

Chapter Six

Integrated Case Analysis

Case studies are the staples of ethics discussions. But the discussants may have wildly different understandings of a case. Each reader brings his or her own perceptions and projections to the analysis.

That is what I learned some years ago while developing a course in research ethics for graduate students of science and medicine. My faculty colleagues at Dartmouth and I decided that pretest analysis of a case at the beginning of the term and a second analysis of the same case at the end would demonstrate what students learned during the course. The case we chose, *Misconduct: Caltech's Trial by Fire*, told the story of Vipin Kumar, a postdoctoral candidate, and James Urban, a graduate student, who worked in a laboratory at California Technological University run by distinguished scientist Leroy Hood.¹ That laboratory included more than sixty-five junior investigators, lab assistants, and students.

In late 1990, it looked as though Kumar and Urban had acted in ways that were not acceptable in the practice of science. Kumar falsified a lab result. A figure that was supposed to show DNA from several cell lines had the same pattern among the lines. From carefully looking at the artifacts—the little spots that crop up on gels—it was clear that Kumar had used data from just a few cell lines, duplicated them, and then labeled them as though they came from many more cell lines. Kumar did not deny doctoring the figure. He said he did not know that this kind of duplication was unacceptable practice. When these facts were disclosed, Hood withdrew a paper that had been accepted for publication.

On top of that, some of Kumar's raw data turned out to be missing. Kumar maintained that two of his lab notebooks that confirmed questionable data had been stolen.

While reviewing Kumar's work, two committees—one internal to the lab and the other a university investigatory committee—discovered irregularities

in the work of a graduate student, James Urban. Urban had served as coauthor on some of Kumar's papers. As in Kumar's case, much of Urban's data was mysteriously missing. Urban claimed he threw it away when he moved to take a job at the University of Chicago. The committees concluded that a final paper, published in the October 20, 1989, issue of *Cell*, contained data different from the paper that Urban had sent for review and that the data in the first draft were fabricated. Urban did not deny the charge, but he did deny intent to deceive. One official close to the case said that Urban intended to do the work and assumed that he knew how it would turn out.

Urban was already working at another university by the time the investigation uncovered the irregularities, but Kumar was still working in the Hood lab. Kumar had applied for several jobs, with Hood's strong recommendation. Before the investigation was complete, Hood told the following that Kumar was under investigation: universities to which Kumar had applied for jobs, journals that had accepted or published papers based on Kumar's results, and the funding agencies (National Institutes of Health and National Science Foundation) that had provided the needed resources for Kumar's work. Washington University, which had offered Kumar a job, withdrew the offer.

When our students at Dartmouth examined this case for their pretest, faculty expected students to understand that Kumar and Urban had done wrong. We hoped that, at the end of the course, they would recognize more subtle issues, such as what the lab director and university should do and not do when investigating a case of alleged research misconduct.

We asked three independent external reviewers to conduct a structured content analysis on the students' pre- and posttests. We were perplexed when our reviewers disagreed on what the students understood. For example, the three evaluators did not agree on whom a particular student had identified as moral agents. We had asked evaluators to count as a "moral agent" any person whom the student recognized as being accountable for some action. When we first reviewed the evaluations, before our own reading of the student essays, it had not occurred to us that the problem could be with the students rather than with the evaluators.

Kumar and Urban, whom faculty had identified as the "impossible to miss" moral agents, were instead identified as victims by many of the graduate students. Some students said that no one taught Urban how to write an article or his thesis. Some said that no one taught Kumar how to record cell lines. The lab director and senior faculty in the lab, according to our students, were too busy with their own careers and research agendas to provide sufficient mentoring. This perspective remained consistent between pre- and post-

tests, although the students responded as we expected in class discussions with faculty facilitation.

It was suddenly clear to us that our students were analyzing the Kumar/Urban case based on their own experiences. They identified with the graduate student and the postdoc and were expressing their anger at what they perceived as their own mentors' neglect of them.

Through this experience, I realized that good cases provoke projection from readers as surely as they test a reader's ability to analyze the facts of a case. When presented with a case, we readers need to realize that we bring our own assumptions to it. An advantage of group discussion is that personal assumptions are called into question. Individual perspectives might change as a result of hearing how others have understood a case or a situation.

This chapter describes a method for analyzing cases. It also addresses the need to think about making moral mistakes. While the vast majority of cases focuses on wrongdoing, practical ethics literature is overwhelmingly silent on the fact that most of us, at least occasionally, knowingly choose to do wrong. Some literature addresses the forgiveness of others but is silent on the forgiveness of self or how easy it is to rationalize wrongdoing.

Few among us always choose to do what we think is the morally ideal act. Sometimes we don't even choose to do what is morally permitted or required. From time to time, we do things that we know are wrong. Whether the transgression is a lie to avoid feared consequences or even an unwanted social engagement or is an impulsive choice to be rude to a colleague or a stranger on the street, we have done things that we believed to be wrong at the time, or soon after.

