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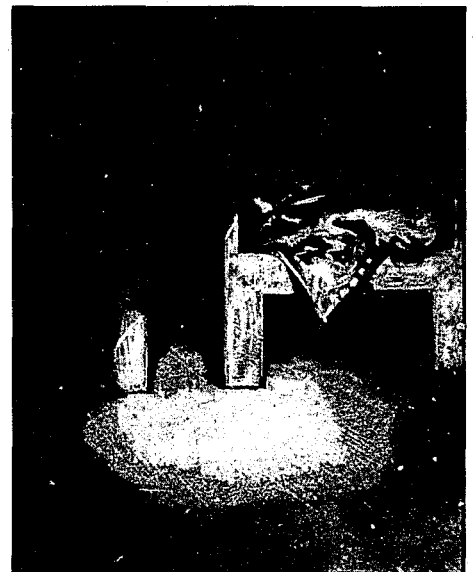
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Ethics and Prison Administrators

Learning to articulate the reasons for your decisions

J. David Newell

Like other Chief Executive Officers (CEO's), the Federal warden is responsible for making daily decisions and judgments about policies, programs, procedures, and particular problems concerning a wide variety of issues. In an ethically sensitive age such as ours, it is essential that such decisions have a solid ethical grounding—but it is just as important that the CEO be able to articulate these grounds when necessary.

One does not become a warden without having passed muster as a man or woman of character and good moral standing. Most of the decisions wardens make are no doubt good ones, even if a particular warden on a particular occasion may be at a loss for words when it comes to articulating the reasons for a decision, when required to do so by an inquiring superior or a concerned public.

In this essay, we will address two issues: How can we assure ourselves that our decisions are ethically valid? How can we best articulate the reasons for our decisions to others? These questions are closely related. By establishing a procedure for justifying our decisions and judgments, thereby assuring ourselves that we have made the right decision, we will also have developed a framework that allows us to account for our thinking about moral issues.

Moral decisions and judgments in prison administration are justified in essentially the same way they are in other areas of applied ethics. In the first section of this article we will consider a model of moral reasoning that can be used in justifying ethical decisions. While this model is somewhat similar to the way reasoning is performed in business, medicine, engineering, and so on, two features of

A 6-stage model of moral reasoning—Stages 5 and 6

Stage 1: Concept of a subordinate.

Stage 2: Theory of punishment.

Stage 3: Universal ethical principles.

Stage 4: Code of the profession.

Stage 5: Particular case.

Stage 6: Moral judgment.

Stage 5: Particular case.

The facts of the case drive the problem-solving process; inadequate or mistaken factual information subverts the whole enterprise.

Stage 6: Moral judgment.

Once the facts of the case are presented, our immediate response is frequently a judgment about what should or should not be done—that is, we make a moral judgment or decision.

Since intuitions sometimes differ among individuals, it is important to be able to provide good reasons for them...Such reasons are found in stages 1-4.

our model are specific to prison ethics: a theory of punishment and what I will call a "concept of the subordinate"—that is, how you think about those who are subordinate to your decisions (primarily inmates in this context, but also staff).

In the second section, we will examine three theories of punishment and suggest how each affects the day-to-day decisions wardens and administrators make. In section three we will consider four "concepts of a subordinate" and suggest how the view of punishment one adopts depends on which concept of a subordinate one holds.

The model presented here attempts to take into account a wide variety of possible influences upon decision-making. Breaking down what are always complicated (often instantaneous) decisions, with serious consequences, into such a "checklist" may seem unrealistic or even beside the point. In addition, as we follow the stages of the model back toward Stage 1, you may find particular elements with which you disagree.

While it's not the purpose of this article to prescribe a particular ethical system, it

is important to be able to articulate *why* we believe *what* we believe, in professional work as in any other area of our lives. In this sense, this model should serve as a self-monitoring tool for corrections professionals.

A model of moral reasoning

By understanding the model of moral reasoning presented here and the relationship between theories of punishment and "concepts of a subordinate" we should enhance our ability to think through the ethical aspects of decisions and judgments. Such an understanding should also provide us with a rationale for our decisions and judgments whenever a legitimate request for a justification is made. In bare outline the model looks something like the six stages at the top of the page.

Typically, when an ethical dilemma occurs, a problem presents itself and the facts of the case are given—that is, chronologically, *Stage 5* comes first. It is critical that the very best factual information be obtained before attempting to reflect on what should be done. The facts

of the case drive the problem-solving process; inadequate or mistaken factual information subverts the whole enterprise.

