

## INTRODUCTION: APPLIED ETHICS IN THE FRACTURED STATE

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## INTRODUCTION

This volume of *Research in Ethical Issues in Organizations (REIO)* is an outcome of the Australian Association of Professional and Applied Ethics' (AAPAE) 24<sup>th</sup> Annual Conference 'Applied Ethics and in Fractured State'. The conference was held 21-23 June 2017 at the University of Technology Sydney and hosted by the Institute for Public Policy and Governance (IPPG). It was convened by Bligh Grant who was generously assisted throughout by fellow members of the Organising Committee, Charmayne Highfield and Joseph Drew and the entire AAPAE Executive Committee, namely Hugh Breakey, Alan Tapper, Ian Gibson, Jo Namio, Kay Plumber, Michael Schwartz and Sunil Savur, with Sunil providing valuable experience drawn from his role as convener of the 2016 conference, held at the University of Adelaide, and his co-editorship of Volume 17 of *REIO* (Savur and Sandhu 2017).

In searching for a conference theme, the organising committee was faced – as indeed most are – with the challenge of providing a topic that (a) was broad enough to be inclusive of the eclectic range of research and practice interests of the members and associates of AAPAE while (b) not being completely nebulous. Ultimately 'Applied Ethics in the Fractured State' was agreed upon. Yet the decision was not merely expedient.

For instance, many traditions of political and ethical writing have defended the concept of the state as the legitimate site of ultimate authority – an authority which is justified not merely instrumentally but also normatively. In the (broadly) liberal tradition at least, we might be led to think of Hobbes' *Leviathan* (1914[1651]) on particular on this point, and in a clichéd way. However, there are more contemporary and (arguably) very influential examples (see, for instance, Moore 1995). Moreover, it is an institutional fact that the laws enacted in (say) the parliaments of Australia and its constituent sovereign states only come into force when they are consented to by the Crown. And the situation is more or less similar in other types of political systems – in republics, for example – save the absence of a monarch. So the idea of there being an *ultimate, legitimate* authority is very much – and literally – an *enacted* one in our day-to-day lives.

However, a vast quantum of writing (particularly in the broadly liberal tradition) has sought to place limits upon this authority, justified on instrumental grounds, but also for profound

moral reasons (and recognizing that the split between ‘instrumental’ on the one hand and ‘moral/ethical’ on the other hand is in any event a misnomer). And while we might be led, at least initially, to think of the concept of the separation of powers in a very modern sense – for instance, *a la The Federalist Papers* (see, for instance, Kammen 1986) and the philosophical underpinnings of this in *inter alia* Locke’s (1988[1698] justification of private property, we can remind ourselves that writers as diverse as Machiavelli (1979[1517]) and Hegel (1952[1820]) advanced profound justifications of the division of authority in political systems, *while at precisely the same time* advocating for the unity of those systems. Moreover, the few (the very few) of us that exercise an interest in sub-national government would point out that the idea of subsidiarity has, *inter alia* profound deontological foundations (see, for instance, Drew and Grant 2017).

And of course there are many more examples of writing that has been centrally concerned with the proper division of authority in polities. More recently, these arguments have increasingly been joined by those asserting that non-state organisations (private corporations) quasi-state bodies (statutory organisations) and professional associations all have the capacity to *self-regulate*, through mechanisms such as Corporate Social Responsibility (CSR), codes of professional practice and indeed the sheer virtue of the individuals comprising these organisations. In terms of applied ethics, we are on more familiar ground here, and one does not have to travel – or indeed reach – too far to witness the contemporary pervasiveness of these arguments, presented as they are, in very convenient sets in business ethics textbooks, and within which the sovereign – even when supported by institutional arrangements of (varying) democratic thickness – is reduced to a mere ‘stakeholder’ of the private corporation (see, for instance, Crane and Matten 2016).

Yet paradoxically the failure of minimal regulation – witnessed in the Global Financial Crisis, for example (see Flynn 2012) alongside the apparent effectiveness of a strong state in developmental contexts (see, for instance, Grant, Liu and Ye 2018) have both served as evidence that the state ought to be defended as a distinct source of authority, morality and ethical practice.