Awareness that one has knowingly done wrong is an important step in moral growth. Sometimes people have to make the wrong choice before understanding, morally and psychologically, what makes the action wrong. There may be some unjustifiable acts that we continue to choose throughout a lifetime without recognizing the moral weight of our actions.

Reading and discussing cases should encourage readers to reflect on how they act in analogous situations in their own lives. It is easy to argue that some hypothetical character in a case study should do his or her duty regardless of cost to self. It is more difficult to recognize the times that I have chosen not to meet a responsibility and to consider what I should do. The former is an intellectual exercise. The latter is doing ethics in the first person.

ESSENTIALS OF A GOOD CASE

A well-prepared case will allow for reader identification with one or more decision makers. Unfortunately, in the pretest and posttest for the Dartmouth

research ethics class, the only decision makers who provided natural identification for the students reading the case were the graduate student and postdoc charged with wrongdoing. Upon reflection, it is not surprising that our own graduate students would recast Kumar and Urban in a way that made our students more comfortable with that identification. They perceived Kumar and Urban, like them, as powerless underlings caught up in a system not of their making. And consider what follows from a perception that one is powerless: As was discussed in the previous chapter on moral development, individuals who perceive themselves as powerless do not see themselves as morally accountable for their actions. They excuse themselves by believing they cannot be blamed for what they are doing because they are victims of the system.

As with the case described at the beginning of this chapter, cases can be short and relatively simple, with the intent of focusing reader attention on the recognition of moral agents (Kumar, Urban, Caltech, lab director, investigatory committees, other universities, journal editors, funding agencies) and on the limits of acceptable choices by each of these. Cases can also be several pages of narrative or hours of audio or video, giving participants the opportunity to find the ethical aspects of a case in a virtual haystack of other issues and considerations. Practice with both kinds of cases is needed to develop conscious skill in analysis.

SYSTEMATIC MORAL ANALYSIS

Systematic moral analysis (SMA) is the process of dissecting a case or a potential choice of action in a step-by-step way to ensure that no ethical aspect is ignored.² A good analysis is *systematic* in two ways. First, it provides a general system, or process, to be followed in any case analysis. It is also systematic in that it is based on theoretical foundation that provides conceptual support for each step taken in the analysis. A system is based on theory.

The example of systematic moral analysis presented in this chapter is based, in large part, upon the theory of contemporary moral philosopher Bernard Gert. Gert uses a combination of concepts and questions from the classics to develop his own theory. His process of analysis is thus a good contemporary example of mixed formalism. However, what follows in this chapter does not adhere strictly to Gert. I have added to Gert's process my own understandings from classical moral philosophy along with questions and considerations derived from contemporary feminist analysis. The five

questions derived from classical and feminist philosophy, included in chapter 4, are implicit in the more specific steps of analysis included in this chapter.³

A PROCESS OF SYSTEMATIC MORAL ANALYSIS

Any person who has the power to intentionally affect members of the moral community or subjects of moral worth is a moral agent. Agency requires knowledge of general facts about the world, namely that "persons can be killed by other persons and they do not normally want to be killed; one person can inflict pain or disable another person and persons do not normally want to be inflicted with pain or disabled; one person can deprive another person of freedom or pleasure and persons do not normally want to be deprived of these things."⁴

Because moral agents realize these general facts, agents have the obligation to refrain from causing harms such as death, pain, disability, or deprivation of freedom or pleasure unless there is adequate justification for doing so. The obligation to refrain from causing harm applies impartially to everyone whom an agent may encounter.

Case analysis includes two distinct levels. The first level, which is necessary, and sometimes sufficient, I call *conceptualization*; the second level, which is not always necessary and never sufficient alone, I call *justification*. Conceptualization is the step in which one clarifies the ethical issues, identifies agents, and determines who could be reasonably held blameworthy or praiseworthy within the situation. The level of justification is when one figures out if there is adequate reason for causing harm. At this level, one explains why some acts are morally prohibited, others are morally permitted, some are required, and yet others are morally ideal.

Step One: Conceptualization

Conceptualization is the necessary first step of ethical analysis. Many analyses can be concluded at this level. This level identifies particular acts as morally questionable. Once an act is properly identified as an act of cheating or deception, for example, it may be obvious that the act cannot be justified. Many people who are willing to defend an act—if they rationalize that their choice falls short of "real" deception—recognize the difficulty in justifying the act once it can be shown that what they propose is, indeed, real deception.

On the other hand, if an action can be shown not to be an example of deception in the conceptualization stage of analysis (e.g., the reporter had no duty to tell the story source being interviewed about other information that

had been revealed), there is no need to justify the action. Only actions that can be shown to be morally questionable require further analysis.

The first step is to determine if harm has been (or is likely to be) caused. Gert's analysis begins with an understanding that there are harms we all want to avoid: death, pain, disability, being deprived of freedom or pleasure.⁵ If someone causes himself or herself to suffer one of these harms without reason, that action would qualify as irrational; if someone does it to another without adequate reason, that action is unethical. Gert identifies ten moral rules that coincide with the harms that can be caused by self and others.