Once the facts of a case involving an ethical issue are presented, our immediate response is frequently a judgment about what should or should not be done—that is, we make a moral judgment or decision. Thus, *Stage 6* is often the second step chronologically. This initial judgment may be correct; if it goes unchallenged, the matter may end there. The initial judgment may be the result of our intuition or general good sense or judgment, but since intuitions sometimes differ among individuals, it is important to be able to provide good reasons for them. Such reasons are found in the first four stages of our model. Because each stage to some degree depends on the stages before it, we will discuss them in reverse order, from Stage 4 to Stage 1.

Stage 4:

Code of the profession

The first court of appeal, so to speak, should be the “code of the profession”—Stage 4. Whether the code is developed by a recognized association of professionals, or handed down by parties who have legitimate authority, the general duty to follow the code of the profession stems from a voluntary agreement (stated or unstated). It is the idea that certain duties come with certain stations in life and by agreeing to accept a certain station the individual agrees to abide by its code of conduct to the best of his or her abilities.

Virtually every profession has a code of conduct that is presented to new employees. Psychologists, architects, nurses, doctors, insurance brokers, engineers, social workers...all have professional

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codes of ethics. Where a code does not exist, a company or institution often creates one specific to that particular workplace. It is a condition of employment that the worker subscribe to the code or be denied employment.

In the case of Federal prison workers, the code is the “Standards of Employee Conduct and Responsibility” (Basic Federal Personnel Manual, Chapter 735, and Department of Justice Order No. 350-65 (28CFR45), Document #3000.1). If a particular moral problem in Federal prison administration can be straightforwardly settled by a direct appeal to this code, the matter would end there. This will happen at times. But there are certain limits to every code of conduct, and the Federal prison standards are no exception.

Although “Standards...” is a pretty commendable document, it is not sufficient to ensure ethical conduct in even the most conscientious employees, for three reasons:

■ **Compliance.** It is much better when people willingly obey a set of rules than when they comply with them out of fear

of reprisals for noncompliance. People are much more likely to engage in voluntary compliance with rules if they understand them. Programs in which employees are educated about the reasons behind the code are likely to have the highest degree of compliance. Moreover, periodic evaluations of the code require that there be some higher court of appeal against which its precepts can be tested.

■ **Completeness.** The “Standards of Conduct” can’t cover all the territory. It tells us about conflicts of interest, cheating, lying, stealing, fraud, bearing false witness, bribery, favoritism, confidentiality, privacy, loyalty, and so on. It even makes the claim that “loyalty to the highest ethical principles and the country” is to be placed “above loyalty to parties or governmental departments.” But it does not tell the employee what larger ethical principles are behind the code. Moreover, while it specifies a range of penalties for particular offenses, it leaves open to administrative discretion whether, for instance, to issue a reprimand or a 3-day suspension. How are wardens to decide such matters fairly?

■ **Conflict.** Finally, some particular rules of a code may have to be set aside in the interest of doing the right thing. For example, in Herman Melville’s novelette, *Billy Budd*, about life at sea in the 19th century, Captain Vere must decide the fate of the sailor Billy Budd. Before the captain’s eyes, Billy kills the master-at-arms, John Claggart—who has falsely accused Budd of mutinous activities. Budd is an inarticulate innocent—he is so overwrought by Claggart’s lies that he cannot speak. His only resort is to swing—without intending to kill Claggart. But Claggart strikes his head as he falls and dies.

How is Captain Vere to decide this case? The strict rules of the code push him in one direction, but his own moral sense pulls him in another. He must decide; he has Billy hanged, but Melville leads us to question whether he did the right thing.

Codes in the various professions often present fixed rules that are too rigid to be followed to the letter without violating higher ethical principles and sensibilities. Hence, the codes of the profession need to be supplemented by higher ethical principles—and we move to Stage 3.

Stage 3:

Universal ethical principles

At this point we must turn to ethical theory proper for some basic universal principles. Without suggesting that they are the only (or even the most) important principles, we will focus on four principles that seem relevant to contemporary moral problems: autonomy, beneficence, nonmaleficence, and justice.