All too frequently these arguments are debated in structural (or political) and empirical (or at least what might be described as ‘normatively shy’) ways. Yet conceived as a series of ethical practices labelled as ‘professional’ or indeed otherwise, questions about the source of

authority, in liberal and other societies, form an unspoken backdrop to much of the work of organisations and the people that comprise them. As well, we ought to be aware that historically the concept of ‘the state’, according to an authority no less than Quentin Skinner, originally referred to the *condition of the ruler*, not government. For Skinner (1978, p. 3) ‘The decisive shift’ entailed in modern political thought was:

[F]rom the idea of the ruler maintaining his state – where this simply meant upholding his position – to the idea that that there is a separate legal and constitutional order, that of the State, which the ruler has a duty to maintain.

This alerts us to the idea that ‘the state’ is also an intrinsically existential concept, which throws open questions of the self and identity alongside those of regulation and governance discussed above. In short, we thought that there was plenty of grist for the conference mill in ‘Applied Ethics in the Fractured State’ – at the level of ethics *and* institutions, and (in particular) in examining the relationship between the two. Indeed, there was some inquiry into these themes during the course of the conference, as there has been in the recent academic literature (see, for example, Haugaard 2017; Hindess 2017; Jessop 2011; Rockman 2016).

Yet this hardly constituted the whole conference program. On the contrary – and as one would expect – there were panels covering CSR (reflected in the presentation by our first academic Keynote Speaker, Professor Carl Rhodes (2017)) and panels covering regulation (reflected in the presentation by our second academic Keynote Speaker, Professor Janine O’Flynn (2017)) alongside panels discussing (more or less) traditional Western ethical theorising. However, also strongly represented were explorations in (broadly) Eastern ethical writing – Confucianism and Buddhist ethics – and (in particular) medical and pharmaceutical ethics, in particular the issue of euthanasia. These later themes were exemplified in the presentation of our third Keynote Speaker, Alida Lancee MD (2017).

## OUTLINE OF SPECIAL EDITION

In short, the result of the ‘Fractured State’ theme was a diverse conference – which is entirely appropriate for AAPAE. This is reflected in the refereed proceedings, which can be divided into four broad areas of research. First, what we have denoted (above) as ethical theorising informed by broadly ‘Eastern’ approaches. In his chapter, Chris Provis argues that ethical

problems surrounding role obligations can be fruitfully informed by a consideration of Confucian ethics, properly understood. Provis notes that within the business ethics literature three types of ethical problems are associated with roles. The first of these is 'role relativism', i.e., where a prescribed role may either excuse conduct that is otherwise questionable or re-prioritize ethical concerns – what might be termed the problem of blind obedience to authority or indeed behaviour driven only by the requirements of organisational imperatives. The second is 'role definition', where what is actually required by a role is ambiguous (what does it mean to be a 'parent', a 'teacher', for example) and ethical conflicts that can arise from this ambiguity (in, for example, competing obligations to fellow employees, subordinates or employers). Third, 'role identification', where ethical problems arise due under-identification with a role (giving rise, for example, to low performance) or indeed over-identification – the zealous parking inspector.

Provis notes (1) that the three types of problems are intertwined and (2) that both deontological and teleological attempts at addressing them have proven less than satisfactory. In inquiring into the possibilities for a virtue ethics account of role prescriptions and Confucian virtue ethics in particular he contests what might be described as the bifurcation of Confucian virtue ethics (as, in essence, role derived) and Western virtue ethics (as, in essence, trait-based or individuated), while nevertheless asserting that choice is a more salient feature of business than Confucianism *and* that slavish conformity is at odds with classical Confucianism also. Rather, Confucianism ought to be understood as commencing from an understanding of everyday life (including the familial) which is virtue-based (for instance *rén*, or 'humanness'; *zhī*, or 'wisdom' and *chéng*, or 'integrity/sincerity') and where role performance is situated rather than ideal, requiring considered judgement (not relativism) rather than conformity.

Revisiting the ethical problems associated with roles equipped with this understanding of Confucian virtue ethics, Provis argues that role relativism is militated against by seeing roles in their broader contexts and that problems of role ambiguity and role conflict can be seen with the advantage that virtue ethics offers, namely with an emphasis on integrity and authenticity when set against both deontological and teleological approaches. Moreover, problems of role identification (either 'under-identification' and 'over-identification') are seen not only through a deontological or consequentialist lens, but with (again) with proper attention to integrity.

