Peter G. Kirchschlaeger

Ethical Decision-Making

Introduction

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For our daughter Sara Alexandra

Foreword

Thanks to our freedom, ethical decision-making challenges us as human beings on a daily basis – be it in our private or professional lives, be it on an individual, organizational or institutional level, be it in a social, economic or political context. The opportunities open to us thanks to successful ethical decision-making and the challenges to be mastered in this regard are increasing – because of growing ethical complexity and because of a reality that is increasingly presenting itself as a VUCA world (VUCA stands for volatility, uncertainty, complexity, and ambiguity) (Hieronymi, 2016, pp. 6-21).

In view of these realities and thanks to the exchange with students, with participants in conferences, meetings, research workshops, events in which I had the opportunity to participate or lead, with politically engaged people, with decision-makers in politics, society and business, as well as with colleagues and scholars from other scientific disciplines, the idea of developing a model that strives to address new opportunities and challenges that arise in the course of ethical decision-making and that strives to address new opportunities and challenges that arise in the course of ethical decision-making and to encourage a well-founded ethical position and corresponding action, and that in these respects goes beyond existing models and instruments of ethical decision-making has matured in me – this, of course, in the awareness that I may not do justice to all existing instruments and models of ethical decision-making. At the same time, my goal was to develop a model that supports ethical decision-making with ease and argumentative elegance. And out came: SAMBA!

SAMBA stands for the following four steps:

1. **S**ee and Understand the Reality
2. **A**nalyze the Reality from a
   Moral Standpoint
3. **B**e the Ethical Judge!
4. **A**ct Accordingly!

More about this now follows in this book.

A book goes back to an intellectual path that one never treads entirely alone, but on which one directly or indirectly as well as implicitly and explicitly, picks up, collects or receives suggestions and impulses. My special thanks go to the team members of the Institute for Social Ethics ISE of the Faculty of Theology of the University of Lucerne – Aaron Butler, Adrienne Hochuli Stillhard, Alexandra Kaiser-Duliba, Andrea Murer, Antonia Bilic, Dr. Ana Laura Edelhoff, Dr. Ernst von Kimakowitz, Dr. Evelyne Tauchnitz, Dr. Juerg Kuehnis, Kiki Kuenzler, Matteo Frey, Melina Faeh, Shania Kuhn, Sonia Arfaoui –, the participants of the Lucerne Graduate School in Ethics LGSE of the Institute of Social Ethics ISE of the Faculty of Theology of the University of Lucerne – a.o. Elizaveta Ebner, Noemi Honegger, Sara Ilić, Mojalefa Koloko, Laurence Lerch, Darius Meier, Jan Thomas Otte, Nina Stern, Stefanie Uhl and Matej Vereš –, the faculty and

students of the Lucerne Summer University: Ethics in a Global Context under the patronage of UNESCO of the Institute of Social Ethics ISE of the Faculty of Theology of the University of Lucerne, my students at the University of Lucerne and at other universities in Switzerland and abroad, the participants of conferences, meetings and events in which I had the opportunity to participate or lead. At the same time, I would like to thank the other members, including of the Mobility 4.0 working group of the Swiss Federal Roads Office (FEDRO), the Swiss Federal Ethics Committee on Non-Human Biotechnology ECNH, and the board of trustees of the Swiss Foundation of the European Academy of Sciences and Arts, from whom I learn or had the opportunity to learn a lot.

The research-oriented academic environment at the Faculty of Theology of the University of Lucerne has greatly facilitated the writing of this book, for which I am very grateful.

I would especially like to thank Mr. Alexander Hutzel of Nomos Verlag for including the study in the series "NomosTextbook". In setting up the manuscript for printing, Ms. Eva Lang from Nomos Verlag as well as Ms. Antonia Bilic, Ms. Kiki Kuenzler, and Ms. Shania Kuhn from the ISE were of great help to me, for which I am very grateful.

My wife Miriam and our daughters Sara and Mia, my entire family and my friends have accompanied the development of this book with their love and friendship, with encouraging interest and with great support. All my thanks go to the people of my "little world".

Lucerne, July 13, 2023 Peter G. Kirchschlaeger

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1 Why Ethics-SAMBA?

