On the Issue of Ethics Codes Legitimation

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Abstract. The topic of the study is the legitimacy problematic of professional ethics, more precisely of ethics codes. There are many problems concerning the topic of professional ethics in our modern society, which are the signals of a deeper problem, that of the question of social integration of professional ethics. The study tries to grasp the main topic of legitimation, of which two are more prominent: the undefined difference between legality and morality and the confusion of professional expectations with social ones. Considering these contradictions, it is questionable whether specific professions will solve the problem of social integration by creating codes of ethics.

Keywords: professional ethics, code of ethics, legitimacy, modern societies, morality, legality

Introduction

Nowadays there is an ongoing controversy concerning the different professional ethical questions. The modern, institutionalised social life, which is organised around specific professional activities, tends to generate complex and controversial situations that are not self-evident and it is questionable how they fit in a modern, diffuse and divided social value system. The topics of euthanasia, abortion, legal practice, police brutality, genetic engineering and other here omitted practices raise complex questions that often divide the social public. If we take a closer look on these practices, we find an ambiguous materialisation of an over-extended professional practice. I use the expression over-extended in the meaning that these above mentioned practices are driven to an unprecedented level, have no basis of comparison in the social coexistence and though the solutions revealed by them actually resolve or neutralise real social problems they are not usual, accepted and in many cases are ethically ambiguous. This can cast a negative light on these practices, which leads to a socially negative adjudication.

Debates related to these ambiguous situations are merely signs of the approach that generally questions professional ethics. The problematic nature of professional ethics is clearly stated by John Rohr in his study entitled *The problem of professional ethics* (Rohr 1992). In his opinion, the above mentioned ethically ambiguous situations are a result of a conflict between professional ethics and social ethics. General social ethical principles that inherently exist in the everyday life of a society are often violated while practicing professionally. Dennis F. Thomson also tries to identify the relationships that lead to the questioning of professional ethics (Dennis F. Thomson 1990). His most important view is that the equity of the acknowledged morality in private life-situation is questioned in organisational life. Within an organisation, the locus of the moral subject is unidentifiable because either the subject is not following their own moral guide or they are not directly responsible for their actions, the organisation is, or its leaders.

We cannot present the whole of the questioning standpoints of professional ethics within this essay, but there is a concrete manifestation of professional ethics that would allow us a glimpse in those legitimation and justification issues that arise related to their existence. These manifestations are the ethical codes, which are increasingly important in organisational life.

Ethical codes

Nowadays it is generally expected from an organisation to create and disclose its own code of ethics and to imply it in its own operating practices. Despite all this, it is hard to reach a consensual definition related to codes of ethics. In Gyula Koi's definition a code of ethics is "a collection of rules and principles of a particular profession that could effect not only to the social conduct but also to some aspects of the private life" (Koi 2002, 74). Thus follows that codes of ethics are a set of rules and regulations that are specific to the particular organisation and is created primarily to strengthen and uphold the inner values of the profession. At the same time, disclosure is an important gesture because the profession communicates by it the values it follows.

Codes of ethics raise a lot of questions, such as: who can create a code of ethics, whom does it affect, should there be one "central" code of a specific profession or many local ones depending on organisations, should it be law-like or ethics-like, should it contain laws at all, when should they apply, should there be any sanctions, etc. A well-constructed code of ethics should contain a preamble, which is the list of principles or general directives, the concrete and specific dispositions, notices related to it becoming operative, as well as the application, the definition of terms and the basic principles of the ethical committee. However, this essay was not inspired by these concrete application

related questions, but much more by the legitimacy, validity of a code of ethics. Why do we need codes of ethics? What is the real message of their content? On a general scale these questions can be viewed as the subincidences of the following problem: what meanings can the concept of "ethics" be associated with on the area of professional-organisational operation?

The justification of ethical codes is not unanimously positive in the professional life. Though it is more and more accepted to ethically weigh the activities in different professions, many consider the existence and regulations of ethical codes unnecessary. In one of his blog entries public relations manager Bogdan Theodor Olteanu formulates three meaningful dissents regarding codes of ethics (Olteanu 2009): 1) ethical codes are unnecessary because they contain only generalities (they are organised by abstract concepts); 2) public relation consultants will always seem untrustworthy since they provide for money certain services that they do not need to believe in; 3) the morality of a profession is easily manageable if we consider basic human values.

