable of this level of reflection.

Each of these three conditions is necessary for a person to be responsible for his/her actions. Although no one of these is sufficient by itself, taken together they are sufficient in any account of personal responsibility. Responsibility is not a black-and-white affair but is, rather, a continuum or range of possibility. This essential feature of both professionalism and an ethical life is exactly what our token engineer or professional agrees to, i.e. accepting responsibility in making decisions. Given, moreover, the expansion of technical knowledge and political complexities, the professional must see responsibility as an ever-expanding dimension of his/her professionalism. Thus, responsibility remains an underpinning for the emergence of conflicts of interest, a responsibility that grows as the body of knowledge and possibilities open up in the work of professionals.

Conflicts of Interest

One helpful definition of *conflict of interest* is that offered by Michael Davis:

> A conflict of interest is a situation in which some person P (whether an individual or corporate body) stands in a certain relation to one or more decisions. On the standard view, P has a conflict of interest if, and only if, (1) P is in a relationship with another requiring P to exercise judgment in the other's behalf and (2) P has a (special) interest tending to interfere with the proper exercise of judgment in that relationship.[3]

This person is understood as a professional operating in his field of endeavor. Professional fields, such as teaching, engineering, accounting, medicine, and law are such that a fiduciary relationship is established. Such trust or good-faith relationships, for example, are those between a teacher and his students, an engineer and his client, or company, or the public; a physician and his patient, and a lawyer and his client and the legal system as a whole. There is no doubt that the interests of the client, the student, or the patient are to have priority over any personal interests of the professional. In such a relationship, a professional declares that s/he has the education and ethical probity worthy of trust and is entitled to such trust; the other party, whether individual, corporate body, or the public at large, invests trust in this professional, confident that the professional will exercise judgment in his service. In all such relationships, the professional has broad discretion, making decisions that the party who trusts him cannot or will not carry out for himself.

Still, even given this discretion, there are necessary boundaries to the scope of the relationship. The professional works only in his field of expertise as defined by the body of knowledge and the licensing on

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[3] Michael Davis and Andrew Stark, *Conflict of Interest in the Professions* (New York: Oxford University Press, 2001), 8.

which that expertise rests. He should not do anything illegal, even though an illegal act may lie within the interests of the client; his responsibility to the profession, and to the public transcends that which is owed to the client. For instance, an engineer must design for earthquake prevention, even when the client does not request it. Even more challenging is the growth of demands on the professional: technological factors tending to complicate decision-making; increased community sensitivities (e.g., environmental concerns); legislation and political oversight; increasing specialization within a field; and rising expectations of what can be accomplished to serve the public.

The simplicity of the phrase *conflict of interest* belies some complexity, an unavoidable complexity given the array of circumstances in the various professions; and so the second part of the Davis definition invites more detailing. In one sense, *judgment* refers to the knowledge acquired by the special training and experience of the professional; in the other, it means the action taken, or the exercise of his judgment. *Judgment* in the first sense is irrelevant to a conflict of interest discussion; mistakes, faulty calculations, lack of information, for example, may be unfortunate for the client and embarrassing for the professional whom he trusts, but actions resting on these are not moral in nature.

This situation is analogous with lying, as analyzed by philosophers such as Augustine, Aquinas, and Kant. A lie is not defined by the faulty nature of the speaker's words, or the content or substance of what is said, however troubling. Rather, it is the intention to deceive that corrupts the statement. Counter-intuitive though it may seem, a person may say what is true and yet be telling a lie, as when the liar makes a mistake, believing a statement that is true to be false. If the person who was told the lie were to discover the intention to deceive, he would be justified in being offended or angered, even though the actual statement was correct. C (the client) is analogous to the person being lied to. Were he to discover that P (the professional) did not serve all of his interests, even those that C himself was unaware of, he would be at best

annoyed, at worst, angered. He would be like that person lied to, who, though he heard an objectively true statement, was the victim of another person's intention to deceive. P had not revealed to C all of the possibilities that were to C's advantage. In a contrary situation, P may make a mistake; for instance an engineer's faulty calculations may cause a bridge to collapse in a high wind. P did not intend to deceive; here, human error caused was the problem; the substance was wrong, not the motivation. An engineer's collapsed bridge is a tragedy, an embarrassment, and a justification for losing one's job; but the latter situation is not a conflict of interest.