Summary

In this chapter, you will learn that thanks to our freedom and self-determination, we humans have to make ethical decisions all the time. Ethical decision-making is based neither on legal considerations nor on self-interest, individual interest, or economic rationality, nor on pragmatic or practical considerations, but is oriented toward the good and seeks the right. Ethics as a science that reflects on morality should help here and provide orientation. At the same time, its practical orientation is expressed in the fact that ethical decisions should also lead to corresponding ethical actions.

In the course of its striving for universality, ethics must respect the principle of generalizability through rational and plausible arguments to safeguard both freedom and human dignity – the two principles that constitute ethics – of every human being, as well as a cultural, religious, ideological, moral, and ethical plurality. "Good reasons" are to be identified. A model of how "good reasons" can be identified, or how criteria can be formulated that distinguish "good reasons" from other reasons, is as follows: "Good reasons" means that it must be conceivable that all people, in their effective freedom and autonomy as well as in their full equality would agree to these reasons – within a model of thought and not within a real worldwide referendum – on ethical grounds (see Kirchschlaeger, 2021a).

People can help with their ideas and actions today and tomorrow to help shape the today and the tomorrow. For this to happen on an ethical basis and for individuals and society to assume more ethical responsibility, four competencies are needed: first, it is important to perceive reality as comprehensively as possible. Second, we need the ability to recognize ethical opportunities and risks as such. This requires ethical reflection competency. This also includes the rationally justifiable choice of (an) ethical reference point(s), with the help of which the ethical opportunities and risks can be identified. Third, it is necessary to take an ethically justified position. Fourth, ethically based proposals for solutions and possible courses of action are helpful.

Ethics-SAMBA as a model for ethical decision-making can help here.

1.1 Need for Ethical Decisions

The changes in our living environment open up scope for action for us humans and at the same time present us with new challenges of relevance to society as a whole.[1] The need for ethical orientation in an increasingly complex world is growing. This gives rise to numerous fundamental questions with new urgency, such as: How do we confront global problems such as poverty, pandemics, or climate change? How do we deal responsibly with expanded possibilities for action in medicine and biotechnology? What does digital transformation mean for the future of our work, for economic and political systems, for us as individuals and as a society, and for our lives? How can we reconcile the legitimate freedom

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1 All verbatim quotations originally written in languages other than English have been translated with support of machine translation and/or artificial intelligence.

of individuals and those of society? What significance does the perception of personal, social, political, and global responsibility have in this context? "The question of what is right and good arises for every society, every generation, and every person" (Pauder-Studer, 2020, p. 13).

Ethical decisions are required – whether at an individual level (micro level), at the level of organizations (meso level), or the level of societies, institutions, or the global society (macro level). They also serve to understand our understanding, i.e. they allow us to identify where opportunities and risks exist from an ethical perspective, as well as where and how opportunities are to be benefitted from and risks to be mastered. The focus of ethical decision-making is neither on legal considerations nor on self-interest, individual interest, or economic rationality, nor on pragmatic, or practical considerations. "Ethics means philosophical reflection on what is right or wrong on moral grounds. [...] The term 'ethics' is most often used synonymously with 'morality', i.e. synonymous with the sum of the norms by which we consider it right and well-founded to live." (Pauder-Studer, 2020, p. 14). The focus is thus on what people should or should not do. These questions of 'ought' only arise when people are thought in conjunction with freedom. Thanks to freedom people are free to decide between "good" and "bad" or between "right" and "wrong". If people did not have freedom in such a fundamental sense, then the question of *ethical* decisions would be superfluous and this book would end here or would never have begun.

The freedom of human beings also includes the autonomy of human beings. "Only when a person no longer allows him- or herself to be dogmatically dictated what is good, but determines it for him- or herself after careful consideration, i.e., at a critical distance from his or her own interests as well as from the judgments of others, what goals are good for him or her, for a group of people, or all people as a whole, has he or she achieved the moral dimension" (Pieper, 2017, p. 19). This autonomy allows people to relate to morality, to expose points of orientation for ethical decision-making, and to make ethical decisions. "Morality or morals are those patterns of action which have emerged from processes of mutual recognition in a community of people and which have been distinguished as generally binding and to which normative validity is attributed. The terms morality and custom thus denote structures of order that represent evolved forms of life, forms of life that reflect the value and meaning concepts of a community of action" (Ibid., p. 22).

