

Good Ethics – a Win-Win for Aged Care

ACS Conference 22nd November 2005

Good ethics means a win-win for aged care. What does this mean? There are two broad and valued ideals evident in this statement. One is the just care of the aged according to sound ethical principles, and the other is the running of a good business smoothly, efficiently, financially buoyant and perhaps with the possibility of expansion. It doesn't necessarily matter whether that business is a for-profit one or a not-for-profit one, it will still have to operate well and survive in the market place.

It is a misunderstanding of ethics that it is a balancing act in which ethics are balanced against what you want to achieve, and sometimes you just have to sacrifice good ethics for success. When it comes to, say, hospital or university ethics committees, there is a common view that they are the last hurdle to be cleared. It's as if ethics is the extra bit on top, a bit like the icing on a bun but seldom appreciated in the same way. In reality ethics should be more like the yeast in the bun that gives it the right texture and composition. Ethics, properly viewed is foundational to human fulfillment, flourishing and happiness. It is the framework, structure or permeating presence that puts things in their right place and perspective with one another. We can't do without ethics, for human beings are fundamentally constituted to behaving as moral agents. Some have even gone so far to say that the most basic question one can ask is an ethical one – how should I live? Whatever values one lives by, be they constructive or destructive, they will always remain values. There is no such thing as value free when it comes to human decisions about which is the right or wrong way to go. In fact to suggest that there is such a thing as value-free, is itself a value-based statement.

So, how can good ethics be a win-win for aged care?

The first point to make is that good ethics and good business need not be in conflict. Sound ethics based on a whole range of important principles, or perhaps more correctly a framework for human flourishing will ultimately form the best basis for business to thrive. Ethics guides us in the way people behave towards one another, and business is very much about how people behave towards one another.

In a 2004 survey by Booz Allen Hamilton and the Aspen Institute, a non-profit and nonpartisan forum focused on values-based leadership and public policy, it was revealed that most companies believe values influence two important strategic areas – one of which is relationships (the other is reputation).

Some simple examples about how good relationships are good for business may help secure the point. Any shop owner who does not honour the simple ethical principle of respect for persons when dealing with customers will soon find that customers will go elsewhere and business will suffer. What may simply be called treating people with the dignity they deserve will increase the likelihood that customers will keep coming back. After all, everyone likes to be treated well.

Likewise, and conversely, management that deals with staff by shifting goalposts arbitrarily, ignoring prior agreements or making arbitrary decisions without regard for staff well-being will soon find staff wanting to move on or at the least resisting their unreasonable demands. In this case the virtue of integrity, a characteristic which is a basic demand of good ethics, here underscores good business practice.

One might also add that the golden rule that proposes treating others in a manner consistent with how we might want to be treated is a value underlying these two examples.

Another key finding of the Aspen Institute survey was that top performers connect values and operations.

Companies that report superior financial results emphasize such values as commitment to employees, drive to succeed, and adaptability far more than their peers. They are also more successful in linking values to the way they run their companies: A significantly greater number report that their management practices are effective in fostering values that influence growth, and executives at these companies are more likely to believe that social and environmental responsibility have a positive effect on financial performance.¹

Now one might be somewhat cynical and say that the increasing commitment to values on the part of corporations is really just a response to many of the high level breaches of ethical conduct that have resulted

¹ Reggies Van Lee, Lisa Fabish & Nancy McGaw, The Value of Corporate Values. Strategy + Business 39. See http://www.strategy-business.com/media/file/sb39_05206.pdf

in litigation, and companies are therefore simply protecting themselves by focusing on ethics. That may be partly true, however, a closer look at what some of the companies who are doing really well are saying, reveals a genuine commitment to values because they are convinced that good ethics means good results. For example,

France's Bongrain, one of the world's largest cheese companies, doing business in 100 countries, is convinced that the importance of good values to a company's performance cannot be overestimated. "I see the value of values every day," says division head Thomas Swartele. "The communication, the innovation, the adaptability, the coherence: Those are the value of values. Because you are approaching markets, problems, and business opportunities from a shared basic belief system, a values-based business approach becomes extremely efficient and powerful."²

One would also hope that there is a commitment to good ethics because that is simply the right thing to do. It would be fair to say, that the majority of people, by and large, do want to do the right thing. To use a seldom-used word, another way of saying this is that most people want to display at least some of the basic virtues.

