I have no conscience; Adolf Hitler is my conscience.—Hans Frank, 1935

Hans Frank created the legal system for the Third Reich. Although Frank tried to protect procedural legal rights for ethnic Germans, he made Adolf Hitler’s will the ultimate source of German law. As Governor General of Poland during World War II, Frank supplied slave labor to Germany and collaborated in the extermination of Jews. Then, as a scholar, he returned to Germany and lectured about the importance of the rule of law. In 1946, Frank was found guilty of war crimes by the International Military Tribunal at Nürnberg.
Frank’s strange odyssey began in 1927 when he read an advertisement in the Nazi Party newspaper, *Volkischer Beobachter*. Storm troopers had been arrested after rampaging through a Berlin restaurant where a Jewish family was having dinner. The Nazi Party wanted an aggressive lawyer to represent these “poor party members without means.” Frank answered the advertisement, offering his services pro bono. He bought a third-class ticket to Berlin and was successful in obtaining lenient sentences for the Nazi defendants.

Frank’s next stop was Nazi Party headquarters, where he met Adolf Hitler. Hitler, impressed, invited him to “come and work for the party.” Frank’s career possibilities were now unlimited. Political turmoil was rife. The Nazis continually incited violence. The Nazi roar to power was fueled by street terror. Disregard for the Weimar legal system was routine. Legal cases piled up. The Weimar Republic was overwhelmed by 40,000 cases involving Nazis between 1927 and 1930. Frank, at the request of Hitler, was personally involved in 2,400 of them. In 1928, Frank formed the Union of Nazi Lawyers and became their leader. He became Hitler’s personal lawyer.

Then came Frank’s signature case. As leader of the Nazi Party’s Legal Division, he represented three German Army lieutenants, Hans Ludin, Richard Scheringer, and Hans Friedrich, all charged with “preparing to commit high treason.” Fired with Nazi propaganda, they tried to persuade their fellow officers not to combat the Nazis if they launched an armed revolt.

This landmark case became known as the Leipzig Reichswahr trial. It began in Germany’s Supreme Court in Leipzig on September 30, 1930. The Nazis had just made stunning gains in national elections. The Nazi Party was now Germany’s second largest political party.

Frank called Hitler, himself, to testify. As a witness for Frank’s clients, Hitler had an international forum. He reassured the world
that the Nazis would never try to seize power by force. If the young officers thought otherwise, they were mistaken. Hitler assured the court: “Our movement has no need of force. The time will come when the German nation will get to know of our ideas; then 35 million Germans will stand behind me. . . . When we do possess constitutional rights, then we will form the State in the manner which we consider to be the right one.” The President of the Court asked, “This too, by constitutional means?” Hitler’s response, “Yes.”

When the trial ended on October 4, the defendants were found guilty. But they received mild sentences. Hitler’s testimony made world headlines. The Nazis were jubilant. Three years later, Hitler ruled Germany.

Frank regarded this case as his finest hour and his greatest service to the Nazi Party. Hitler encouraged him to enter politics. In 1930, he was elected to the Reichstag, one of its youngest members.

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How to do the Right Thing: A Primer on Ethics and Moral Vision

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Chapter 2:

How to do the Right Thing: a Primer on Ethics and Moral Vision

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“The right thing”—that’s what most of us want to do, but we don’t have a guide, and we don’t think about it much. And when we do think about it, we don’t have much in the way of an explicit or articulated method to follow. Not long ago I participated in a panel presentation where the lead advice on how to be an ethical executive was to exercise “courage, candor and conscience.”1 Sounded good to me, but it seemed too vague, abstract and elevated to provide much practical assistance in actual decision making. What follows is a translation of “courage, candor and conscience” into simple and usable guidance for doing the right thing as a business executive. My intention is to be helpful in understanding the ethics of one’s day-to-day working life.

A Working Definition of “Ethics”

To begin I want to clarify what I mean by ethics, and to distinguish compliance from ethics. Complying with the law is, of course, usually the right thing to do. But merely being in compliance—avoiding violation of the law—does not mean that one is doing the morally right thing in any particular situation. “Ethics” refers to rational deliberation about questions of right and wrong (that is, moral questions) and to the results of that deliberation. In other words, ethics is simply serious thinking about moral questions and the results of that thinking. “Ethics” in this sense is moral philosophy (one of the three main branches of philosophy). It has a long secular tradition in Western culture and universities and— in the form of professional ethics—is commonly studied in university law, business and medical schools. From this perspective it is clear that conduct in compliance with law may well be morally wrongful. For
example, a fair and genuine debt might be blocked from legal enforcement by a statute of limitations or by the statute of frauds. In other words, a legal technicality might prevent enforcement of a debt justly owed and due. Although it would not be a violation of law to refuse to pay the debt, most of us would say—all other things being equal—that refusal to repay what you justly owe is a moral wrong. Similarly, some years ago it might not have been unlawful to use “off-the-books” entities to create a misleading accounting representation of a corporation. Yet, again, most of us would say that misrepresenting the financial situation of an entity to one who will rely on that misrepresentation is a moral wrong even if the technique by which it is accomplished is not legally prohibited. Thus, if one is interested in doing the right thing (that is, if one is serious about business or professional ethics), compliance with the law is only a first step.

