
Book Review

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N Preston, *Understanding Ethics* 2nd edn
Federation Press 2001 232pp

Introduction

Early in Chapter 2 of the second edition of his book, *Understanding Ethics*, Dr Preston quotes a former United States Supreme Court Chief Justice, Earl Warren, who observed: "...the law floats on a sea of ethics".¹

Though not a legal text, the many issues and themes that arise for consideration in this book lie at the heart of contemporary legal analysis: issues such as individual liberty, protection from harm, the promulgation of a just society; issues of social justice as determined by the "common good" and "public interest"; general principles of justice and fairness; the protection of human rights; exploration of matters of integrity, truthfulness and honesty; appropriate boundary setting for state intervention in a liberal democratic society; the recognition and management of conflicts of interest; and broader perspectives on acting in ways that are consistent with the duties entrusted to persons in professional roles.

As the author argues, "ethics is on the agenda of our social institutions and communities in a qualitatively new way".² one needs only minimal media exposure to witness growing community interest in ethics and popular engagement in contemporary ethical dialogues. There is an emphasis on instituting ethical codes of practice and training in many workplaces, though the enculturation process seems most obvious in the public sector for public and governmental officials.

The legal services industry is not immune from these imperatives. As the Australian Law Reform Commission (ALRC) has recently emphasised in its Report, *Managing Justice*, legal education should focus on the inculcation of graduate attributes, both generic and discipline specific, and not just on technical competence and specialised legal knowledge:

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¹ N Preston, *Understanding Ethics*, 2nd edn Federation Press Sydney 2001 at 24.

² *Ibid* at 7.

...properly conceived and executed, professional skills training should not be a narrow technical or vocational exercise...rather it should be fully informed by theory, devoted to the refinement of the high order intellectual skills of students, and *calculated to inculcate a sense of ethical propriety, and professional and social responsibility.*³ (emphasis added)

In this environment, it is timely for educators generally to consider the broader issues involved in recognising ethical dilemmas, strategies for ethical decision-making and how ethics may be taught and learnt at a more generic level of engagement. *Understanding Ethics*, now in its second edition, is a text well able to assist in this process.

Understanding Ethics

Understanding Ethics is self-described as a “basic text, designed to communicate with those who have never studied philosophy or ethics formally”.⁴ It would serve well as an introductory undergraduate text or as a reader for either tertiary or secondary teachers who come to the study of ethics from outside the discipline. It would also find an appreciative audience simply with anyone who is interested in these broader philosophical or contemporary moral questions.

The text is easy to read, well written and thoughtfully organised, particularly with an introductory “How to Use This Book” in Chapter 1 and a glossary of technical terms included at the end, which provides succinct explanations of the language of ethics, accessible to the most novice of ethics reader. The chapters are well structured internally through the useful organising tool of summaries of key points together with concluding questions posed to facilitate the ethical dialogue that author argues is critical to an ethical understanding.⁵ To further place ethics in a contemporary context, each chapter also provides a number of case studies to assist in the contextualisation and application of ethical discussions to a variety of situations. The various chapters are introduced by apposite, if eclectic, examples drawn from literature, film, history, contemporary events and philosophy that make, all the more, for an interesting read.

The book is essentially structured into three sections. The first few chapters introduce ethics - its language, an overview of ethical theories and the frameworks of moral philosophy. The first part concludes, in Chapter 4, with the book’s centrepiece, a model for ethical decision-making based on the use of various ethical approaches. Dr Preston refers to this decision-making model as “an ethic of response”.

The second part or section of the book, explores contemporary areas of applied ethics issues, ranging from bioethics through to sexual and environmental ethics, considering business, political and professional ethics and also issues of social justice. The analysis of each of these areas is set against the advocated “ethic of response”.

The disparate threads are all drawn together in the final Chapter and section of the book entitled “Cultivating an Ethical Life” which considers, what Dr Preston refers to as, “the

³ Australian Law Reform Commission, *Managing Justice – A Review of the Federal Civil Justice System*, Report No 89 (1999) Chapter 2 “Education, Training and Accountability” at para 2.85.

⁴ N Preston, *supra* n 1 at 11.