It is, of course, not enough for a company to simply possess a values statement or a code of ethics – it must actually be serious about implementing it.

Martin Carver, CEO of Bandag ... a company base in ... Iowa ... says, "Loads of companies will tell you they have values ... more than likely they've got their values plastered all over the walls. But very few companies clearly see the correlation between success and values, so they never really embrace, define, and then drive them into the organization with any real passion."³

It is almost always easier to speak than to act.

Most of these examples relate to companies that are in the business of making a profit on a product in the general marketplace. They do not necessarily have the same sorts of issues that arise in caring industries like care of the aged. There are some important differences between aged care and any other business, or at least there should be. In many respects it would be more accurate to view the aged care industry as a subset of the healthcare industry. If that is a fair way to proceed, then certain common characteristics of healthcare and aged care mean that somewhat firmer ethical principles must hold.

Why is that the case? Primarily, both are dealing with human beings who are often in a vulnerable position, and it is mainly because of this, it has been argued, that higher ethical requirements hold.

Part of that higher ethical requirement has been interpreted to mean that people have a right to care, specifically in relation to health; but given the health issues in later life, this might apply similarly to aged care. Furthermore, different systems of government will extend that right to differing extents. For example, in the UK and Australia the right to healthcare is recognized in a sense that does not pertain to the same extent in the US. A consequence of a diminished recognition of the right to healthcare is that more people fall through the gaps and end up without appropriate care, and usually this is the poor or otherwise disadvantaged.

How the aging process is viewed impacts upon the caring enterprise. Meredith Minkler talks about,

... putting a human face – and a human body and spirit – on aging and growing old. This ... humanistic orientation ... critiques ... the evermore technical and instrumental orientation of academic gerontology, within which the problems of later life are treated with scientific and managerial efficiency, but with no grasp of their larger political or existential significance. The last stage of life is progressively drained of meaning.⁴

A right to health care, or as I am suggesting here to care of the similarly vulnerable inasmuch as health care and aged care intersect, is based on the idea that such care concerns goods that all people require in order to pursue their various life courses. This right is not about obtaining discretionary items on which different people will place different priorities, but instead is about something basic that underscores the pursuit of

² Reggies Van Lee *et al.*, *Op. Cit.*

³ Reggies Van Lee *et al.*, *Op. Cit.*

⁴ Meredith Minkler, In: Introduction to *Critical Gerontology: Perspectives from Political and Moral Economy*. Ed. by Meredith Minkler & Carroll Estes, Baywood, New York, 1999, 2.

those other discretionary items or interests that vary from one person to another. Health is indeed so basic that without it there exists a disadvantage that limits pursuit of other goods.

Returning for a moment to the US, Bulger and Cassel have this to say,

Because the United States as a nation has not yet realised the right of equal access to healthcare for all its citizens and embraced the concept of healthcare as a social good, there is no consistent underlying covenant between the society and these institutions. A social covenant would lead to some kind of centralized planning for healthcare needs, and institutional missions would flow from this. Instead, the United States relies on marketplace values combined with a variable and often unreliable “safety net” of public institutions. It has proven to be very difficult for any of these institutions to live up to their traditional charitable based institutional values and at the same time survive the economic and social realities of US culture.⁵

To the extent that healthcare or care of the aged in Australia has or might become more like that in the US, this problem may become more evident here. What these writers are suggesting is that producing a positive bottom line – financially - has become more of a priority. Perhaps too much of a priority. They go on to say,

Some not-for-profit institutions have extraordinarily idealistic community-service orientations, expressed through their written missions and goals. These orientations have sometimes become so consumed by the direction provided by bottom-line oriented, high-price management teams that a variety of less-desirable and short-sighted practices have been implemented to produce a positive bottom line.⁶

Some of these practices include, “salary incentives ... based primarily upon financial performance”, “... manpower investment strategies determined primarily by their potential for high earnings”, “transfer policies that favor keeping patients whose care will add to the bottom line”, and “different patterns of care based on whether or not patients possess ample insurance coverage or other financial resources.”⁷

Carroll Estes, writing in 1999 in *The Aging Enterprise Revisited*, expands on these problems in the nonprofit sector in greater detail. She says,

Overall changes in local service delivery include the weeding out of the weaker, less competitive nonprofit community-based agencies; restructuring and concentration within and across provider industries, with independent free-standing agencies facing especially tough survival questions; dramatic growth in the number and influence of for-profit providers, and blurred boundaries between nonprofit and proprietary service sectors.