1. Don't kill.
2. Don't cause pain.⁶
3. Don't disable.
4. Don't deprive of freedom.⁷
5. Don't deprive of pleasure.
6. Don't deceive.
7. Keep your promise.
8. Don't cheat.⁸
9. Obey the law.
10. Do your duty.⁹

The first step in conceptualization, then, answers the three following questions:

1. Is a member of the moral community or subject of moral worth being caused harm?
2. Has a moral agent caused the harm?
3. What are the agent's role-related responsibilities?

The next step in conceptualization is to establish whether a moral agent is potentially blameworthy or not, leading to the next question to be answered:

4. Was harm intended or could it have been predicted?

The Nature of Role-Related Responsibilities

As a professor, I have responsibilities to my students and to the department and university that employ me. I have responsibilities toward other ethics scholars. Defining an agent's role-related responsibilities as they relate to the situation at hand is necessary before one can decide if there has been a neglect of duties (violation of moral rule ten).

We all have multiple roles. I am a wife, a daughter, a sister, and a friend in my personal life. I am a teacher, a scholar, a news source, a colleague in my professional life. Each of these roles, and the many that don't come to mind at the moment, carries a unique set of obligations.

It can be difficult to be specific about role-related responsibilities. I suggest thinking of oneself as an alien anthropologist, sent to find people doing a good job of representing the role that one is seeking to describe. What would the journalist be doing? How is the journalist different from other mass communication professionals? A good description of role-related responsibilities should be twenty-five words or less and should show how the role in question is different from other similar roles in society. It is better to clarify role-related responsibilities before doing detailed analysis of a case so that the description of role is not tailored to provide a specific answer for the case at hand.

Identification of role-related responsibilities provides a basis for determining if moral rule ten, do your duty, has been violated. Role-related responsibilities will also be useful in step two, justification of the SMA, for determining if there have been adequate reasons for the agent to violate moral rules.

Blameworthiness and Praiseworthiness

Sometimes people are hurt without some person being blameworthy for that harm. A situation is morally questionable if it is found that the harm was caused by violation of one or more moral rules. However, an agent can be a proximate cause of an event without being morally blameworthy for the harm that follows that event.

For example, if I were to stop my car at a pedestrian crosswalk to allow someone to cross, I am not blameworthy for the damage caused to the driver behind me who stopped only when he crashed into the back end of my car. Indeed, if the force of that crash was so overwhelming that it propelled my vehicle forward and I ended up running over the person I had stopped to avoid, I would still not be blameworthy. There is a difference between being the proximate cause for an event and being morally blameworthy for its outcome.

However, if I recognized the person in the crosswalk as someone I wished to harm and also recognized that the driver of the car behind me was not paying attention, and *then* I slammed on my brakes with the hope that the driver of the car behind me would crash into my car, propelling it forward into the person I despised, I would indeed be morally blameworthy for any injury caused. I would be morally blameworthy in this case, even if my

actions were legally judged as unintended. The difference, in this case, is my intent.

An agent has acted in a morally questionable way (is potentially morally blameworthy) if any of these conditions apply:

- The harm to the person (P) came about because the agent (A) neglected to fulfill his or her role-related responsibilities.
- A acted with intention to cause harm to P.
- A could have reasonably predicted the harm caused as a consequence of A's action or nonaction and could have accomplished the same legitimate end while causing no harm or less harm.

An alternative way to think about blameworthiness is that any person who has the power to affect a situation should be held blameworthy for choosing not to use that power to avoid or limit harm. Therefore, an alternative and less minimalist way of judging blameworthiness is this: If A could be held morally praiseworthy for a good outcome in an event, he or she should be held morally blameworthy for a bad outcome in the event.

Once it is clear that one or more moral rules have been (or are likely to be) violated, and that one or more moral agents could be held morally blameworthy for the action, the conceptualization phase of the systematic moral analysis is complete.

If no moral rules have been violated by an agent, he or she cannot be held morally blameworthy for the act. However, it does not follow that the person should be praised for it, either. Praiseworthy actions are generally those that prevent or mitigate harm, not those that simply do not cause harm.

Step Two: Justification

The steps in the analysis of justification consider whether the morally questionable action could be morally permitted in the particular situation and in all that are similar. Justification starts with the analysis of identified moral rule violations:

1. Which harms are caused by the violation of the rule? Which harms are avoided? Which harms are prevented?¹⁰ Gert reminds us that foreseen and foreseeable consequences are important criteria for consideration, along with actual or intended consequences. Agents cannot ethically ignore the unintended, but predictable, consequences of their actions.