In her contribution, Chand R. Sirimanne provides an account of the significance of intention (*cetanā*) in Buddhist ethics (specifically a Theravāda Buddhist stance) and asserts its increased relevance in our digital age, where (arguably) the ethical self is increasingly distanced from our actions. Noting the ‘Four Noble Truths’ and the ‘Eightfold Path’ to Enlightenment, the author emphasizes the inseparability of psychology and ethics in Buddhism and that intent, or *volition*, is key to the *ethos* of same, and can be disaggregated into intention of *renunciation*; intention of *good will* and intention of *harmlessness*.

Sirimanne performs the valuable service of explaining some common misunderstandings about core elements of Buddhism. Thus, *karma* does not signify the (unintended) consequences of actions (or ‘just deserts’); rather it denotes wholesome and unwholesome volitions. Meditation (*bhāvanā*) ought to be understood not as introspection but as a ‘cultivation of the mind’, and *anattā* not as a lack of agency but as a questioning of the concept of an extant and fully-formed soul – rather, this has to be developed. Sirimanne also outlines the reasons for the popularity of Buddhism in the West, namely the lack of a deity; the onus on the individual to achieve salvation; the absence of moral absolutes; its questioning approach to ethical issues and its advocacy of compassion. While there are similarities with elements of utilitarianism and virtue ethics (in particular its Eudaimonist branch), the author notes that the central doctrine of *anatta* (non-self) rules out any direct parallel, as (arguably) does Buddha’s acceptance of women in monastic orders.

This appreciation of intent (*cetanā*) allows for different (but by no means wholly unfamiliar) ethical perspectives on issues such as abortion, suicide, discrimination and the parameters of sexual behaviour. Noting that the application of these ideas to governance and morality is complex (‘only a fool becomes a king’ – see Zimmerman (2015)) Sirimanne nevertheless argues that a Buddhist *ethos*, grounded in an understanding of intent (*cetanā*) militates against the increasing anonymity of the digital age.

The second broad area covered in this edition of *REIO* is medical ethics. In his contribution, Xavier Symons investigates conscientious objection in health care, asking how we might distinguish between legitimate conscience claims and those based upon prejudice. The Rawlsian ‘reasonableness’ approach is contrasted with both the ‘genuineness test’ for

conscientious objection (which rests on the profundity of belief) and the ‘incompatibility account’, where any objection is assessed against the obligations of health care professionals.

Symons provides an account of Rawls’ concepts of ‘reasonableness’ and ‘reasonable disagreement’, grounded as they are on a procedural account of justice and being richer than an account based upon mere rationality, to necessarily involve normative principles – particularly that any inequality must not include inequality of opportunity and that any systematic inequalities must be of the greatest benefit to the least advantaged in the long-run. Moreover, any disagreement must be compatible with public reason rather than absolutist. For Symons (following Rhodes 2012) the transposition of this framework of ‘reasonableness’ and ‘reasonable disagreement’ from the political to the medical is justified on the grounds that basic medical care is an essential service; that medical care involves consensual interventions that would otherwise be classified as violations of bodily integrity; that health care is an issue of equality of opportunity and that medical practice is circumscribed by law. As such, the normative framework for decisions about conscientious objection ought to be the same as those that frame (Rawlsian) political discourse.

Importantly for Symons, all of this is underlain by the (Rawlsian) defense of ‘liberty of conscience’ *and* surrounded by the issue of what constitutes ‘the private domain’, and he examines Robert Card’s (2014) account of ‘intrinsic’ and ‘extrinsic’ factors for conscientious objection in relation to these. On Card’s (2014) account, while many conscientious objections are ruled out for normative (Rawlsian-type) reasons, others will need be determined by empirical evidence, assessed by a ‘Medical Conscientious Objection Review (MCOR) board. The problems that Symons has with this approach are (1) that it does not recognise that every kind of conscientious objection involves an imposition of views and (2) that there are cases where there are justifiable, but differing views about conscientious objection – such as euthanasia and physician-assisted suicide (E-PAS).