■ **Autonomy** states that every human being is a self-determining agent with intrinsic value. This means that we must treat human beings as ends in themselves, never merely as a way to achieve other ends. It means that we must respect the inherent freedom and dignity of the individual. Human persons are not objects, but subjects. They are not tools or instruments to be used. (In hanging Billy Budd, Captain Vere used him as a means of averting a mutiny, violating the principle of autonomy.)

■ **Beneficence** states that we must do what we can to maximize good or benefit for all who are affected by our actions. Specifically, beneficence requires us to (a) do positive good, (b) remove harm, and (c) prevent harm. If Captain Vere's decision to hang Budd was designed to

Stages 4 and 3	
<p><i>Stage 4:</i> Code of the profession.</p> <p>In the case of Federal prison workers, the code is the "Standards of Employee Conduct and Responsibility."</p> <p>Although "Standards..." is a commendable document, it is not sufficient to ensure ethical conduct in even the most conscientious employees, for three reasons:</p> <ul style="list-style-type: none"> ■ Compliance. ■ Completeness. ■ Conflict. <p>The codes of the profession need to be supplemented by higher ethical principles—see Stage 3.</p>	<p><i>Stage 3:</i> Universal ethical principles.</p> <p>Four principles seem relevant to contemporary moral problems (these are not the only important principles):</p> <ul style="list-style-type: none"> ■ Autonomy. ■ Beneficence. Do positive good. Remove harm. Prevent harm. ■ Nonmaleficence. ■ Justice. Equal treatment. Impartial treatment. Desert.

prevent mutiny, and Vere perceives the prevention of mutiny as doing positive good or preventing harm, then his decision may have been justified. But hanging the popular Budd could have in fact *caused* mutiny. Nor was removing Budd removing something harmful, since up to that point Budd had had a good effect on the crew.

■ **Nonmaleficence** is usually seen as the flip side of beneficence. This principle requires that we do not do deliberate, unnecessary harm to others—for instance, torture others for the pleasure of it.

■ **Justice** requires us to be fair in our dealings with others. We can identify three common applications of the notion of justice that are relevant to prison work.

(1) A central feature of virtually every theory of justice from Aristotle to the present is the notion of *equal treatment*. Justice is not done unless we treat equals equally and unequals unequally. By itself this does not tell us either how to determine when two or more people are equal. Still, given that persons are viewed as equal, justice commands us to treat them the same way.

(2) Justice also requires us to engage in *impartial treatment* of others. Impartial treatment means an absence of prejudice and favoritism in the way we treat others. Most of the "Standards of Employee Conduct" hang on this principle.

(3) Finally, there is the notion of *desert*—that everyone should get what they deserve, neither more nor less. The concept of desert requires us to give everyone his/her due. This rules out excessive as well as inadequate punishments, excessive as well as inadequate rewards. It is compatible with what we will later see as the "retributive theory" of punishment (see below). In the case of Billy Budd, if he did not intend the death of Claggart, his punishment of death by hanging seems cruel and unnecessary—disproportional, undeserved. Of course, if Budd were a favorite of Vere's, it would be wrong to lessen the punishment that another sailor would have received...that would be partiality.

These four principles, then, can be used to justify much of the conduct called for by the professional code of the Federal Bureau of Prisons, and to supplement the

code in areas beyond its scope. It is tempting to end the story here, but the potential for competition between and among these four principles remains a problem. If conflict occurs, how do we decide which of these ethical principles outweighs the others?

I maintain that the way we prioritize universal principles (Stage 3) is determined in large measure by the views we hold about punishing offenders. We are brought to that stage of the model in which "theories of punishment" are brought into play—Stage 2.

Stage 2:

Theories of punishment

Punishment, whatever its form, involves the deliberate infliction of "pain and suffering," or deprivation, on human beings. In putting offenders behind bars, limiting their freedom, or curtailing their rights, we are inflicting some sort of suffering or deprivation on them, whatever else we may want to call it. Since suffering and deprivation are generally viewed as negative, how can we justify their infliction?

Theories of punishment are designed to provide answers to this question. There are three main theories: *utilitarian*, *retributive*, and *vengeance-based*.

■ **Utilitarian theories.** Utilitarians believe that ethical conduct should increase the total amount of happiness or pleasure in society. They see the infliction of pain on offenders as a necessary evil aimed at producing the maximum benefit for society as a whole. The utilitarian, then, argues that our justification for inflicting pain on others is either *reform* or *deterrence*.