It is also important to notice that every unjustified violation of a moral rule invariably causes some harm. The direct harms are obvious—someone

is killed, caused pain or disability, or is deprived of freedom or pleasure. The indirect harms are less obvious. But deception, promise breaking, cheating, disobeying the law, and neglecting one's duty create predictable harms for individuals, for the community as a whole, and for agents themselves. With an act of deception, for example, the person deceived is caused harm by being led to a false conclusion even if this person does not know he was deceived. The person will make choices or judgments based on the faulty claim. Community is harmed by each act of deception because societal relationships are based on trust and truth. Deceptive acts break down societal trust even if the deceiver is the only one who ever knows. The agent knows herself to be the kind of person who will deceive in these circumstances. As it is natural for us to analogize that others are like ourselves, the act of lying decreases societal trust because the liar suspects that others are liars too. We have learned from Aristotle and our own experience that liars and truth tellers are created by practice and known by their habits.

2. What are the relevant desires and beliefs of the person toward whom the rule is being violated?¹¹ Refraining from providing clinical treatment to a terminal patient, which would generally be morally prohibited, becomes morally permitted (perhaps, even morally ideal) when the caregiver has the dying person's consent. Some people who are dying want to know details of their condition, even if such knowledge causes them pain. It is not justified to withhold this information from these patients. However, other terminally ill patients prefer not to know clinical details. It is justified to withhold information from them with their consent.
3. "Is the relationship between the agent and the person toward whom the rule is being violated such that the former has a duty to violate moral rules with regard to the latter independent of their consent?"¹² The presence of a special relationship can make the difference in whether consent is morally required. The relationship between parents and their minor children and between governments and their citizens can allow for the former to deprive the latter of pleasure or freedom without consent. Parents have the special role-related responsibility to raise their children. Therefore, they have the unique right to control them. Government has the special duty of protecting citizens, so it has the unique privilege of taking money from them in the form of taxes so that it can perform its duties. In contrast, while professors sometimes cause their students pain with honest evaluations or deprive students of pleasure by giving them assignments, their doing so is with the students' consent. Being a student is a voluntary act.

4. "Which goods (including kind, degree, probability, duration, and distribution) are promoted by the violation?"¹³ The goods being promoted provide added justification in cases that are already justified by consent or special relationship, or in cases of justified paternalism.
5. Is the rule being violated toward people in order to prevent them from violating moral rules when the violation would be (1) unjustified or (2) weakly justified?¹⁴ For example, it is morally justified to detain a person on false pretenses when that person is threatening to murder another.
6. Is the rule being violated toward people because they have violated moral rules (1) unjustifiably or (2) with weak justification?¹⁵ The answer to this question justifies punishment, whether in the form of a judge's sending someone to prison or a professor's giving a student an F for plagiarism. It is important to remember that, in these examples, the judge and professor are causing harm. However, causing harm in these cases is justified.
7. Are there any alternative actions or policies that would not violate moral rules?¹⁶ The primary responsibility for all moral agents is to find ways to meet their role-related responsibilities in a way that causes the least amount of harm, even when causing some harm can be justified. This is also the time to make sure that actions are chosen that take into account the needs of those involved as well as their right not to have moral rules violated toward them. It is also time to step back to look at the big picture. Cases for analysis happen in a larger context of ongoing relationships and the network of relationships we call community. Ethically ideal choices reflect all these considerations.

A final consideration is whether the agent could publicly allow the violation. For example, some acts of deception are justified by the ability to make that act known to all relevant parties. Unmarked police cars are an example of justified acts of deception. The police in these cases are disguising themselves as nonpolice. Generally, citizens correctly expect officers of the law to identify themselves as such. It is an example of cheating when police fail to meet this expectation. However, citizens have agreed, at least implicitly, that having unmarked police cars might be useful in preventing people from speeding and in protecting the public.

Analysis of the case using the questions in step two should, minimally, yield a description and explanation of which actions are morally required (by the agent's role-related responsibilities) and which are morally prohibited (unjustified violations of moral rules). The goal is to have the analysis, in addition, yield a list of actions which are morally permitted (actions that don't violate moral rules or violations that are justified) and morally ideal (actions that prevent harms and promote the good without causing harms).

AN EXAMPLE OF SYSTEMATIC MORAL ANALYSIS

In the late 1980s, coproducers Wendy Conquest, Bob Drake, and I wrote and produced a twenty-seven-minute video documentary, *Buying Time: The Media Role in Health Care*.¹⁷ The case presented the story of two patients in need of bone marrow transplants: Sue Jackman, a thirty-three-year-old Vermont resident whose insurer initially refused to cover the transplant, and Derek Annesse, a six-year-old New Hampshire Medicaid recipient. The state had declined to cover his transplant. Both cases came to the attention of local news media, who publicized the cases. Ultimately, Blue Cross/Blue Shield of Vermont agreed to pay for Jackman's transplant, and New Hampshire Medicaid agreed to pay for Annesse's transplant.

Our documentary presented the story of how news media got involved in the reporting of those cases and how the news coverage ultimately changed policy. Because of the news coverage of Sue Jackman, Vermont Blue Cross/Blue Shield became the first Blue Cross/Blue Shield in the United States to cover bone marrow transplants for the treatment of breast cancer. Because of the news coverage of Derek Annesse, New Hampshire Medicaid changed its policy to cover bone marrow transplants for patients under the age of twenty-one. Relevant ethical issues were raised through an examination of the perceptions of state representatives, media professionals, and policy analysts as well as those of the bone marrow recipients and their families and friends. The documentary was an example of a descriptive case presentation, with no normative judgments offered by the filmmakers.