At this point, however, a significant distinction would have to be made, which would clearly show what is important in *ethics* and thus in *ethical decisions*. "Whoever does not leave it at simply judging morally, but is interested in what is actually moral and whether it makes any sense at all to act morally, how one can justify such action – whoever asks such questions begins to pursue ethics. Ethics discusses all problems connected with morality on a more general, fundamental, and insofar more abstract level by reconstructing in a purely *formal way* the conditions that must be fulfilled in order for an action, no matter what its content in detail, can rightly be called a *moral* act. Ethics thus does not determine which concrete individual goals are morally good goals worth striving for by everyone;

rather, it determines the criteria according to which it can be bindingly established in the first place what goal is to be recognized as a good goal. Ethics does not say what the good is in concreto, but how one comes to judge something as good. [...] Ethics is not itself a morality but talks *about* morality" (Pieper, 2017, p. 20, emphasis in original). Ethics is therefore not morality but thinks about morality. Ethics is the science that thinks about morality and reflects and examines it. The following examples serve to illustrate this point: "Analogous to the literary scholar and theater critic, the ethicist also judges this object, namely morality, from a certain distance to his object. By doing ethics, the ethicist does not act morally, but reflects on morality from a theoretical perspective and thus from the critical distance of the scientist" (Pieper, 2017, p. 25).

This does not mean, of course, that ethics and thus ethical decisions have nothing to do with practice. On the contrary, ethics as a science is characterized by its practical orientation. Nevertheless, ethics and ethical decisions have to be differentiated from concrete moral or ethical actions, which is illustrated by the following analogy: "The object of literary science is the so-called 'beautiful literature', which is examined and classified under various aspects (e.g. linguistic, formal-technical, content-related). Those who pursue literary studies do not write a novel, a poem, etc by doing so, although they may well be capable of it; rather, they analyze literary texts with regard to certain regular structural elements and forms in order to arrive at general statements about 'the' novel, 'the' drama, 'the' ode, etc., and, by means of these rules, they in turn attempt to critically assess individual novels, dramas, odes. Whoever writes a novel, on the other hand, does not engage in 'literary studies,' although knowledge of literary studies can certainly be of use to him in the writing process" (Pieper, 2017, p. 24f). Ethics informs ethical and moral action.

The first step of an ethical action turns out to be ethical decision-making. At the same time, ethics and ethical decision-making have to keep a sufficient distance from the practice. Only in this way can a critical penetration of practice by ethics succeed.

The concept of ethics as a science that thinks about morality and thus has its object of investigation in morality, seems to have become clearer than it seems to be the case with the concept of morality. "The concept of morality encompasses all structures of order and meaning (systems of rules), some of which have arisen naturally, some of which have been agreed upon by convention, some of which have been handed down by tradition, and which have emerged from processes of mutual recognition and values regulate the satisfaction of the needs of a human community of action on the one hand and, on the other hand, provide information on what is generally regarded as binding (as a duty). Duties provide information about the community's understanding of freedom." (Pieper, 2017, p. 37) Morality can be located on the personal level (individual) and the social level (community, society).

Ethical decision-making is nourished by morality which, however, has to be reflected ethically. Ethical decisions get their meaning from ethically reflected

morality. "In the concept of morality, freedom is thought as the unconditional claim, to realize freedom for the sake of freedom as the highest human good. [...] Morality (in the sense of ἦθος) is the will to do good that has made the unconditional claim of freedom its own and its horizon of meaning. Whoever acts out of this basic attitude possesses *moral competence*." (Pieper, 2017, p. 37f, emphasis in original)

In the interplay of morality and morals, ethics has an essential task, which also has a constitutive effect on ethical decision-making. "This *interrelationship of morality and morals,* which founds human practice as a humane practice, is the central subject of ethics: Ethics reflects the relationship between morality and morals. By setting in motion the dialectic of morality and morals, ethics fulfills its critical purpose, namely, by going back and forth between the conditional claims of morality on the one hand, and the unconditional claim of the principle of morality on the other, to set in motion a process of enlightenment through which dogmatic fixations, prejudices, and constraints on action are made transparent or dissolved" (Pieper, 2017, p. 39, emphasis in original). This exclusive focus on the unconditioned is what distinguishes ethics. It is concerned with "the good in itself" or "the right in itself". "The morally good is what, on a final level of evaluation, becomes recognizable to us not as any good, but as good par excellence, and at the same time obligates us unconditionally" (Marschuetz, 2014, p. 20).