⁵ *Ibid* at 12.

life of integrity”.⁶ As a legal educator, I found this chapter most useful in terms of its affirmation of the possibility of ethics education, not at the professional-ethical-code level of engagement on which legal education has traditionally focussed, but at the more fundamental level of cultivating a mature ethical life, informed by an ethic of care, an ethic of justice and an ethic of critique, all of which are independently and objectively desirable attributes for the legal graduate. Dr Preston observes cogently in this regard that “ethics education will generally be appreciated by students for its relevance to their life circumstances”.⁷ In a legal context, the obvious and attractive potential for the correlation between integrating (generic) ethics education and the development of social justice awareness in our graduates is certainly worthy the effort of its pursuit. The alternative to attempting this “transmission of transformative ethical perspectives in an institutional setting”,⁸ as colourfully put by Dr Preston, is that we, and our students, are likely to “flounder in ethical confusion and illiteracy”.⁹ We should promote to our students, and encourage their use of, the language and discourse of ethics so that they are equipped to recognise ethical issues when encountered, are cognisant of the principles or normative values and considerations that bear on resolving those issues, have a decision-making strategy available to them and are able to relate all of this to making of challenging decisions in their own lives.

The Relevance of Generic Ethics Education to Legal Educators

Dr Preston could have been writing for contemporary legal educators when he notes in his concluding chapter:

Not all ethics teaching will be effective; it will remain difficult to determine effectiveness in this field. Nonetheless, it is unthinkable that we should continue to pursue a general and professional education that equips us technically and intellectually while ignoring the need to cultivate the ethical life and, with it, the capacity to make responsible ethical decisions, because this capacity is absolutely essential in contemporary workplaces and social relationships.¹⁰

Dr Preston’s last chapter discusses a range of strategies for ethics education and training and, as do most of his chapters, also provides further readings in the area. To a large extent, his urgings to ethics educators should be easily transferable to the field of legal education, given that admission to legal practise has traditionally insisted on an institutionalised approach to ethics training, even if somewhat narrow in focus. The challenge for legal practitioners and educators is to delve deeper into lawyering practices and to address “the culture” of the profession. At a most fundamental level, this should encourage us to engage with key questions such as: what is the purpose of lawyering? What are the values the profession is seeking to serve? The transference of a broader ethics education to a legal context should be relatively unproblematic given that the underpinning issues of concern are all valid and essential enquiries in the law and that, as lawyers, we have easy access to normative codes against which to gauge appropriate responses (for example, the gamut of international instruments which set

⁶ *Ibid* at 209-212.

⁷ *Ibid* at 214.

⁸ *Ibid* at 219.

⁹ *Ibid* at 216.

¹⁰ *Ibid* at 219.

out basic and inalienable standards of respect and behaviour). For legal educators particularly, the diversity of our student body, the variety of graduate employment destinations and the freshly-emphasised desire to inculcate greater diversity awareness and sensitivity in our graduates-in-training, also encourages us to embrace a critical perspective when examining the values of lawyering from the (ethical) standpoint of the socially and economically disadvantaged and from the point of view of those most in need of protection in our society. It does the lawyering soul good to be reminded, as Dr Preston does, that, “A person of integrity is especially conscious of the ambiguities and limitations of the human condition”.¹¹ The ethic of response, the framework that the book provides for *responsible* ethical decision-making, is at once both a valuable generic and a useful discipline tool. It seeks to bridge the chasm between the theory of ethics and the “lived reality” of ethical decision-making and action¹² – the translation of ethical understanding into ethical practice. It draws on, and is allied to, three substantive principles which are referred to throughout the book and which are not alien to a lawyering environment:

- the principle of respect for life, which includes respect for the rights and dignity of persons and broader life choices that have affect beyond human beings in the sense that they might affect (for example) the environment;
- the principles of justice and fairness which, amongst other matters, give priority to interests of the most disadvantaged; and
- the principle of covenantal integrity (notions of truthfulness and honesty, self-consistency and inner integrity).¹³

The ethic of response advocated requires a comprehensive discernment of all the relevant factors (and guidance is given on these matters) and then provides a procedural outline leading to an ethical decision that is “fitting” in terms of the values identified above, is consistent with the underpinning idea of responsibility (including the latter’s emphasis on the “interconnectedness” of life), and is reducible and justifiable by way of defensible decision made. Of particular value to lawyers in terms of their day-to-day practice in a client context is the recourse also to desirable attributes of compassion and empathy.