For the purposes of this discussion we will assume the conduct being discussed is lawful. The question then becomes: is it the right thing to do?

**Moral Vision**

The first insight I would suggest is that *ethics is problematic not so much in the deciding what to do, but in being aware that our conduct involves an ethical problem to begin with.* I have defined ethics as rational deliberation about questions of right and wrong. But you can’t deliberate unless you notice there is a question facing you. Most of us who run into ethical difficulty do not have bad character or wrongful intentions. Our problem is failing to notice that there is a moral question to begin with. Seeing (observing and perceiving) is thus the first and crucial step in morality. And this step—always difficult—is more difficult in organizations because of the dilution of responsibility: there are others to notice, others one can rely on. A classic psychology experiment demonstrates this phenomenon. Participants were placed in a room and asked to fill out a form. Smoke was then sent into the room through a wall vent. If the subjects were alone, 75 percent reported the smoke to the experimenters. If two other seemingly unconcerned subjects were also in the room, only 10 percent reported. Thus, almost all subjects would follow the passive lead of the others, continuing to fill out the form and
ignore the smoke (and the danger possibly indicated by that smoke). This now well known—but usually ignored—fact about human nature can have severe consequences. In the winter of 2005, a remote mountain lodge in southwest Colorado was destroyed by a propane gas explosion; three children died. In the hours before the explosion many guests and employees smelled the odd odor of the gas. One guest asked an employee, who suggested the odor was just “sewer gas.” No one acted to find the leak, identify the odor, or evacuate the lodge.

The lesson is that moral vision is a prerequisite to thinking about an ethical question. You have to notice the smell of the gas, you have to register that you are seeing and smelling smoke, before you can think about it. If seeing (perceiving) is therefore perhaps the key moral art, then courage, candor and conscience—as elaborated below—serve as the foundations of the moral vision required for ethical deliberation and conduct.

First, let me translate “conscience” into something a little more tangible and close to home. By conscience I would suggest we understand simply everyday “intuition” about right and wrong. Each of us has a sense of right and wrong. It is near at hand, part of us. Yet often the further we go in life, the more we tend to find ourselves in situations where we suppress that intuition. We think:

(a) we’re grown-ups now, out in the big “real” world; or
(b) we’re in a “hardball” business or litigation situation with large stakes for our company and our own advancement; or
(c) we’re part of a smart, savvy, mature organization (or team)—these people know what they’re doing.

Here lies the danger for suppression of moral intuition; for distancing ourselves from ourselves and undermining our own integrity. Here lies the very real risk of suppressing our perception of that propane gas smell, or of that smoke coming into the room as we do our job and fill out that form. To avoid that risk we need to cultivate our intuition about right and wrong, not ignore it.

Ask yourself, how would I feel about telling my spouse (or child, or parent) about this situation in ordinary language? Would I want to have it reported in the newspapers? Notice
when thinking about a situation causes a little queasiness in your stomach (and don’t, one or
two layers down in your consciousness, blame it on lunch). For example, if your organization or
client is, for some arguable reason, resisting paying a just debt: notice the queasiness; pay
attention when the thought drifts by that you’re contemplating “stiffing” a creditor who is
really owed the money (or material, or machinery, or whatever).

There is no overemphasizing the importance of this initial step. It is the gateway to
ethical behavior. Imagine some action other than the debt closer to home for your particular
work. Let’s call it “D.” D is attractive from a business or professional perspective; it is not
prohibited by law. Nobody else seems bothered by D. To cultivate your intuition (or
conscience) you need to go further:

• Is D the right thing to do?
• Is there some perspective from which D is the wrong thing to do?
• Will it harm people who don’t deserve to be harmed?
• Is it dishonest (although not unlawful)?

To be ethical it is essential that you go beyond your business or professional identity as
executive, accountant, lawyer, or board member. It is essential to pay attention to what you as
an ordinary moral person would think about the proposed conduct. The somewhat lofty and
elusive concept of “conscience” can be understood in this way as simply your intuition about
right and wrong. But to make it accessible and useful you have to cultivate it, pay attention to
it, listen to it.