These thoughts clearly outline the main problems which usually arise related to codes of ethics and they also point out certain questionable issues of professional ethics. In the following we shall review these problems and demonstrate them through concrete examples.

The analysis of the problems

The first dissent of Bogdan Theodor Olteanu draws attention to the exaggerated generality and conceptual ambiguity of these codes of ethics, which in his opinion makes them unusable. The profession of public relations in his opinion needs a much more concrete, lifelike orientation, which cannot be served by these codes. If we start form the expression "code", the denomination makes one believe that on the area of professionalism the moral expectations can be conceptualised, listed and applied much like in the codes of justice. In certain opinions, only the moral of religion can have a code of ethics, where the legitimacy of the laws is derived from an unworldly source (Földesi 1978). These codes are similar to the tablets of Moses with the difference that while the tablets were inspired, dictated and thus legitimised by God, in the case of ethical codes this function is served by the democratic common good, the commitment to the working of democracy. So we come to the question: of what interest and to whom are codes of ethics designed for? Are they meant to give orientation to employees of an organisation (for which they are usually too general and complicated) or are they there for a totally other – not clearly specified – reason?

To answer this question we need to analyse more closely the second statement of the public relation professional. In this entry, Olteanu draws attention to a

trait also noted by John Rohr. Rohr considered the most pressing problem of professional ethics the fact that its rules often conflict with general morality. Olteanu modulates this statement even further and actually unifies the views of Rohr and Thomson. In Olteanu's opinion in the case of the public relation profession the traits of the profession makes it inevitable that the responsibility of the person is forcibly suspended. The professional who adheres to their profession does not have to follow their own conviction, it is sufficient if they comply with the rules of their profession, which can easily lead to immorality or in the best case scenario – amorality.

The fact that the morality of a profession can conflict with the morality of society means that a new view of society is necessary to be delineated. This change has long been perceived by sociology and it has been described by theoreticians like Jürgen Habermas (2002) and Niklas Luhmann (2012). It is impossible to sketch the complexity of adherent views of the topic within this essay but we can state based on the works of the mentioned theoreticians that professionally organised bureaucratic societies find their coherence primarily in functionality not morality. Thus follows that not a social system of expectations expressed by morality but functionality (usefulness in society) verifies the specific practice of professions, which creates a gap between the morality of the profession and that of the society that has to be bridged or mediated.

This situation refutes the optimism shown in the third opinion of the public relations professional. If the ethics of the profession differs, or – to be more precise – is based on different grounds than that of society's, then it is useless to try to adhere to basic human values because situations will arise when these cannot help anymore and though they are not cancelled they are suspended by the specific operation of the profession. Professional codes of ethics have to adjust to this contradictory situation and their texts have to reflect this adjustment.

Reading the text of ethical codes shows a certain ambiguity concerning their legitimacy due to their regulations, indeterminate nature and the not clearly defined operational concepts. There are two primary indeterminates constantly present in these documents, which make it hard to define their status: 1) the unclarified difference between legality and morality; 2) the combination of the professional standpoints and society-originated expectations.

At the same time there is a particular incertitude in the putting into effect of these codes of ethics. There is no uniform practice how these codes should be viewed: are they rules to be kept or merely guidelines. There is no consensus regarding sanctions. In the following we will search for examples for these incertitudes and try to further reveal the ambiguous nature of the legitimacy of these codes.

The unclarified difference between legality and morality

In the majority of codes of ethics the importance of the code is motivated with the insufficiency or ineffectiveness of legal regulations, without clearly defining the meaning of the completion. Two typical examples follow:

"This Code of Ethics is a code of conduct that lists and systematizes the behaviors expected from public officials defined not by the law but by the unique and intransigent moral." – From the Civil Service Code of Ethics draft.

"Regarding certain questions (for ex. corruption or conflict of interest) it was reasonable to reinforce legal regulations with moral standards by the Code of Ethics." – From the Code of Ethics of the Internal Affairs Office.