Buying Time was meant to show a real-life dilemma with real patients, families, and professionals struggling hard to cope with tough ethical choices. The best presentations are those made by investigators who have not figured out the "right" answer. I did not attempt to do a systematic case analysis of the issues in *Buying Time* until the documentary had been completed and released. I suspended my judgment, just as I ask students to do when they are researching and writing an ethics case for analysis. The job of the case writer is, first, to be a good journalist, honestly presenting as many perspectives as possible.

What follows is the systematic moral analysis I ultimately conducted of the issues in *Buying Time*. Notes relating to the steps of my systematic moral analysis appear in [brackets].

Compassion and Responsiveness in Professional Ethics

[First, I start with my conclusion.] *Buying Time* provides a good example of journalists doing the wrong thing for the right reasons and of policy makers

doing the right thing for the wrong reasons. It was wrong for journalists to champion the cases of Sue and Derek, but they intervened for what seemed to be a good reason: compassion. It was right for policy makers to provide bone marrow transplants for breast cancer and myelodysplasia, but they did so for a problematic reason: media pressure.

[Next, I begin with the first level of analysis, conceptualization.] It is difficult to get a handle on the ethical problem for journalists in *Buying Time* because it looks like a simple problem of fairness, but it isn't. It is easy to say, "News organizations should be fair. If the mother of another six-year-old child calls these reporters a week later with the same story, well, the newspaper should do a story on that child too." Unfortunately, even if news organizations were willing to publicize and thus help fund-raise for every patient's plight, it wouldn't work. News media cannot take every case of need to the public and get the same public response. Citizens are not going to respond to pleas for help week after week. Providing the same coverage for everyone in the same situation would not be effective. Nor would it be news.

It is difficult to get to the bottom of the policy makers' problem because it seems that the policy makers did the right thing. They responded to public outcry. If we have a representative government (or an insurance company that is responsive to the desires of those it insures), we would think that policy makers should do what the people want. But the problem is in deciding *which* people ought to be represented. To *which* public outcry should officials respond? The rule that policy makers in *Buying Time* seemed to follow was this: you'll get what you need if you can get media attention or if you are lucky enough to have the same kind of problem as the people who got media attention.

Because of Derek Annesse, New Hampshire Medicaid now provides a bone marrow transplant for all people in need of it who are under twenty-one years of age. It sounds as if the state officials are acting fairly because they created a policy to benefit all others like Derek. This sounds less fair, however, when we realize that the money now going to fund these bone marrow transplants is coming out of the same pot that funds prenatal care and standard medical care for other indigent children. Some needy people are being deprived to help other needy people. At the time that Derek's case came to the state's attention, legal services lawyers in the state had been working to negotiate an increase in how much the state paid for prenatal services. No doctors in Derek's hometown were taking in new pregnant Medicaid patients because, at the time, Medicaid was paying less than one third of what practitioners charged for prenatal visits. Just when the state was ready to approve a rate hike for prenatal doctor visits, the Derek Annesse case came to the attention of the governor. In response to the governor's decision to fund

Annesse and patients like him, the state legislature decided they'd better hold on to that \$400,000 in case they got more bone marrow cases.

That's not how government should function, even if the new policy was made in response to public pressure. In some puzzling way, we want a representative government that's somehow collectively smarter than the individual people it represents.

So, it doesn't help in analysis of the ethical issues in *Buying Time* if we classify the problem as a case of unfairness by the government or news media. Neither government nor news media can provide equally for everyone with extraordinary needs. Rather, it is important for journalists to stop acting out of compassion and for policy makers to stop being responsive to cases that get good press. Instead, both journalists and policy makers should do a more complete job of fulfilling their role-related responsibilities. [Now, I have clarified the issue we are dealing with in this case. It is not a case of fairness, which would lead one to an analysis of whether others were wrongly deprived of opportunity because of the professionals' actions. Rather, it is a case in which journalists and policy makers failed to do their duties. I will need to argue for why I make that claim before I can ponder whether the neglect of duty is morally justified or not.]

If journalists are doing their jobs, they provide readers and viewers with the information citizens need to make intelligent decisions for self-governance. It is morally permissible for journalists to do other things such as provide movie reviews and the crossword puzzle, but that's something they choose to do on top of what's morally required. Journalists are morally required to do the special duty associated with the job they have chosen.

If journalists were doing their jobs in telling us about bone marrow transplants, what would they report? What do citizens need to know about such things?

Citizens need to know about bone marrow transplants, that they work and how they work. And they need stories about how such discoveries are made. Citizens need to know how experimental or investigative procedures get funded. If insurance companies won't pay for this kind of clinical research, then who should? If it comes from the government, citizens need to hear stories about which kinds of research get chosen to be funded and which kinds do not.