As exemplified by the smoke experiment (among many others), there is a great deal of
empirical evidence that our moral perceptions are worse when we are in groups or when
authority figures may be participating. (Imagine: a board of directors, a business project team,
a working group with the supervisor present.) In such contexts most of us tend to assume that
if there were really an ethical problem, somebody else would notice it and point it out. “I’m
here with a lot of smart, talented, experienced people. If they aren’t bothered, there must not
be anything bothersome” is the natural assumption. This is reinforced or heightened if the
group has a leader or hierarchy. We naturally tend to defer to the leader: “If George doesn’t see a problem with this, there must not be a problem.”

Resisting that common reaction is the second step in moral vision, and the second translation. I suggest a very modest and close at hand understanding of courage: self-confidence. The first and most crucial step is noticing that something may be wrong (conscience); the second is not burying that perception, not pushing it aside (courage). Moral vision and ethical analysis require bringing a vague perception to the surface, looking at it squarely, thinking about it directly. That requires confidence that your individual, lonely sense that something may be amiss might just be right. (And you have to be willing to follow this perception despite the fact that no one else in the group—including the leader—seems to have noticed.) It is so easy to defer in groups, or to leaders, particularly when that deference is implicit, when the issue hasn’t been raised for discussion, isn’t on the agenda, hasn’t been perceived. In fact, it is very difficult not to defer. Having the self-confidence to take your perception (hazy and ill-formed as it may be) seriously requires courage. There may well be several others in that room or in that working group who have a similar vague sense that something is not quite right, but who are also deferring, remaining silent on the issue.

But there are many pressures and incentives not to notice a moral difficulty. Even within one’s own thoughts, those incentives and pressures commonly remain unconscious and unarticulated—we don’t notice the problem because it’s uncomfortable to notice it. When that moral queasiness nudges, when there is a little something pushing at the edges of our thoughts, there is usually a tendency to push it back, to keep it out of focus, to half-think the queasiness is just something from lunch. And if the perception becomes a little clearer or more articulated—if, that is, we do notice—it is easy to decide that we are probably mistaken, or overcautious, or idiosyncratic. Most of us don’t want to be the squeaky wheel. We want to move the project forward, not slow it up with imagined difficulties.

Moral vision thus requires (1) focusing on and developing that vague sense of uneasiness, and (2) having the courage to believe that you—alone—may well be on to something that should be dealt with. When no one involved has a developed moral intuition (conscience) and the self-confidence to trust that intuition (courage), your group or
organization may be on its way to trouble. For the ethical life of the organization and for your own personal integrity, it is essential that you not defer to the silence, that you not push that ill-formed perception somewhere out of sight, out of mind.

The third element of moral vision is candor, which I would translate to mean simply honesty with oneself. You have to be able to bring your intuitions into focus and face them directly. You have to be honest with yourself about what you are seeing or feeling, and you have to be able to articulate your insights before you can think them through. You have to know what you are thinking, or seeing, or feeling before you can exercise self-confidence in regard to that perception. In this sense, candor is tightly connected with our definitions of conscience and courage. Candor and courage reinforce each other. Honesty with yourself may well be a necessary precondition to self-confidence about your intuition. This is much more difficult to accomplish than it sounds. As we have seen, all the incentives often pull in the opposite direction: it is so much easier to just let that possibly troubling thought drift on by, or find some quick (and usually superficial) reason for dismissing it.

Courage, candor and conscience are the essential ingredients of moral vision. They need not be lofty abstractions, but can be close at hand and familiar: (1) everyday moral intuition, (2) honesty with oneself about that intuition, and (3) self-confidence about one’s moral vision.

**Ethical Deliberation**

At this point let’s assume you have moral intuition. You’ve been honest enough with yourself to have a fairly clear idea about a problem, and you have the self-confidence to conclude that the problem may be sufficiently serious to merit concern. This is the beginning, not the end. You now know there may be a problem, not that there is a problem. What now?

I’d suggest two further steps. First, think through the problem carefully and analytically. Why do I think this may be a problem? Will innocent or undeserving people be harmed? Will someone be cheated? Will the market be deceived? Who will gain from the conduct, and will that gain be earned or deserved? What values are at issue: Honesty? Fair value? Shareholder
value? Transparency? Generosity? Equity? From what perspective can the conduct be criticized? From what perspective can it be justified? Which is the more truthful, accurate, or generous perspective? This is ethics in a nutshell: rational deliberation about right and wrong. You may already have accomplished much of it in the process of clarifying and being honest about the initial intuition.