The two quotations invoke the dilemma of legality versus morality with a clear impliance to its resolve. Regarding the first quotation there is no dilemma, the areas of legality and morality are clearly defined and differentiated and what is more, there is a unique and intransigent morality as opposed to legality. The claim for moral standards is questionable despite the seemingly self-explanatory nature. Every profession is regulated by a well-elaborated set of laws so the question offers itself: why is it necessary to reinforce or amend them with moral expectations?

It is hard to draw a dividing line between legality and morality in modern society. The difference between the two regulating systems could be formulated in the following way: while legality is fixed in a system of set laws, morality is a more general system of norms and its effect reaches beyond that of legality. In the relation of legality and morality the latter proves to be the wider, more integrative system of which legality is delimited. This relationship and hierarchy seems to switch in the developed western societies where it came true for the first time that the Roman law based legal system became independent of classes and theology – as ascertained by Max Weber (Weber 1989). In modern democracy legality is primary over morality. The simplest example is the question of capital punishment, which is widely supported by the population of Europe according to surveys but it is not included in the legal system. Thus the legal system overrides the social expectation.

It is safe to conclude that the need for ethical codes is driven by this situation. Since in modern society morality and legality have come apart it has become important to make steps in order to narrow the gap between them. The narrowing in this case means that we try to conciliate rules that derive from professions and laws with ethical expectations of the society. This conciliation is meant to correct the impression that professional rules concerning public interest are many times self-serving – as shown by John Rohr. Nonetheless the starting point also marks the intent. It seems that there are two societies: that of the law and that of morality. That is the reason for the presence of both legal and ethical requirements in these ethical codes.

The combination of the professional standpoints and society-originated expectations

Texts of the ethical codes often contain notices that enforce the observance of an already existing law. Two examples follow:

"Members of the university must comply with regulations stipulated by the Charta, laws in effect, the educational decree, labor decree and all regulations that control the teaching, research, tuition-organization, economical and other activities taking place at the university." – Code of Ethics of the Sapientia Hungarian University of Transylvania.

"It is basic requirement that all members of the professional staff live and work by those stipulated in the Constitution, the legislation and other legal implements of the state." – Code of Ethics of the Internal Affairs Office.

What can these statements be viewed as? It is surprising that the guidelines contained by them are also ethical requirements and in the Ethical Code of the Internal Affairs Office it is also extended on the area of the private life. The reinforcement of legality by morality can be viewed as redundant since the adherence to legality is enforced by laws. The texts of the ethical codes actually double the legitimacy of these regulations, question remains, what their intent is by it. In our interpretation it is merely a gesture towards society and more a symbolic than a real one. In relation with the operation of the profession the society is an outside environment that is hard to define. It is not by chance that the modern society is primarily described by surveys – except for the regulation and institution systems. Or by different demonstrations and demonstrative events, which are usually set up by an organisation. The translation of the above statements might be that the profession, in order to claim legitimacy beyond its own functionality must reach the society.

Conclusion

The topic of this essay is the specific situation of ethics codes as part of the wider problematic of professional ethics. We tried to discover the legitimacy of these codes within the organisational-professional operation. One of our basic ascertainments is that contradictions present in the professional ethics problematic must reflect in the texts of the ethics codes. Via a few examples we tried to demonstrate that the legitimacy issues of the professional ethics lead directly to the core problems of modern society, that is the complicated question of difference and congruence of legality and morality. In the texts of ethics codes, we find legal and moral regulations that try to bridge the gap between the morality of society and profession. This endeavour reveals the different genesis

of legality and morality. While morality derives from the social coexistence, legality is the product of the social system. The basic problem of the modern society from the moral integration standpoint is that the general sociality was disconnected from systematic organisation. That is why nontraditional ways of integration are needed.

The final conclusion is that the specific professional ethics signal their demand to be integrated in the social coexistence. That many receive this phrasing as ambiguous is understandable. The gesture resembles that of an oil company funding an environmental organisation or a bank patronising an art gallery. In both cases legitimation is accomplished by helping a practice opposing the basic function of the helper. By comparison, the different professions try to combat their distance from social ethics by enforcing morality. Whether this effort will be able to exceed the ambiguous circumstances of its genesis remains to be seen.

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