The relationship between the professional person (P) and the client (C) begins with C's hiring P to achieve, for C, C's interests. P understands these interests and commits his efforts to their achievement; correspondingly, C expects P to achieve what P has committed himself to do. More importantly, C trusts P to do so, and P's moral obligation is derived from C's trust in him. P's moral obligation, moreover, extends farther than C may realize. If P were to recognize that C's expectations are too modest, i.e., that P is able, in this same project, to exceed C's original expectations, then P is obliged to make known to C this "more." Having more knowledge than C has, P is morally obliged to serve C's best interests, even when C himself is unaware of any added possibilities.

Regarding what this requirement of "best" can mean, P has the guidance of Immanuel Kant's Practical Imperative, viz. act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end. If P were to prioritize his own interests and use his work for C as a means for achieving his own interests, he would be using C as a means to an end, thus violating this Kantian principle. This humanity formula stands in clear opposition to a Utilitarian guideline, which evaluates actions in terms of good consequences. If P's interests overall would outweigh those of C, P would be a good utilitarian if he

were to prefer his own. Acting, though, on Kant's humanity formula, P stands on higher ground. Holding C as coextensive with C's interests, P takes up the duty of treating C, and thus C's interests, as an end in itself.

It is P's intentions in the exercise of his work for the client that allows for a conflict of interest, intentions which, in the ideal, are the best that C either has for himself or even would have for himself, did he know of the possibilities. Such interests are directly material to the task at hand to be performed by P and are no broader than the range of P's expertise and background. A conflict of interest emerges when interests other than those of C intrude P's thinking or performance or have the potential to intrude or even displace C's best interests. One source describes the conflict thus:

> a professional when acting in a professional role . . . is ". . . subject to influences, loyalties, temptations, or other interests that tend to make the professional's judgment less likely to benefit the customer or client than the customer or client is justified in expecting."[4]

While it is reasonable and appropriate for P to earn money for his work, his professional duties have to be clearly and obviously distinct from his for-profit interests. As Paul Busch comments, "wearing the hat of an independent professional is not consistent with concurrently (and sometimes surreptitiously) wearing the hat of a talented business person in a non-professional business."[5]

The National Society of Professional Engineers (NSPE) states clearly what P must do, when he becomes aware of a conflict of interest or even just the appearance of one: "Engineers shall disclose all known

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[4] Michael Davis, *Ethical Issues in Engineering*, quoted in Charles Harris, Michael Pritchard, and Michael Rabins, *Engineering Ethics, Concepts and Cases* (New York: Wadsworth, 2013), 144.
[5] Paul L. Busch, "Time for Another Look at Conflict of Interest," https://www.nspe. org/resources/ethics/ethics-resources/other-resources/time-another-look-conflict-interest, accessed on June 20, 2016.

or potential conflicts of interest that could influence or appear to influ-ence their judgment or the quality of their services."[6] The Institute of Electrical and Electronics Engineers (IEEE), though, calls for more—the engineer is "to avoid real or perceived conflicts of interest whenever possible, and to disclose them to affected parties when they do exist."[7] The American Society of Civil Engineers (ASCE) enjoins both avoid-ance and disclosure: "Engineers shall avoid all known or potential con-flicts of interest with their employers or clients and shall promptly in-form their employers or clients of any business association, interests, or circumstances which could influence their judgment or the quality of their services."[8]

Not everyone agrees that these canons are effective. According to George Loewenstein and others, on-going, experimental studies involv-ing disclosure yield disappointing results.

> For now, and especially for the inexperienced and vulnerable, disclosure does not appear to live up to its protective promises . . . Care must be taken . . . to ensure that disclosure does not re-place more effective measures, such as working harder to elimi-nate conflicts of interest in the first place.[9]

These studies of disclosure are declared disappointing because their effectiveness in guaranteeing C's best interests cannot be documented. Enforcement of the several professional ethics codes is spotty at best, and no guarantees that enforcement exists in all cases can be given.