This can be further illustrated if we contrast judgments where, for example, "good" is used in the course of an everyday value judgment (e.g., "good food"), a certain quality is designated in relation to a sensuary perception. In an instrumental understanding, the statement "good for something" (as a means to an end) comes into play. Pragmatically, something is "good for someone" (goal). Distinct from all three uses is the moral use of "good," which understands "good" as "good in itself" (in the sense of unconditional validity). "Ethics, insofar as it wishes to provide a sufficient justification of morality, must refer to an unconditional, ultimate validity that guarantees its normative claim. Ethics understands this unconditional in the principle of morality as freedom and indeed as freedom which has no reason outside of itself, but is self-grounded. Wherever human action appears with a claim to morality, it is claimed to have acted or to want to act unconditionally good. Unconditionally good, however, can only mean an action which is *both done out of* freedom *as well as with* freedom (of the agent and of those affected by the act) as its goal." (Pieper, 2017, p. 41, emphasis in original)

How does this concentration of ethics on the unconditional aspect work, if, at the same time, it considers morality in its changeability and dynamics? Doesn't it make it a target for the accusation of relativism (i.e. that actually everything can be ethically acceptable and everything ethically problematic in the sense of "anything goes")? "This objection applies only to the variable substantive moment in morality (e.g. to live according to the principle of polygamy [...]), but overlooks the fact that an invariable formal moment is also expressed in genuine moral claims to validity (e.g. to live according to the principle to live and

5 The Rule-Transcending Uniqueness of the Concrete

Summary

This chapter is dedicated to the characteristics of ethical decision-making that, on the one hand, it cannot rely on democratic opinion-forming and decision-making processes for its justification. On the other hand, it is characterized by a sensitivity for the *rule-transcending uniqueness of the concrete*. What is meant by this is that ethical decision-making goes beyond blind adherence to ethical principles and norms in that it has to strive for what is ethically right in each concrete situation in a concrete encounter with concrete people.

5.1 Ethics Is not Democracy

In their ethical decision-making processes, people have to consider something that is also true for ethics committees, for example (see Bobbert & Scherzinger, 2019; Duewell & Neumann, 2005, pp. 225-274; Huriet, 2009), and remains a fundamental conceptual challenge: ethics as a science is not democratic. A democratic process does not *per se* guarantee legitimacy. It is possible that a democratic opinion-forming and decision-making process may also lead to results that are ethically bad or wrong. Ethics must rationally and critically satisfy the principle of generalizability by presenting rational and plausible arguments – "good reasons". "Good reasons" means that it must be conceivable that all human beings, in their actual freedom and autonomy as well as in their full equality would agree to these reasons – zu within a model of thought and not within a real worldwide referendum – on ethical grounds (see Kirchschlaeger, 2021a).

5.2 Ethics Beyond Principles and Norms

Furthermore, people have to master the fact that ethics is not only about principles, standards, and rules. In order to cope with the complexity of ethics, its sensitivity for the *rule-transcending uniqueness of the concrete* (see Kirchschlaeger, 2021a) must be taken into account. This is, among other things, the reason why ethics is not casuistry. The following example can illustrate the complexity of ethics: Let us imagine a situation in the Nazi era in which we are hiding a Jewish family from the Nazis in our home. Suddenly, the Nazis knock on the door and ask us if we give shelter to a Jewish family in our home. If we follow the commandment to tell the truth, we send the Jewish family to a certain death. If we want to save the lives of the Jewish family we must lie to the Nazis. Now, what is the ethically right thing to do in this concrete situation, in this concrete encounter, with these concrete people? In this case, saving the lives of the Jewish family would have to be weighted higher than the commandment to tell the truth and, consequently, the ethically right thing to do would be to lie to the Nazis. Ethics and ethical decisions are characterized by their sensitivity for the *rule-transcending uniqueness of the concrete*.