Those were not the stories told by the journalists in *Buying Time*. Journalists did raise questions about the role of policy makers—in government and in insurance companies—but the questions they asked moved the public away from policy discussion.

Journalists asked, "How can you let this little boy die?" They didn't ask, "How are the decisions made about how to spread out that limited Medicaid

budget?" They didn't ask, "Why is it so limited in the first place?" If they had asked those questions, the focus would have been on how the policy makers could best do their duty. [Here I detail the harms caused by journalists failing to do their duty. The harm is that citizens were not informed that policy makers failed to do their duty.]

One duty of policy makers is to delineate a publicly known policy for how they distribute the public funds they control. The policy makers did not do that. Citizens were harmed by being deprived of the freedom (opportunity) to make educated decisions regarding their own self-governance, as they were not informed of governmental failure.]

Like journalists, policy makers have duties—role-related responsibilities—whether they are medical directors of insurance companies or state administrators of public health funds. One of the duties of government, as described by Gert,¹⁸ is to prevent the suffering of harms (death, pain, disability) by its citizens. The state prevents suffering in a number of ways: enacts laws, establishes police departments, appoints judges to help enforce those laws, and builds jails. The state also supports medical research and the creation of medical property by funding research to help keep its citizens from suffering pain, disability, and death. The state taxes individuals to support the governmental duty.

It is an unanswered question of how aggressively the state ought to be working to prevent medical suffering by its citizens. Those who argue in favor of national health care conclude that the state has a moral obligation to provide health care as a way of preventing death, pain, and disability for its citizens. But regardless of the question of national health care, one can argue that policy makers have a duty to address the needs of deprived persons. A deprived person is someone who gets less than what we generally think every citizen should have.¹⁹

Whether a particular person should be included in the class of "deprived people" may be a matter of disagreement among rational people, but we can agree on some citizens that would surely be in that class. For example, homeless children living in poverty are examples of the class of deprived persons.

The duty-related question for policy makers in *Buying Time* is, then, two-fold.

1. Are Derek and Sue deprived persons?
2. Are the policy makers shirking their duty toward other deprived persons in responding to Derek's and Sue's needs?

My answer to both questions is, "I don't know." The reason I don't know is that the state and the insurance company, respectively, neglected an impor-

tant duty—that of developing defensible public criteria for how limited resources are to be distributed. The development of such criteria rightly belongs with the legislature—the people's representatives. In the case of *Buying Time*, the governmental decision was made not by the legislature but by the governor's office, in response to media pressure. Pressure was applied to the executive branch and it responded—by taking money that would have taken care of other needy people. This makes for neither a just nor a good government. By analogy, the same legislate-by-pressure rule applied to the insurance company. [Here I have established harms caused by policy makers' failure to do their duty. The harm caused is an unjustifiable policy that results in some people being harmed (caused pain, death, disability) when others in morally relevant similar situations are not. I also point out here what cannot be analyzed and why.]

Journalists, of course, had a corresponding duty to tell such stories.

And what if they did? If journalists tell these less dramatic policy stories, is it then okay for journalists to talk about individual people in need? I think not. [Here I move into the justification phase by examining alternative approaches and explaining why one approach is morally permitted and another is not.]

Social institutions, of which journalism, insurance companies, and government are instances, are different in a morally relevant way from individuals. Individuals should be compassionate; institutions ought not. There's a subtle irony that surfaces when news media act for the benefit of a single individual. In both Sue's and Derek's cases, we had journalists who were appalled at the lack of response from policy makers who could have helped these individuals in need. And they were right to be appalled. It's hard to justify a government or an agency denying treatment without compelling evidence that the denied treatment differs in kind from treatments allowed. But when journalists used the power of the press to bring about care for Sue and Derek, they became institutions that participated in the same uneven treatment they sought to expose. The assistance provided to a few does not make up for the harm caused to others by the intervention. [Here I described the harms caused, balanced against the harms avoided.]

The journalists' work implicitly asks, "How can these powerful institutions care for some and leave others in similar situations to die?" But when news media do the Sue story and the Derek story and ignore the Luther story and turn down the Nancy story, the news organization becomes just one more of those powerful institutions that care for some and leave others to die. We've already established that news organizations cannot treat every patient in similar situations in similar ways. Caring for individuals in the community is not the role-related responsibility of news organizations, as it is for governments

or insurance companies. But the press is a powerful social institution, and it has a responsibility to use its power judiciously. When journalists identify an individual in need, with the clear implication that he or she will be directly assisted through news coverage, there should be a unique characteristic that can create a morally relevant difference from other similar cases of need. What makes the story "news" is not simply the identification of a particular person in need.

