

ETHICAL ISSUES IN GIFT PLANNING

Frank Minton

Ethics is the discipline dealing with what is right and wrong or with moral duty and obligations. People from different cultures, and even within the same culture, frequently differ on whether particular customs and actions are right or wrong, but there is almost universal agreement that we ought to act ethically.

Edward O. Wilson, the Harvard sociobiologist, argues that the predisposition to follow ethical precepts is encoded in our genes. Imanuel Kant offered no biological explanation of ethics, but he did acknowledge that innate sense of ethical responsibility in a saying that is carved on his gravestone in Konigsberg: "Two things fill my mind with ever-increasing wonder and awe, the more often and the more intensely the reflection dwells on them: the starry heaven above and the moral law within me." People of religious faith generally acknowledge a responsibility to act in accordance with the will of a Supreme Being

However the ethical impulse is explained, it appears to be a given. The challenge is to determine what is the right course of action in a complex situation.

I. CRITERIA FOR MAKING ETHICAL DECISIONS

To assist in the process of decision-making, philosophers and theologians have proposed various ethical theories or models for determining and doing the right thing. In real life we often act without awareness of the ethical theory that underlies our decisions. Nevertheless, it is good discipline to reflect on our criteria for decision-making, and then apply those criteria to the particular ethical question we are confronting. Here is a summary of some influential approaches to making ethical decisions.

A. Models for Decision-Making

1. Legalism

According to legalism, an act is ethical if it is in accord with established rules. What is the source of those rules? To some, they are divinely revealed and are found in codes such as the Ten Commandments. Others hold that there is a natural moral law perceivable by all people of reason. They argue that respect for life, respect for property, respect for truth, and respect for individual rights are universally acknowledged to be our duty. With reference to estate and gift planning, an action would be considered ethical if it is in accord with the Internal Revenue Code and the Regulations.

2. Categorical Imperative

Another model for decision-making is Immanuel Kant's categorical imperative, which defines as ethical only such acts as you are willing to have become a universal standard of behavior applicable to all people. He also said, "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end." These precepts are similar to the Golden Rule, which holds that you should treat others as you would want to be treated. You should never make yourself a special case. With reference to gift planning, an act would be ethical if you would be willing for all other gift planning professionals to do the same thing.

3. Utilitarianism

Sometimes called "consequentialism," utilitarianism holds an act to be ethical if the likely consequences are more beneficial than the likely consequences of alternative actions. You should try to predict the effects of an action and weigh the good it will produce versus the harm it will cause. Then choose the action that results in the greatest good and the least harm for the greatest number of people, giving no preferences to yourself. Early advocates of this position were Jeremy Bentham and John Stuart Mill. With reference to gift planning, you would consider not only the effect on your donor (or client) but also on your profession and the general public.

B. A Personal Model for Decision-Making

In practice, we probably combine elements of all of these models. The following steps, which draw from each of these historic theories, are suggested as criteria for ethical decision-making.

First, gather as much information as possible about the situation requiring a decision.

Second, see what existing rules may apply to the situation. They represent the collective wisdom of the ages, and generally the social order depends on most people following them most of the time.

Third, exercise the personal discipline of asking whether you would want others to take this action, or whether you want to be a privileged special case.

Fourth, predict the consequences insofar as you can. Consider not only the immediate results to be achieved but also the long-term impact. Sometimes it may be necessary to violate one ethical principle to advance another, but examine your motives and be sure you aren't rationalizing a questionable action that is in your self-interest.

Fifth, reflect on the situation.

Sixth, implement the decision but be prepared to modify it if new information comes to light.

C. Values and Ethics

Values are often discussed in connection with ethics, but they are not the same. Values are desires that motivate us. They can be non-ethical, unethical, or ethical. If you consistently act ethically, you will develop ethical values, and when you have ethical values your decision-making will be easier and more automatic.

Assuming you have a good value system, you may reliably apply the following emotional tests to your decisions.

- How do you feel in your stomach? If you are churning inside and can't sleep, chances are that the action is contrary to your acknowledged values.
- If an investigative reporter described the entire transaction on the evening news or in the morning paper, would you have any cause for embarrassment? If not, you have probably acted honorably.
- Would you be willing for your child or other relative, close friend, or colleague to be privy to what you are doing? Any action done because no one will ever know about it is questionable.
- Will your self-esteem suffer? Far more important than immediate gain is your personal and professional self-image. If you would like yourself less because of an action, don't do it.