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legalistic retributivism
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committed a crime.**

If the aim is *reform*, we can punish lawbreakers to change them—improve their character—so that they will not repeat the deed, perhaps not even want to do it again. By reforming the individual we ultimately make society a better place—contributing to the greatest happiness of the greatest number. Decisions about programs and policies aimed at rehabilitation are justifiable using this principle.

Whether or not rehabilitation works is another question entirely. But even if it does work, opponents of the utilitarian view say that mandatory vocational training, mandatory counseling, mandatory trips to chapel, and so on, constitute additional punishment for those who do not want such experiences. Critics also argue that we could, using utilitarian principles, justify punishing someone who has a bad character, even if that person has not actually been convicted of anything. Some people think that it is a weakness of this view of punishment that it cannot justify capital punishment.

According to the utilitarian view, we can also justify inflicting pain on offenders if we see it as a way of deterring others

from doing likewise. As with the reform view, *deterrence* is aimed at making society a safer and better place, but it does not focus on the betterment of the individual offender. If the punishment of an offender can serve as an example to future offenders, then the punishment is justified. Unlike the reform view, *deterrence* seems to account for the death penalty.

However, critics of this view argue that if 3 years in jail is the prescribed punishment for an offense, it is additional punishment to also give the incident three columns in the local newspaper. It is also difficult to know how successful punishment is in deterring others, since any successes will go virtually unrecognized. Moreover, this theory could hypothetically be used to justify the punishment of an innocent person, if such punishment could be shown to have a significant deterrent effect.

■ **Retributive theories.** In general, retributivists insist that the punishment of a criminal must be only in response to the deeds he or she has done. No amount of punishment of an innocent man, no matter how much good results for society as a whole, can be justified on retributive grounds. Retributive theories usually fall into either the *moralistic* or the *legalistic* category.

The *moralistic retributive* view says that we must set the punishment to match the moral gravity of the offense. This theory argues that the penalty should be appropriate to the degree of wickedness of the criminal's intentions. (Billy Budd did not intend to commit murder.)

The difficulty with this view is that it requires us to be able to reliably deter-

mine the exact intentions of the offender. It also requires us to decide precisely what degree of punishment corresponds exactly to the offense. Intangibles such as "intentions" and "moral gravity" are slippery items.

Like moral retributivism, *legalistic retributivism* says that the sole justification of punishing someone is the fact that he or she has actually committed a crime. This avoids some of the problems of the moralistic view by insisting that the punishment be prescribed by law and that intentions and moral gravity are not relevant to the issue of whether or how much to punish. (It is worth noting that the "Standards of Employee Conduct and Responsibility" is largely based on this point of view.)

One traditional problem with this view is that it is unclear how we decide what and how much punishment to establish by law for various offenses. Another problem is rigidity: presumably, there will be times when we will want, with good reason, to make exceptions. (Of course, in the Federal system, Sentencing Guidelines address both of these concerns.)

■ **Vengeance theories.** Aimed at satisfying our desire for vengeance, especially for heinous offenses such as child abuse, rape, and cold-blooded murder, this theory says we are justified in punishing a criminal as an outlet for aggressive feelings that would otherwise demand satisfaction in socially disruptive ways. It may also give pleasure to those who wish to see the offender suffer for his/her crime. Some vengeance theories see punishment as an expression of the hate and anger we often feel toward the offender.

Stages 2 and 1

Stage 2:

Theories of punishment.

Punishment, whatever its form, involves the deliberate infliction of pain and suffering on human beings.

Three main theories are used to justify the infliction of pain and suffering:

- **Utilitarian.**
Reform.
Deterrence.
- **Retributive.**
Moralistic.
Legalistic.
- **Vengeance-based.**

Stage 1:

Concepts of the subordinate.

A subordinate is someone who is subject to or under the authority of a superior.

There are at least four ways in which a supervisor or other person in charge may view subordinates:

- **Subordinate as "object."**
- **Subordinate as "animal."**
- **Subordinate as "devil."**
- **Subordinate as person.**

In this last view, the subordinate is seen as a human being—a person with dignity—who thinks, makes choices, has goals, can improve.

The trouble with vengeance is that, since it is emotionally based, there is a danger of getting carried away by unreasoned passion.

It may be that no one of these theories is adequate by itself to decide what punishment is appropriate, but that some combination of them could be. And yet, in cases of conflict, it remains important to be able to decide which takes precedence.

As suggested earlier, the view we take of punishment is largely bound up with the concept we have of the inmate (subordinate)—the first stage of the model.