Like most ethical problems, *Buying Time* is an example of good people making the wrong decisions, often with the best of intentions. From the journalistic side, it's an example of what happens when good intentions get in the way of people doing their jobs. [My conclusion is that it was not morally justified for policy makers or journalists to neglect their duties in this case. Consider the SMA questions for justification:

Question 1: Which harms are caused by the violation of the rule? Which harms are avoided? Which harms are prevented? The harms caused include harm to the citizens from policy makers who are making policy without clear justification and from journalists who are failing to tell citizens the true news stories. Citizens are being deprived of the freedom (moral rule four) to make educated decisions regarding governmental policy. The harms being avoided are those to the two patients who are the subjects of these stories. The news stories as written are helping them avoid pain and death. But notice that both institutions (government and journalism) have primary responsibility to create policy that benefits the community as a whole. Neither institution would work effectively if it failed to meet institutional responsibilities in the hope of benefiting particular individuals.

Question 2: What are the relevant desires and beliefs of the person toward whom the rule is being violated? The primary rule being violated by journalists and policy makers is "Do your duty." Citizens (to whom journalists and policy makers have primary duty) would not want to be uninformed or to have unjust policies enacted.

Question 3: Does the agent have a duty to violate rules with regard to citizens? There is no special relationship to consider here between policy makers and Derek and Sue that does not exist between policy makers and all constituents. There is no special duty that would justify the deprivation of citizens' knowledge and choice.

Question 4: Which goods are promoted by the violation? Potentially lifesaving treatment for Sue and Derek and those clinically similar, but the lack of lifesaving treatment for those deprived by the policy to fund Sue and Derek and clinically similar cases. While it is always sad when an individual does not get life-sustaining medical care—and ideally, we would live in a world

where that would not happen—the community as a whole is best served by social institutions with policies that allow for equal access to public goods.

Questions 5 and 6 are not relevant to this case, as the social institutions are not acting in response to other moral rule violations.

Question 7: Are there alternatives that do not violate moral rules, that recognize needs, and that focus on the picture bigger than the individuals in this case? There are, indeed, preferable alternatives to the journalistic action taken in publicizing these two cases. Stories could have been written that addressed the larger issues and focused policy makers' and citizens' attention on creating just policies. Policy makers could have enacted policies based on an analysis of aggregate public good rather than on media pressure and could have engaged citizens in deciding what types of medical care will be paid through public or insured funds and which will not. Individuals are not being treated unethically if some who participate in a publicly known process, such as lining up to get tickets to a performance, are denied service (e.g., because there is no more seating). Similarly, individuals who are denied funds for certain treatment because the community has determined that it is better overall for limited funds to be committed for some purpose but not another are not being treated unethically. But if the process is not determined in a justified way, it is not justified for individuals to be denied.

LIFE AFTER THE MORAL MISTAKE

Buying Time provides a good example of how one would expect most case analyses to turn out: There was no inherent evil in the case, but there were professional mistakes. These mistakes were ethical in nature because the policy makers and journalists failed to meet their role-related responsibilities. They failed to do their duties. When one fails to do one's duty, even out of ignorance rather than intention, that person has made a moral mistake. If we had been the principals in *Buying Time*, now recognizing that we made mistakes, though we were well intentioned, what follows? An agent in such situations should consider the following:

1. Could I have made different decisions? If the agent is unwilling or unable to realize that she could have made different choices, she cannot recognize that she has made a moral mistake. Denial of alternative possibilities precludes moral growth.
2. If I had been a journalist or working in the insurance company or governmental agency, how could I have encouraged my organization to make better choices? The agent should recognize his power to bring

about change in the institution, if the problem is at an institutional level. Perception of oneself as a victim of circumstance, unable to affect change, also precludes moral growth.

3. How can I formulate a plan of action to make a difference the next time this issue comes up? Recognizing a moral problem doesn't do much good if the agent finds herself or the organization simply repeating the violation.

THE IMPORTANCE OF RECOGNIZING MORAL MISTAKES

I have argued throughout this book that the primary reason for ethics education is for those engaged in the study, teacher and student alike, to be motivated to become increasingly better decision makers about ethical issues. Therefore, it is vital to recognize moral mistakes when they happen. Far too often, we rationalize or excuse our mistakes rather than accept them as signs of ethical failure and opportunities for further growth.

What follows is a list of excuses commonly used to avoid recognizing that one has made a moral mistake:

1. *Other people do it.* Recently, I explained to students in my professional ethics class why I required them to get Institutional Review Board (IRB) clearance for projects involving interviews or surveys. The students, understandably, wanted to get on with their research. Their argument for why they should not have to seek IRB approval was that other professors had not required them to do so. Their attempt to justify unethical behavior by pointing to the unethical behavior of others led to a fruitful discussion. The students weren't necessarily convinced that I had good reason for requiring them to get IRB approval, but they were able to see that using the argument that other people get away with it did not provide a basis upon which to advance their argument.
2. *My boss told me to do it.* This rationalization is a variation on the excuse that other people do the unethical act. The reasoning here is that if one is following the direction of a superior, the person committing the act is not responsible for the consequences. However, as long as the agent is not the subject of coercion or threat, moral responsibility is not transferable from actor to authority. It is easy for people to accept that they are independent autonomous agents until they would prefer not to accept the responsibility of their actions. Then the heteronomous influ-

ence of others, particularly of authority figures, provides an easy-to-use excuse. But it is yet one more form of denial.