As a means to address this impasse, Symons argues that any decisions based around evidence ought to incorporate normative (in essence, Rawlsian) elements in the discussion. Symons also argues that an eclectic account of what constitutes ‘basic medical care’ (i.e., one that is inclusive of different approaches to medicine) needs to be developed as part of the operations of MCOR boards, and that while arriving at an agreed definition of ‘basic medical care’

would be difficult, it would be both possible and fruitful to reach a ‘reasonable’ view of what this constitutes.

In any discussion of contemporary issues in applied ethics, the subjects of euthanasia and assisted suicide loom large. In their contribution to this ‘Special Edition’, Judith Kennedy MD and Michael Kennedy MD examine the consequences of the increased support for euthanasia and assisted suicide in Australia. The authors are careful to specify the parameters of their discussion, stating that rather than assessing the arguments for and against the two practices they are interested in examining the ‘moral vulnerabilities of medical practice when both euthanasia and assisted suicide are added to the therapeutic armamentarium’.

Commencing with a definition of medicine, the authors examine how long-standing law across Australia’s jurisdictions has addressed the question of *inter alia* the terminally ill, arguing that this has been consistent with the goals of medicine. Yet this is rapidly changing. Noting the recent legislative developments in the Australian states of Victoria and New South Wales (NSW), Kennedy and Kennedy provide timely evidence as to how a range of professional associations – the Australian Medical Association (AMA), the Advent Mutual Group (the largest professional indemnity organization in Australia), the College of Nursing, the Australian Psychological Association (APA) and the Law Institute of Victoria (LIV) have all positioned themselves in relation to the issue. The authors make several observations about these changes, including that the incorporation of killing into Australian medical practice has already begun – signified not only by the position statements provided by the aforementioned organisations, also by an identifiable change in nomenclature; also that legalized killing in health care will necessarily involve a range of professions and require actively managing the attitude and behaviour of these professionals. They also explore how these changes are leading to moves to protect both patients and professionals, particularly doctors.

The authors’ position is overwhelmingly one of profound concern. They detail several challenges to medical practice arising from these developments and examine these from a squarely moral perspective, emphasising that while doctors do not act alone, the responsibility will rest principally with them. They conclude by noting that authorization to kill could very well result in a ‘slippery slope’ (our phrase) situation and note developments in other jurisdictions that are indicative of this.



In their contribution to this ‘Special Edition’ of *REIO* Joseph Drew and Bligh Grant examine the same issues of concern in the previous chapter, but through the lens of the ‘Principle of Double Effect’ (PDE) and utilizing an in-depth case study. Initially the authors’ underscore the basis of PDE in Natural Philosophy, which holds that there are binding and universal truths that are discernable by reason and hold for all people, one of which – the most important for their discussion – is human life, and around which the propositions of ‘dignity’ ‘the common good’ and ‘solidarity’ coalesce. The authors also note that while Natural Law is often associated with Christianity and Catholic Social Teaching (CST) in particular in fact it is also associated with Aristotle and the three major monotheistic faiths (Judaism, Islam and Christianity) and that the precepts of Natural Law are enshrined and enacted in many judicial systems.

Following from a definition of PDE, the authors emphasize that ‘foreseeability’, ‘proportionality’ and – as we saw in Chand Sirimanne’s contribution in her discussion of Buddhist ethics – ‘intent’ are all of paramount importance in determining whether an act is morally licit or otherwise. Moreover, the issue of intent is of particular importance in evaluating the process of dying, ‘because if death is intended, rather than merely foreseen, then the whole moral and legal evaluation changes dramatically’. Examining prevailing definitions of euthanasia from both the scholarly and regulatory literature, the authors draw a more finely-calibrated distinction between voluntary, non-voluntary and involuntary euthanasia, before providing a detailed (but redacted) account of what they term ‘a case study of dying’ and applying PDE to this particular example. They conclude – after referencing the Queensland Criminal Code – that the first of three critical acts in the case study was neither morally or legally licit. In particular, Drew and Grant draw our attention to situations where conscious but aphasic patients could be aware of decisions being made on their behalf, yet not be in a position to have their opinion heard, and/or experience the anguish of family members making decisions.