Another important theme of relevance to the legal community that runs through the book’s ethical conversation, is the concept of ethics as an instrument of social transformation. Again, the application of this ideal to a legal context that acknowledges the worthy pursuit of social justice objectives is obvious in its appeal. History has shown that lawyers have the incredible potential to be influential in policy development at all levels. That legal graduates and lawyers might exercise this potential positively, armed with an ethical approach and another of the book’s “underpinning perspective[s]” that the ultimate test for public justification of any social policy or practice is whether or not the most disadvantaged benefit from it and whether it promotes democratic, participatory processes,¹⁴ must sit well with the production of a type of graduate of whom any university would feel justly proud. As Dr Preston points out, “Our professional role can never be divorced from our social responsibility and wider impact

¹¹ *Ibid* at 210.

¹² *Ibid* at 70.

¹³ *Ibid* at 75 esp.

¹⁴ *Ibid* at 9.

on family life, the environment, and social justice”.¹⁵ It is arguable that, as lawyers, we have a particular and positive obligation to “minister to the ethical health of our society” which Dr Preston argues for generally. But as his book makes clear, the benefits of ethics study are pervasive – it can enhance the capacity for critical judgment and practical decision-making in a variety of personal, workplace and applied contexts.¹⁶ I found his consideration and exploration of the notion of “truthfulness” (a “foundational ethical matter”) particularly compelling, especially when placed in the context of the lawyerly courtroom injunction to swear to tell “the truth the whole truth and nothing but the truth”. The author’s deconstruction of what is truthfulness¹⁷ in terms of the human ability to deal in “partial, selective or misinterpreted” truths, to embrace easily a aspect of paternalistic deception, his identification of the absence of certainty or absoluteness regarding certain “truths” (eg, of moral assertions, of shifting beliefs – the world is flat), the impact of cultural relativity on truth telling and the capacity for self-deception (both individually and collectively), make for illuminating reading for any legal graduate–in-training or practicing lawyer, and that is even before embarking on his discussion about truthfulness in certain professional ethical situations.

There is much in *Understanding Ethics* that is transferable to a legal context. Two more useful examples are the discussions about honesty and consent in the context of sex, love and morality, translatable to a myriad of criminal and family law issues and the Chapter 7 discussion which deals with “Matters of Life and Death”, which could read as an introductory chapter for any course of medico-legal issues and is prefaced with quotes from the movie, *Dead Man Walking*, and from Lord Justice Hoffman in the well (legally) known case of *Airedale NHS Trust v Bland*.¹⁸ My one criticism of the text is that I feel that the book would benefit from a more dedicated discussion on the difficult issue of professional ethics from the more generic standpoint. In Chapter 2 there is a brief discourse on the interrelationship between law and ethics,¹⁹ while some of the examples utilised throughout the book touch on issues of the law and ethics “interface” – the case studies of the ethical dilemmas surrounding abortion, suicide, euthanasia, capital punishment and biotechnology, on prostitution, pornography and censorship – are obvious examples. However, this apart, it is disappointing to see that the whole issue of the broader aspect of “professional ethics” is given only cursory treatment in approximately a page of text in Chapter 8.²⁰ Nevertheless, this latter discussion is informed by the adjacent treatments of political, public service and business ethics which are not, of course, wholly divorced from notions of the ethical obligations of professionals.

Conclusion

This slight matter aside however, *Understanding Ethics* is highly recommended for that which its title suggests – understanding the inevitability²¹ of ethics and our condition as

¹⁵ *Ibid* at 10.

¹⁶ *Ibid* at 14.

¹⁷ *Ibid* at 92-100.

¹⁸ [1993] AC 789: There is no question of his life being worth living or not being worth living because the stark reality is that Anthony Bland is not living a life at all. None of the things one says about the way people live their lives – well or ill, with courage or fortitude, happily or sadly – have any meaning in relation to him.

¹⁹ N Preston, *supra* n 1 at 23-25.

²⁰ *Ibid* at 173-174.

²¹ *Ibid* at 2.

“ethical beings”.²² It should be recommended reading for all legal graduates-in-training for the challenges it raises, not the least of which is to lead an ethical professional and private life of integrity.

²² *Ibid* at 5.