3. *Moral rules are nice in theory but don't work in practice.* Philosopher John Dewey might have made this point best in his observation that people wave the banner of principle but march to the drummer of expediency. While we can easily come up with examples that prove this to be true, it doesn't follow that the principles or rules should be ignored. We should not expect humans to consistently behave in accordance with what is morally required, permitted, or ideal, but we should expect them to recognize rather than excuse those mistakes. We should expect ourselves and others to strive to do the best that we can.
4. *I didn't mean to hurt anybody.* Often people commit harms unintentionally. But when harm could be predicted or when harm is the result of an agent's neglecting his or her role-related responsibility, the agent is responsible for harm caused, even if that person had the best of intentions. The lack of intentionality works to mitigate the level of one's responsibility, but it does not deny responsibility.
5. *No one knew.* If ethics is a first-person activity, then the intentions, motivations, and outcomes are, indeed, known to the person who matters most—the agent. The lack of external consequences for an act is not the basis upon which one should judge the moral permissibility of his or her behavior.

NOTES

1. Edited and abstracted from L. Roberts, "Misconduct: Trial by Fire," *Science* 243 (1991): 1344–1347.
2. This chapter does not provide the theoretical backing for the steps included in the SMA. There is not time nor space here, or in a semester-long practical ethics class, to argue for this process over others. However, as few people have a conscious process, this SMA provides tools that individuals can use and that allow group discussion about a case to take place. Many group discussions about ethics fail because participants are not using terms in the same way or because they do not agree on what is ethically relevant. Once my students are able to use this SMA effectively, they are free to challenge it or argue for alternative methods of consideration.
3. The impartiality required by Kant is necessary to conduct the SMA included in this chapter. Every person deserves the same basic moral protections (don't violate moral rules in regard to me without adequate justification). These considerations are specifically addressed in questions 1–3 of the conceptualization stage. The steps regarding justification in this chapter (and specifically questions 3–5) address goods and should be considered in Mill's aggregate sense. Question 7 is Aristotelian in that it asks us to go beyond what is morally permitted and to seek an action that might be morally ideal—to act as our moral

hero might. This question also asks us to consider the needs of those involved, relationships, and community. Thinking of a case from a basis of needs and with consideration of the bigger picture can reveal alternatives that are not visible from close analysis of the specific case alone.

4. Bernard Gert, *Morality: Its Nature and Justification* (New York: Oxford University Press, 2005), 24.
5. This list, and all application of Gert that follows, has been edited, interpreted, and enhanced. Its inclusion does not imply Gert's approval of my changes and additions.
6. This includes emotional pain.
7. Freedom is meant to include opportunity to act. Failure to disclose information can deprive people of opportunity to act knowledgeably.
8. Cheating means that one fails to meet others' reasonable expectations of him or her.
9. Gert, *Morality*, 159–219.
10. Gert, *Morality*, 227.
11. Gert, *Morality*, 228.
12. Gert, *Morality*, 230.
13. Gert, *Morality*, 230.
14. Gert, *Morality*, 231.
15. Gert, *Morality*, 232.
16. Gert, *Morality*, 232.
17. As an illustration that there is no obvious conflict between self-interest and ethics, the video documentary *Buying Time* is available for purchase or rent from Fanlight Productions, ISBN 1-57295-133-8.
18. Gert, *Morality*, 364–371.
19. Gert, *Morality*, 371–372.

Chapter Seven

A Bridge across Cultures

Henrietta Mann, then professor of social work at the University of Montana, faced thirty-one undergraduate students enrolled in her Native American Religion and Philosophy class one day in the 2000 spring semester. She had invited me in to observe an approach to teaching practical ethics that was different from that used by those of us trained in Western philosophy. Professor Mann was dressed in a clay-colored shirt, hand painted with Native American symbols. Her hair, short-cropped on the sides, sported a waist-length braid in the back. At 66, she was an elder in her tribe, the Southern Cheyenne. “I am finally a woman of wisdom,” she told the class with pride. “You don’t get there until you are 65.”

“Sweet Medicine and Erect Horns,” she said, as she wrote the names on the board. “These are our prophets. They brought us our ceremonies and our teaching. They show us how the values of the people are reflected in our ceremonies. They gave us the ceremonies to remind us of the four substances used to create the world.”

This class didn’t look or feel like the ethics courses I had taken or taught, yet it was one of the forty-two free-standing courses at the University of Montana approved to provide students with upper-level general-education credits in ethics and human values. At the University of Montana, the general-education criteria were purposefully written broadly enough to encompass ways of examining ethics that transcended the content and processes of dominant society. The students in the class, many of whom appeared to be Anglo, listened intently to Professor Mann’s descriptions and explanations.

“The first day of the Sun Dance, we make the rattles,” she said.

“The Cheyenne traditionally know that it is time to prepare for Sun Dance when the leaves of the cottonwood tree curl up toward the sun. Now, to accommodate the workday requirements imposed by the dominant culture, the five-day celebration begins on the Wednesday before the weekend closest