Deliberation, as most effectively practiced, involves a second step: including someone else. Seek additional input and the benefit of a different point of view. Discuss the situation with at least one — and preferably several — people whose judgment or perspective you trust or value. This two-step process provides a check on your intuition and your analysis, and will help you decide whether you are seeing clearly. You may be mistaken, idiosyncratic, or overcautious — these steps help you measure that possibility. Often the two steps can be combined: thinking the situation through analytically may be most effectively accomplished through conversation with a friend or colleague.

An Example

Picking the role closest to your own, imagine you are either (1) a corporate executive, (2) a member of the board of directors, or (3) a professional advisor — perhaps a lawyer, accountant, or consultant. A major product line—several similar electronic toys—are assembled in China by young women workers, approximately 18 to 23 years old. Each is required to work 110 to 120 hours a week. Ordinarily, working fewer hours would reduce the pay for these young women, which is already very low. But your company can clearly afford to lower the hours significantly and still pay each worker the amount she now earns for the 110 to 120 hour week. Even with the higher labor costs, the product could still be sold competitively and at a worthwhile profit. Chinese government officials, however, prefer that the hours not be changed because your company’s workers would then be treated more favorably than comparable workers at state-owned factories. The disparity would create pressure on the state-owned enterprises. Finally, workers are selected by the government. This complicates
matters because of the very real possibility that many of your workers are in fact younger than 18, despite assurances to the contrary by government officials.³

Take a little time and effort here: pause, and try to imagine yourself into this situation. What would you feel? What would you think? Don’t go on to the next paragraph without spending a few minutes trying to put yourself into this situation.

For most of us, some sense or intuition suggests that something is wrong here. One hundred and ten to 120 hours of intricate physical work every week, week after week — what kind of life is that? To the extent we can identify with these young women as fellow human beings, something in this situation does not feel right. What time is left for the things we value in life aside from work? How do those hours of work, week after week, wear on the body, the mind, the spirit? Would you want this life for your daughter? What would your spouse or child or parent think about this? About you participating in this situation? How would the newspapers or magazines react to it? Aside from what you think about it, how do you feel about this situation?

That feeling—that moral intuition—is unfortunately easy to brush aside. And in the real world of business such feelings and intuitions are frequently suppressed. For example, the following quick reactions are easily available brushes: (1) This is China we’re considering, with vast differences from our own culture and economy. Any queasiness we might have isn’t applicable to a situation so far away geographically, culturally and socially. (2) If these young women had a better option they’d take it. From the perspective of basic economics, if they choose this work we have to assume it’s better than the alternatives, and we’d be doing them no favor by taking it away. That’s the beauty and comfort of the market. (3) Paying wages above the market is dangerous. It invites our competitors to come in and produce similar products at a lower price. (4) This situation may be a problem, but it is not my problem. It’s not in my division, not my job, not my responsibility. I am not the officer in charge of this operation; it’s her problem, not mine. (Or, it’s management’s responsibility, not the board’s.
Or, local management’s responsibility, not the executive officers’. Or, this is for senior management to worry about, not us on the line.)

One or all of these justifications may be correct, or at least partly correct. But it is not time for that yet. Conscience—cultivating your moral intuition—simply means not being so quick to dismiss: first you have to bring to the surface, refine, and clarify the intuition that there may be something wrong here. Following that is the time for those modest translations of courage and candor. The fact that nobody else in the organization is bothered by these long hours of labor is not crucial at this stage. (In fact, many others may share your concern, and just not be saying so. Or, they may not have thought about it. Or thought briefly and dismissed too summarily.) The fact that the leader is not bothered (or not saying so) is also not crucial at this stage. What is crucial is whether you are bothered, whether you think there may be something troubling here. It takes courage (self-confidence) to think that you may have noticed something of moral significance that no one else has noticed or is willing to mention. And it requires honesty with yourself (candor) to look squarely at the situation and clarify your perception that something about this situation seems wrong.

Thus the right answer is: this situation is ethically problematic. There is at least a possible problem of right and wrong. But that only begins the ethical analysis; it doesn’t end it. The question then becomes: is this conduct ethically justifiable? That moves into the more complicated questions of ethical deliberation mentioned earlier. It seems wrong, but in context and analyzed is it in fact wrong, and if so, why? This chapter is not the place to create a business school ethics “case” from the Chinese workers scenario, thoroughly examining the many relevant and arguable factors. But we can briefly canvas some of the questions raised.