The cultural revolution in non-profit service delivery has imposed a new set of values on community services: winning in price competition; quick turnover of clientele; policies and strategies to provide the greatest number of service units at the lowest cost; the unbundling or selling of single services to increase reimbursement; eliminating unprofitable services regardless of need; attracting private-pay clients; and avoiding the ‘adverse selection’ of no-pay and low-pay clients. These values were more familiar to the medical care industry than to traditional voluntary social service providers.⁸

Bulger and Cassel summarise their analysis in the following way.

The main lesson from these examples is that the pressures and forces inherent in the competitive market-oriented environment that has become dominant since the early 1980s have served to overtake the charitable values and philosophies that were central to the creation of many of these institutions.⁹

Those within the aged care industry here in SA will be in the best position to determine how much such a shift in values and philosophies has also taken place here.

⁵ Roger J. Bulger and Christine K. Cassel, Healthcare Institutions. In: *Encyclopedia of Bioethics*, 3rd Edition, Ed by Stephen G. Post, Vol. 2, 1087-1091.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Carroll Estes, *The Aging Enterprise Revisited*. In: *Critical Gerontology: Perspectives from Political and Moral Economy*. Ed. by Meredith Minkler & Carroll Estes, Baywood, New York, 1999, 138-9.

⁹ Roger J. Bulger and Christine K. Cassel, *Op. Cit.*

What are or were those values and philosophies that may have become supplanted by others? And if indeed the caring enterprise has moved away from charitable values and philosophies, what is their nature? What charitable values and philosophies are we talking about?

What kinds of foundational human values form the core values from which sound ethics flow, in particular with respect to the caring industries?

Perhaps the best place to start is to acknowledge the inherent dignity of the human person, and then move on to a framework of applying values that uphold that dignity. Dignity in this sense is a strong term that gives all members of the human family a fundamentally equal status, and is in reality the basis of human rights. Without recognition of that inherent dignity, at different times and places all manner of abuses have occurred.

This notion of dignity might also be related to the idea of the sanctity of human life, that places a high value on human life itself and, when honoured, provides protection, particularly to the weak, frail and disabled.

There have been times in the past when inherent dignity has been denied to certain groups of people, and in particular, mischievous use of the term 'person' has served to exclude some from moral consideration.

Indeed, down through history there have been circumstances when personhood was denied to certain groups of people, usually for the purpose of withholding their basic human rights. For example, the *Canadian Indian Act 1880* states that "the term person means an individual other than an Indian". Within 5 years this changed. The *Canada Franchise Act 1885* states that "[a person] is a male person, including an Indian and excluding a person of Mongolian or Chinese Race."

In the United States, prior to the abolition of slavery, legal status as persons was denied to slaves. This was exemplified in the case *Dred Scott v Sandford* where Chief Justice Taney of the United States Supreme Court excluded the Negro slave Dred Scott from personhood.¹⁰ Fortunately those days are gone. As Fleming and Hains note:

The attempts to disenfranchise some members of the human family from moral consideration has led to intolerable abuses of human rights ...¹¹

It should come as no surprise that the human rights movement arose from the ashes of World War II with all its horrors, those that had occurred outside of actual warfare as much as those that had occurred within it. It was almost as if the human community, shaken to the core, decided that it would do all in its power to never let such things happen again, and so set out to articulate its most fundamental agreed values in written form.

Therefore, as a foundational starting point, the human rights documents begin with several affirmations that refer to human dignity and personhood, and in effect these documents represent an agreement or consensus of the global human community.

This agreement can be found in many places, but most notably in the *Universal Declaration of Human Rights 1948*, which rejects discrimination against any members of the "human family", and requires the "recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family." [Emphasis added].