The authors argue that the example illustrates the ‘non-voluntary’ or ‘involuntary’ nature of some euthanasia events and that there are a number of public policy implications of this. First, that the issue of non-voluntary euthanasia has not been at the forefront of recent debates; second, that religious authorities ought to be especially cognizant of non-voluntary euthanasia, as they administer many aged-care and palliative facilities. Third, that there is a good case for education campaigns in the form of Advanced health directives (AHDs) that

provide clear instruction around procedures and care for end of life patients and that arrangements for enduring powers of attorney (EPA) should be mandatory for all admittances to aged-care and palliative facilities. Fourth, that arrangements for implementing an expedient institutional form of dispute resolution for such patients ought to be investigated. Finally, that statutorily enforced guidelines around such issues need to be developed.

The third broad area is regulation/policy and ethics, and perhaps it should come as no surprise that the two contributions are both in the area of health regulation. In her chapter, 'When health workforce governance met regulatory capitalism: Australia's national arrangements for health professional registration and accreditation', Fiona Pacey positions the registration of health professionals in Australia in a regulatory capitalism framework. Through an exploration of the 'National Registration and Accreditation Scheme' and its operational elements, namely the Australian Health Practitioner Regulation Agency (AHPRA) and its fourteen national boards, Pacey outlines how the new arrangement is quasi-independent, which allows the state to consolidate its position in the health workforce market.

Prior to the Scheme, there were more than 90 organisations with responsibilities for administering local health regulation legislation and within these there were inconsistencies, gaps and contradictions. By moving from a state and territory model to a national model of health professional regulation, Pacey argues that there is greater consistency for practitioners and workforce planners, and she carefully traces the development of the national scheme. Following from a Productivity Commission recommendation in 2005 to move to a national scheme, an Intergovernmental Agreement was signed in 2008 which outlined the broad objectives of the regulations to be developed. These objectives are reflective of traditional regulation and also incorporate aspects of workforce reform. The putative benefits of the scheme have included a single registration agency for practitioners, a central location for information and complaints for patients and a national approach to policy concerns and workforce planning for government.

Pacey also reviews the literature on Independent Regulatory Agencies (IRA) in asking the question of whether the agency is independent and if so, from what or whom. She concludes that the Scheme is best described as a quasi-independent national regulatory agency, with government retaining some critical authority, as a means of managing socio-political risks, demonstrating the relevance of the framework of regulatory capitalism in this case study. The

ensuing quest for independence is then assumed to be one designed to ensure balance, where the state can maintain influence and the professions are constructively engaged but do not have the autonomy to set their own standards and monitoring arrangements.

The discussion of the National Registration and Accreditation Scheme in the context of regulatory capitalism, independent regulatory agencies and quasi-independent bodies provides an insight into the changing institutionalization of regulatory and reform functions of the state. Her discussion of regulatory capitalism, which she defines as the merger of neoliberalism with an attentiveness to risk, situates the scheme in a larger context of increasing delegation to business, individuals and the society, while at the same time (and perhaps paradoxically) increasing regulation by the state.

In their contribution, “The impact of the National Mutual Acceptance on research governance practices in Victorian public healthcare agencies”, Bernice Davies, Anona Armstrong and Maree Fitzpatrick explore the arrangement introduced in 2013 which allows healthcare agencies to conduct a single ethical review for multi-site clinical trials. The discussion presents the results of a survey and series of semi-structured interviews designed to explore the future of the National Mutual Acceptance (NMA) and whether it is leading to standardised research governance practices.

The NMA, introduced in 2013 as a successor to various state-based models allows for a single ethics approval to be accepted by multiple jurisdictions as a means to make health research easier and economically competitive. Focusing on Victorian public healthcare agencies, under the NMA the process involves a single proposal to a certified human research ethics committee. Organisations from participating jurisdictions then access the single review in lieu of submitting their own ethics application. Each organization then undertakes an individual site specific governance review to determine their risk appetite and capacity to participate. Reviews are due to be completed within 60 days, although practice suggests there is some confusion as to when participating sites are endorsed and that the practices of individual organisations are diverse and inconsistent.