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[6] Accessible at: https://www.nspe.org/resources/ethics/code-ethics, accessed on June 20, 2016.
[7] Accessible at: www.ieee.org/ethics, accessed on June 20, 2016.
[8] Accessible at: http://www.asce.org/code-of-ethics, accessed on June 20, 2016.
[9] George Loewenstein, Daylian Cain, and Sunita Sah, "The Limits of Transparency: Pitfalls and Potential of Disclosing Conflicts of Interest," *The American Economic Review* 101: 3 (May 2011): 423–428.

Conclusion

Whatever research on disclosure may reveal, the basic question is ethical in nature, specifically the responsibility of P, responsibility taken up willingly by P and specified by the best interests of C. Working in the ethical tradition of Immanuel Kant, P is morally obliged thereby to treat persons as ends in themselves and never as means to an end. In this context, treating C as an end in himself has to mean that P fulfills his responsibilities only if he embraces C's best interests and no other. Of course, the word 'best' allows that the interests of the public, local codes, and legal requirements may supersede those of C at times.

There are difficulties still unresolved, such as these three. Engineers, for example, often are contracted to companies and government agencies who share in decisions; to the extent that this is the case, group responsibility displaces the personal responsibility of the employed professional. Algorithms, however, for apportioning the different levels of participation in decision-making and thus responsibility are not available. Then, as on-going studies indicate, the value of disclosures of conflicts of interest is spotty. A further challenge is enforcement of professional codes themselves. Who exactly, within a profession, has ultimate responsibility for enforcement of the code? And should judicial strategies be employed for ethical violations?

There have been codes of behavior for at least four thousand years. For example, we read in the *Code of Hammurabi* the following directive: "If a builder build a house for someone and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death."[10] That was a code with motivation. But, in our day, professional codes are quite different; as discreet, self-conscious efforts by professional persons at self-governance, pro-

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[10] Stephen Asbury, Richard Ball, *The Practical Guide to Corporate Social Responsibility: Do the Right Thing* (London, New York, NY: Routledge, Taylor & Francis Group, 2016), 46.

fessional codes are creatures of the twentieth century, codes containing ethical principles giving guidance along the moral contours of life and work. A dizzying array of questions may, and will, emerge impelled by greater knowledge and insight, or by developing technology, or by political insight and intervention, or by expanding community awareness.

Some of the expanding responsibilities are already emerging. The professional should respond to the aspirations of the stakeholders; but the question of exactly who these stakeholders are and the identification of which of their aspirations should count remains to be addressed. Recently, the term itself, i.e. *conflict of interest*, has been applied to personal integrity in the publication of one's research.[11] Expanding the connotation of the word only adds to the challenge. If the professional belongs to a corporation, there is a question of group responsibility. S/he should be prepared for an ever-expanding concept of harm, as his/her social and cultural identity becomes clearer to the public. And s/he must, obviously, live and work at the cutting edge of technology. Moreover, within such responsibilities, any number of potential conflicts of interest, both simple and complex, may well emerge, moving in tandem; but the professional cannot wait for government or Gallup polls to resolve them. They are his/her ethical responsibility.

PROFESSIONAL RESPONSIBILITY
AND CONFLICT OF INTEREST

SUMMARY

When conflicts of interests arise for the professional, s/he should be aided in their resolution by a long-standing body of knowledge called *ethics*. Ethics provides an array of concepts, vocabulary, and strategies to aid in both the understanding and the resolution of such challenges. Central here are two concepts, viz. responsibility and conflict of

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[11] Lynn T. Kozlowski, "Coping with the Conflict of Interest Pandemic by Listening to and Doubting Everyone, Including Yourself," *Science and Engineering Ethics* 22: 2 (April 2016): 592.

interest. Responsibility emerges incrementally from a person's knowledge, freedom, and deliberation. Conflicts of interest are either simple or complex: simple, when a principle conflicts with human wants; complex, when two or more principles are mutually inconsistent. An analysis of these two concepts leads us to the claim that a professional, to remain such, even while embracing an ever-expanding burden of responsibility, needs a conceptual framework for resolving conflicts of interest.

KEYWORDS

professional, ethics, principles, responsibility, conflicts of interest.

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