Article 2 asserts that "*everyone* is entitled to all the rights and freedoms set forth in this declaration, *without distinction of any kind* ..." [Emphasis added]. Article 6 specifically deals with the issue of persons by stating that "*Everyone* has the right to recognition everywhere as a person before the law." [Emphasis added]

In some respects this may seem like stating the obvious or preaching to the converted, but it must be said that this idea of inherent dignity and indeed the sanctity of human life is somewhat under attack. There are significant numbers of philosophers and bioethicists who consider the idea of personhood as separate and superior to simply being human. They think that one can be human but not necessarily have the requisite characteristics of personhood. This is an idea that equates moral value with personhood, and defines

¹⁰ "Prior to the American Civil War and the antislavery amendments, such decisions as *Dred Scott v Sandford* relegated slaves to the legal status of nonpersons in spite of clear biological evidence of their humanity." John Warwick Montgomery, "Abortion and the Law: Three Clarifications", in *New Perspectives on Human Abortion*, eds Thomas W Hilgers, Dennis J Horan, and David mall, (Frederick, Maryland: University Publications of America, Inc., 1981), 284. Cf *Dred Scott v Sandford*, 19 Howard 393 (1857) and the *Slavery Convention 1927*, Art 1.

¹¹ JI Fleming and MG Hains, What Rights, If Any, Do The Unborn Have Under International Law? *Australian Bar Review* November 1997, **16(5)**: 181-198.

personhood as dependent upon functionality and capacity. Unfortunately, on this count, some members of the human family might be considered out rather than in, and this has particular bite when human life is vulnerable, weak and frail, as is so often true of the elderly.

The danger is that defining human beings on their capacities or level of functioning rather than on their inherent dignity and membership of the human family consigns some to a lesser moral status and in the end influences how we treat them.

One of the key proponents of the idea of personhood as a way of defining human beings is Professor Peter Singer, now the Ira W. DeCamp Professor of Bioethics at Princeton University's Center for Human Values. Singer has been most vocal in moral debates about the start and end of life, basing his conclusions on a utilitarian theory that has as a key component the connection between personhood and moral value.

Regarding Singer's views, bioethicist Anthony Fisher makes the following comment.

For Singer, to be a person means being self-conscious, aware of oneself, having plans and projects, desires and interests to be satisfied, being rational, linguistic and interesting – indeed being rather like a University professor. ... Singer's psychologising of personhood mistakenly reduces person to personality and once again impoverishes rather than enriches our moral discourse.¹²

On Singer's personhood criteria, Alzheimer's patients and others similarly vulnerable might be considered somewhat less persons than others without such a disabling condition, and on this view therefore possibly less deserving of fair and just treatment.

In contrast, membership of the human family, by being based upon inherent human dignity, affords protection to the able and disabled alike, and indeed any whose faculties are in any way compromised. Within this understanding, to be a member of the human family is sufficient to be a person.

At face value talk about personhood and having individual rights might sound individualistic. But on closer scrutiny it becomes obvious that there is strong recognition of the correlation of persons to communities. In fact, the idea of the human person recognizes that we cannot exist apart from the community. Ashley and O'Rourke put it eloquently.

The correlation of person and community is not merely superficial. People need a community not merely because it supplies them with certain instrumental needs (food, housing, clothing, defense), but because their personalities can be fulfilled only in the act of communication and sharing. If personhood is embodied intelligent freedom, it can be fulfilled only in the free act of knowing and loving. Yet, in the whole universe the most complex, varied, integrated, and beautiful beings are persons; and it is only in them that the desire to know and love can find full play. All of science's efforts to understand the universe culminate in exploring the mystery of human persons who, with their complexity, freedom, and potential for intercommunication, are the highest outcome of the evolutionary process.¹³

Now on the basis of the inherent dignity of the human person, and its possession by all members of the human family, including the weak and frail, what are the values that might be useful for forming a basis for care of the aged, and at the same time form a basis for operating a good business.

These values might be described as self-evident goods. They are, in the words of Budziszewski, the truths "we can't not know". In a sense they are written on the human heart and therefore "natural". Not natural in the sense of natural versus artificial, but natural because they are recognizable and characteristic of human nature. Regardless of how they got to be there, they are there.

But not everyone agrees.