Stage 1:


Concepts of the subordinate

A subordinate is someone who is subject to or under the authority of a superior. Staff workers in a prison are subordinate to the warden and inmates are presumably subordinate to the correctional workers and others in jurisdiction over them. The concept one has of those who are in his/her charge can dramatically affect the way one treats them. There are at least four ways in which a supervisor

or other person in charge may view subordinates:

■ **The subordinate as object.** The subordinate is seen as a means to an end, as an instrument of one's own or the prison's ends. A person with this view uses people to advance his/her own program or career, regardless of the effect it has on the subordinate. The subordinate is not given an opportunity to participate in decisions, make choices, or contribute ideas. The subordinate is a "thing"—incapable of improvement, deserving of virtually nothing. This perspective sees the prison as warehousing human objects, and staff as mindless robots—equivalent to the bars on the windows or the gates on the entrance.

■ **The subordinate as animal.** In this view, the staff person or the inmate is seen as a living thing with basic biological needs (food, shelter, clothing, sex), but not as a human animal. The subordinate is more than an inanimate object, but less than a person who has higher needs.



From this perspective, the prison is viewed as a kind of kennel and staff as animal keepers. Needs of staff or inmates that go beyond the basics are ignored.

■ *The subordinate as devil.* A superior may see the subordinate as something evil—clever and intelligent, perhaps, but bent on lying, stealing, or murder. Holders of this view tend to establish policies and procedures designed to make life miserable for the subordinate. The penalties they devise are designed to punish for the sake of punishment alone. Their decisions will perhaps be designed to retaliate for evil, to strike back, or to get even, regardless of whether reform or deterrence occurs. Hostile emotions are vented through punishment of the offender. People with this view tend to see punishment as vengeance.

■ *The subordinate as person.* In this view, the subordinate is seen as a human being—a person with dignity—with feelings, thoughts, needs, desires, hopes; who thinks, makes choices, has goals, can improve. A person has a family, makes friends, wants to be happy. A person can change or be changed. A person is worth saving. A person has inherent worth or dignity.

Someone who sees the subordinate as an object or a brute animal is likely to be drawn to the utilitarian perspective, in which the subordinate is seen as a means to an end. If reform measures are introduced, the outlook shifts to a behavioristic (Skinnerian) view, arguing that staff should retrain or modify the behavior of the offender. From this perspective, anything we do to objects and animals for the good of society is acceptable—including using them to deter other offenders. The principle of maximizing benefits for the greater good

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can improve.***

will always override considerations of autonomy and justice.

One who views the subordinate as evil or an agent of evil will be inclined toward vengeance theory, in which punishment is seen as a way of striking back at evil—or as good triumphing over evil. This person will use (or abuse) justice principles by treating all subordinates as equal to each other but unequal to “us.”

Finally, those who view subordinates as persons will most likely embrace the “moralistic retributive” theory of punishment and gravitate toward the principle of autonomy as the superior ethical principle. This view has several advantages: allowing reform measures as an option to the offender (respecting his/her right to choose); making deterrence incidental; ruling out vengeance as abusive to the fundamental dignity and worth of human beings; avoiding rigid rules that cannot account for wrong things done with good intentions.

Such a view puts autonomy, or respect for persons, above utility, or maximizing happiness. Captain Vere would not have sacrificed Billy Budd to the interests of

the greater good if he held this view. In this view, the only policies, procedures, and programs that are justifiable are those that respect the inherent worth of the individual.

Prisons are first and foremost places where people live and work. Where there are rules and regulations on the books, they should be laid down with respect for persons in mind. Once they are established, compliance should be based on respecting people as individuals. “Standards of conduct” at Stage 4, that are drafted with respect for persons in mind, deserve to be followed because they are so based. They should be followed, unless their abandonment can be justified by appeal to a higher principle such as those at Stage 3. Principles at this stage are to be prioritized by appeal to our basic philosophy of punishment (Stage 2) and our view of subordinates as human beings (Stage 1).

While the viewpoints in this article may appear clear-cut and easily defined, life experiences are more dynamic and tend not to fall so neatly into recognizable categories. Thus, this article is intended, as mentioned at the start, to enable correctional workers to examine the lines of reasoning they employ to reach the decisions they make. In this way, they can either reaffirm or reexamine their decisions—and they will be able to articulate the underlying reasons for these decisions, adding consistency to correctional decisionmaking all along the line. ■

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