In their review of the relatively new literature on research governance, the authors identify concerns about overly bureaucratic and duplicative approval processes which result in delays and additional costs. The corporate governance theory of Institutional Isomorphism – the

need for organisations to appear legitimate to their stakeholders – is applied to explore research governance and the NMA. The research seeks to discover if there is evidence of support for the NMA (is coercive), if there is evidence of collaboration and learning between agencies (is mimetic) or, if there is evidence of agencies participating in professional standards (is normative).

Given the robust research methodology, the study makes a number of findings, the most significant of which points to a lack of evidence that organisations were developing standard research governance responses to the NMA, thus disproving the argument of institutional theorists that organisations tend to develop similar behaviour in response to the same environmental constraints. The authors conclude that there are mixed views on how the NMA is impacting research governance; moreover that there is some confusion about its purpose. However, they identify that the NMA has the capacity to deliver quality clinical trial outcomes, maximise resources and create performance metrics if there are consistent governance practices and that failure to harness these opportunities could see Australia lose its competitive edge in health research.

The fourth broad area is one which, arguably, sits at the core of the research and applied activities of AAPAE and of this journal, namely professional ethics. In the final paper, Helen E Christensen explores the professionalisation of those who facilitate participatory democracy within and on behalf of government institutions. In the paper, “Community engagement and professionalisation: Emerging tensions”, she argues that these (arguably, emerging) professionals, who design, communicate and facilitate community engagement processes, serve multiple masters: their clients (or employers), the public good and democratic process.

Community engagement, also known as public participation, is the involvement of communities in decision-making processes around policies, plans and programs. Christensen argues that it has become a standard feature of public-state relations. Surrounding these engagement processes are those who practise it, a group which is gaining increasing scholarly attention. Christen explores whether or not the practice of community engagement can be considered a profession, and whether or not those who practise can be considered professionals. She argues that practitioners are situated as intermediaries between

communities on one hand and the public institutions that employ or engage them on the other hand, and that this dichotomy creates a series of tensions.

Christensen reviews the literature on professionalism and then focuses in on Noordegraaf's (2009) conceptualization of 'pure' professionalism. She then uses this framework to assess the professional status of community engagement. Through the presentation of a series of short vignettes, the author demonstrates the types of tensions practitioners may experience. These include how inclusive practitioners are when they involve community members and the amount of control they are granted over the decision-making processes therein; whether neutrality of the practitioner should be prioritised above other virtues, and whether the needs of the practitioner, the client or the democratic process should assume priority. Christensen notes that there is currently little to no guidance for practitioners faced with these dilemmas.

In her broader observations, Christensen returns to three foundational issues. The first is whether community engagement is really a profession. Reflecting on Noordegraaf's (2009) framework, she concludes that a profile of the field is emerging and that while there is some 'semblance of a profession' it is not conclusively demonstrated. The second is what tensions community engagement practitioners face and how they manage these. The third is how ethics can inform an understanding of the professionalisation of community engagement. Christensen concludes that there is the opportunity for reflection and examination of decision-making models, practitioners' traits and virtues to allow them to develop ethical responses to the complexities they face in their practice. She also concludes that community engagement practitioners are uniquely placed between communities and institutions and that there is an opportunity for the field to support practitioners in making good decisions in the face of the inevitable dilemmas that arise from this unique position. Moreover, the failure to harness this opportunity may adversely impact practitioners, public institutions and democracy itself.

The guest editors would like to thank the series editors, Associate Professor Michael Schwartz and Associate Professor Howard Harris for the opportunity to edit this 'Special Edition' of *REIO*. We would also like to thank all the authors who submitted papers for consideration and all of our colleagues who performed the invaluable service of peer-reviewing the blind manuscripts for the 'Special Edition. Circling back to the conference, we would like to thank all those that participated, especially the three Keynote Speakers, Alida Lance MD, Professor

Carl Rhodes (UTS Business School) Professor Janine O’Flynn (then of University of Melbourne; now of the Australia-New Zealand School of Governance [ANZoG]) and the Institute for Public Policy and Governance at the University of Technology Sydney, particularly Ms Eeva Routio for all of her assistance with marketing, photography, the conference website and logistical support.

We were especially pleased that the 2017 Conference attracted a strong participation rate from Higher Degree Research (HDR) students – almost 40 per cent of the presentations overall – a fact that is well-represented in this ‘Special Edition’. This bodes well for the future of AAPAE.

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