Budziszewski puts it well when he says,

Once upon a time it was possible for a philosopher to write that the foundational moral principles are the same for all ... Today all that has changed. A thinker ... can no longer expect

¹² Anthony Fisher & Tracey Rowland, Review of "Moral Theory: a Non-Consequentialist Approach; Applied Ethics: a Non-Consequentialist Approach" by Daniel Oderberg, *Bioethics Research Notes*, 14(3): 25-26, 2002.

¹³ Benedict M. Ashley & Kevin D. O'Rourke, *Health Care Ethics. A Theological Analysis*. 2nd edition, Catholic Health Association of the United States, St Louis, 1982, 7.

most people to agree. In fact he must expect most people to disagree. He will be told that the foundational moral principles are not the same for all ... They might not even be right for all, and they are certainly not known to all.¹⁴

He goes on to say about moral knowledge,

... not only was moral knowledge universal, but the determination to play tricks on moral knowledge was universal, too. A law was written on the heart of man, but it was everywhere entangled with the evasions and subterfuges of men.¹⁵

Perhaps the rise of the human rights movement, and its near universal agreement, is reflective of that universal moral knowledge, and a recognition that basic agreed values are the basis for human flourishing.

It is clear from Budziszewski's comments about today's prevalent moral relativism, that he thinks that relativism is flawed, even viewing those he calls the moral skeptics as "supposed skeptics ... playing make-believe, and doing it badly."¹⁶

I agree with Budziszewski that moral relativism is flawed, and in keeping with that view, ask the question, "What are the basic goods or values that we can agree upon?" What can we all call good? What values can we say yes to?

One might be knowledge itself, that includes a commitment to the truth. There is little more basic desire than wanting to know the truth about something, and few who want to be deceived. And the desire for knowledge is a basic human good that is evidenced, for example, by our commitment to education.

Another value would be trust, which is clearly a basic requirement for the flourishing of good relationships. Without it, relationships suffer. We would rather have trust than mistrust, even though the latter is everywhere.

Human life itself is the most basic value and when it comes to human rights, it is the right to life from which all other rights flow. Without life itself there is little point in upholding other values. Furthermore, our commitment to this basic value is evidenced by our laws. This commitment to the value of life itself is critical for the protection of the weak and frail, and any erosion of the good of life puts the vulnerable at risk first.

It is notable for example that the legal permission for euthanasia in The Netherlands, whilst initially only to be permitted upon request and for the terminally ill in unbearable pain, is now permitted for 12-16 year olds and possibly soon for newborns. Moreover, for those euthanasia cases that have been reported under the law, the majority have been for those who did not request it, because they could not by virtue of incapacity. The legislative permission to take human life for those that wanted it, put at risk others in the community. This is partly why human rights are couched in terms of inviolability and inalienability. Inviolable in that they ought not be violated, and inalienable in that they ought not be given away.

For example, someone wanting to sell themselves into slavery would put at risk others in the community, as slavery as a concept would be strengthened and a result might be encouragement of any slave trade.

Within the context of the value of life itself we can include the values of fertility, health and safety. Whilst health is clearly basic to enjoying the other values, it is only partially within human control. It is clearly highly regarded as a value or good, and we can see that evidenced by ever-increasing health budgets, but resources are not a bottomless pit and limitations are real. The commitment of any one community to the good of health will always be a tension between the high regard for health and the available resources. Accepting the reality of limitation is par for the course, which leads to problems of distributive justice and who receives what out of a limited budget. The point is, that that limitation does not mean that practices which are unethical must occur. It is possible to behave in an entirely ethical manner with real limitation. The fact that there exist difficult decisions based on limited resources is a challenge, but one that can be met with regard to all of the best values that spring from recognition of human dignity.

Another basic value is the good of freedom, sometimes expressed as self-determination or autonomy. This value is clearly not absolute, and it has been widely argued that it has assumed too great a role in bioethical decision-making. What any one individual or group of individuals wants cannot simply trump other

¹⁴ J. Budziszewski, *What We Can't Not Know: A Guide*, Spence, Dallas, 2003, 3.

¹⁵ *Ibid.*, 4

¹⁶ *Ibid.*, 3

considerations, especially when the desire would violate other values. Indeed it is really one of the working rules relating to fundamental values that basic goods cannot be traded off one against another.