First, it does seem that innocent people undeserving of harm may well be harmed by this conduct. Second, market deception does not seem to be involved (except to the extent customers assume that the products they purchase were produced under humane working conditions). Third, the company and its customers both gain. Whether that gain is earned or deserved seems to circle back to the root question: is this unjustifiable exploitation of the vulnerable? Fourth, of the values listed above, “generosity” and “equity” seem to suggest that
finding a route to lowering the hours without lowering the pay at least merits serious consideration.

Now, switching to the other side, from what perspective can the conduct be justified? This is the point at which to consider seriously each of the four “brush offs” listed above, and each has some weight and persuasive power. The fact that the women apparently have no better option (the basic economics argument) seems particularly weak because the company can afford to provide them with a more attractive option: significantly lower hours for the same pay. The fact that taking that course of action would displease the Chinese authorities due to the pressure it would put on other factories with similar excessive hours is significant, but requires more information. What are the likely, or possible, consequences of causing that displeasure? How likely? How much would those consequences harm the company or the workers? Might the pressure and its consequences help those workers employed in the government factories and possibly have a small positive effect on the conditions of employees in the area in general?

We can combine, refine, and to some extent summarize these questions: our corporation didn’t create this general economic and social situation, but is it acceptable to profit from it? What alternatives do we have? How, if at all, would those alternatives improve the situation for these young women? And, finally, what of the arguable fact that this is someone else’s responsibility? At this stage, that last factor seems to be primarily a means of avoiding ethical responsibility and analysis. It is premature. At this point the task is to engage in sufficient analysis to decide whether the issue ought to be raised and brought to the attention of, or forced on, those who are more immediately in charge of or responsible for the situation. As noted above, this kind of deliberation can often be best accomplished through conversation with others who can help think through the issue. Discussing the matter with someone whose judgment and discretion you trust can be crucial in reaching reasoned conclusions.

Assuming you conclude there is a significant ethical problem, what do you do about it? With whom do you raise the issue? This is where we come to the question of “whose problem is this?” The answer will depend on the organization, your position in the organization, and the
specific nature of the problem. You should consider who you are comfortable approaching, lines of communication, and who is trustworthy. Where does the responsibility and authority for this matter rest? What responsible person is most likely to be open to considering the situation as ethically problematic? These are the kind of practical questions that must be addressed in order to turn your ethical perception into possible positive action.

**Conclusion**

Two final observations. First, if your group or organization is relatively informal, and if you are sufficiently comfortable and confident of your position in it, the final two steps of analysis and reflection with others might be accomplished within the group itself. If raising a half-baked idea is acceptable in this group, this more spontaneous and direct route may well be the better way to go. The more comfortable your group is with raising and considering moral questions, the less likely it is to have ethical problems. Second, modesty and tentativeness are often appropriate in raising ethical issues. The self-confidence I suggested earlier is something quite different from arrogance or self-righteousness. Being tentative about assertion and conclusions, speaking in terms of “possibilities” or “perhaps,”, and moderation in tone and substance, all may be helpful in being heard and understood.

With these questions of how and where to raise ethical issues we are moving toward another topic. Some observers think we have lost the ability to deliberate together about questions of right and wrong. Organizations should be concerned about that possibility, and should carefully consider how to address it. In this chapter, however, I have been primarily concerned with the moral vision which precedes that deliberation.

What I have tried to provide here is a little low-key advice about the day to day practice of ethics. Conscience we can understand as ordinary intuition about right and wrong. Pay attention to those intuitions; focus, don’t dismiss. Courage can and should mean a lot more, of course, but for this process to work it calls for no more than self-confidence about what you see and feel. Finally, think straight and be clear. Don’t fool yourself by finding some easy way to dismiss what may really be a problem. The candor required is simply the self-discipline to be
honest with oneself. Conscience, candor and courage—moral intuition, honesty with yourself about that intuition, and self-confidence in regard to what you’re seeing—are all close at hand and not so difficult, but they can make a big difference.

1 The panel’s topic was “Board Leadership: Courage, Candor, and Conscience,” the title of a paper by the lead speaker, Roger Raber, then president of the National Association of Corporate Directors. See Stephen Pepper, A Short Primer on Ethics and Moral Vision, 30 Directors Monthly 19 (July 2006), for an early and less developed version of the advice suggested in this chapter.


3 This “hypothetical” was suggested by my colleague at the Daniels College of Business, James O’Toole, Daniels Distinguished Professor of Business Ethics.

4 All of these responses were evoked when this scenario was presented to a monthly meeting of a local chapter of the National Association of Corporate Directors in a state I won’t identify. The assembled directors, asked to imagine themselves as members of the board, were extremely reluctant to characterize the situation as a moral or ethical problem. And, if it was an ethical problem, many were quite firm that it was not the board’s problem.

5 See “Ethical Deliberation at page ___ above.