We can see this again, for example, in the euthanasia debate, where the permission for euthanasia is often framed by proponents in terms of choice or autonomy, or even as a right to die, yet clearly the most basic value of life itself is violated in the process. If a community permits the violation of the basic value of life in this way, within its legislative process, it puts at risk the value of life, and indeed the right to life of all other members of the community.

Just briefly, other basic values include integrity which can be understood both as wholeness or totality, and as authenticity, which might be understood as being true to oneself or acting in accordance with a well-formed conscience; equity and substantive fairness which can be viewed at the level of personal relationships or more broadly in terms of the just distribution of resources in the caring industries; courage including the ability to stand up for these values in the face of difficult circumstances or strong opposition; and wisdom, which we often wish we had more of.

In addition to the recognition of fundamental shared human values, there are a series of principles that assist in the realization of those fundamental values. They are like a set of guidelines that give a framework for the values, or as they might be described, self-evident goods.

The first, and most obvious principle is not to violate the espoused values. Second, not to violate any other value while attempting to realize a value. In other words, one value cannot be used to work against another. For example, it is no good upholding individual freedom or autonomy to violate health. Third, to act with reciprocity and sympathy that involves solidarity with other human beings. Fourth, to use the Golden Rule – to do to others as you would have done to you - as a guide when deciding upon a particular course of action. Fifth, the principle of double effect. This principle will come into effect in difficult moral decisions involving foreseen but unintended consequences of an action. For example, a doctor may increase the dose of painkillers to relieve pain knowing that there is a possibility that life will be foreshortened. But this is only legitimate where there is no intention to shorten life. Sixth, to observe the precautionary principle, which operates as a brake when outcomes are largely unpredictable. Seventh, to respect persons in each and every act. And finally, to always act according to a well-formed conscience.

I would like to finish with brief reference to the application of basic values expressed as rights within the aged care sector.

In 2002, Southern Cross Bioethics Institute, in collaboration with the Commonwealth, undertook to develop a Code of Ethics for Aged Care. The Code was based upon fundamental human values expressed as rights and sought to establish the minimum standards that should pertain in aged care facilities. The Code came with a guide that expounded on the Code and a more detailed set of model protocols that were designed to assist with day to day ethical issues. The model protocols at this stage remain unpublished.

The Code reads as follows.

The Aged Care sector recognizes the need for the protection of fundamental human values in the context of the common good of all who deliver and receive residential Aged Care services.

As partners in the delivery of residential Aged Care services, providers recognize that these fundamental human values derive from the inherent dignity of the human individual.

In accordance with our expertise and in the context of our relationship to residents we commit ourselves to protect the following rights of residents:

1. the right of individuals to be treated with respect;
2. the rights of the individual to life, liberty and security;
3. the right of individuals to have their religious and cultural identity respected;
4. the right of competent individuals to self-determination;
5. the right to an appropriate standard of care to meet individual needs;
6. the right to privacy and confidentiality;
7. the recognition that human beings are social beings with social needs.

These rights, which are not unlike those that are expressed in the international covenants, are meant to provide a basis for real decision-making. Whilst it is never easy to move from rights to the details of making ethically sound decisions on an everyday basis, as the notion of rights becomes embedded, as they become part of the conscious framework of thinking, they provide a sort of collective wisdom that serves to form the character of those who adhere to it so that when the time comes, wise choices can be made.

I would like to finish by returning briefly to the idea that good ethics is a win-win for aged care. In reality what is being suggested is that a focus on good ethics is a prerequisite for a successful and thriving aged care enterprise.

It is also true that there is a certain personal impact that comes from a commitment to sound ethics. In what is now almost antiquated language, this has often been called virtue. Good ethics has a personal impact on virtue, peace of mind and wholeness of person.

Let me finish with an anonymous quote:

Too many corporations share one common factor: they ignore the humanity of an organization. Virtues are the essence of all humanity. Throughout the ages great philosophers, writers, theologians & prophets have described virtues as core to all human activity. When virtues are absent, things fall apart. When virtues are present, great things can be accomplished.¹⁷

Dr Gregory K Pike
Director
Southern Cross Bioethics Institute
22 November, 2005

¹⁷ Anonymous, from St Pauls City Ministry Reflections, Adelaide, SA.