The virtue of *epikeia* and the conscience play an essential role here. Epikeia involves the "rectification of the law where it is incomplete as a result of its gener-

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al wording" (Aristotle, 1983, p. V, 14, 1137b, 26). *Epikeia* is an "independent practical judgment that evaluates the moral demands of a concrete situation in the light of moral principles and moral norms." (Schockenhoff, 2014a, p. 601) *Epikeia* consists of the "search for the greater justice" (Schloegl-Flierl, 2016, p. 29), it has to "stimulate and sustain the search for meaningful justice" (Schloegl-Flierl, 2016, pp. 29-30). *Epikeia* takes into account the fact that in a concrete encounter with concrete people in a concrete situation, rules reach their limits because the concrete in its uniqueness overrides the rule. "The generally applicable concrete ethical, the positive-legal and the many other norms are an indispensable prerequisite, but they are not sufficient to guarantee that basic stock of humanity which, in the face of diversity, saves this society from being torn apart and from the dire consequences that result from it. Inevitably, in the concrete situation, we must sometimes transgress norms in order to act humanely, without denying the need for norms or denying that they apply in general." (Virt, 2007, pp. 42-43) What is crucial here is, *first,* that this is not done to enrich oneself or to pursue a self-interest, preference, desire, or lust, but to achieve a higher ethical good in this concrete situation, in this concrete encounter, with these concrete people. *Second,* ethical and legal norms and their validity are of course not put into question by *epikeia*. *Epikeia* "guides not only the application of norms but also identifies the most pressing ones." (Keenan, 2010, p. 155) They are, *third,* made more effective by this justice striving for virtue. *Fourth, epikeia* at the same time ensures that the ethical and legal norms serve human beings and not the other way around (see Schloegl-Flierl, 2016, p. 39). "With the help of epikeia it is possible to act in a way that is appropriate to the situation and serves the human being." (*Schloegl-Flierl*, 2016, p. 39) *Fifth*, this also does not imply putting into question the meaningfulness and raison d'être of ethical norms in the sense of a call for anarchy.

Epikeia, however, requires ethically critical and constructive participation (see Demmer, 2010, pp. 110-113), "which presupposes the human being as a responsible person capable of creatively considering and interpreting norms and laws." (Schloegl-Flierl, 2016, p. 39)

Due to the increasing complexity of everyday reality, people are challenged to find insights into reality-adequate norms and to take them into account in a more differentiated and better way. In this context, human beings are expected to take responsibility for the shaping of norms. This responsibility aims at the fact that these rules must be critically questioned again and again and adapted for a perspective and ethical improvement of people.

This prospective, creative level also includes a human responsibility to create norms. "The perception of the moral claim does not at all mean merely a reading of normatively determined factual and meaningful behavior, but is always already a creative seeing and discovering. This seeing and discovering is creative in that the human being is called upon to risk new meaningful moments of the shaping of life in his imagination, which did not occur in the previous system of rules. The moral goodness of the person urges him to further develop what is humanly right in the form of models." (Virt, 2007, p. 43)

6 SAMBA

Summary

This chapter is dedicated to Ethics-SAMBA: Ethical decision-making challenges us every day – be it in our private or professional lives, be it on an organizational or institutional level, be it in a political or economic context. SAMBA encourages ethical decision-making with ease and argumentative elegance by the following four steps:

1. **S**ee and Understand the Reality
2. **A**nalyze the Reality from a
   Moral Standpoint
3. **B**e the Ethical Judge!
4. **A**ct Accordingly!

In the following, attention will be given to such a model on the basis of what has been established so far and within the lines already drawn. The SAMBA model aims to provide a concrete guide to ethical decision-making with ease and argumentative elegance to be effective in four steps. This model is intended as a concrete and practical framework for structuring ethical arguments, ethical discussions and ethical decision-making for ethics-students, students of all scientific disciplines, people in their professional as well as private ethical decision-making processes as well as decision-makers in politics, business and society. SAMBA is intended to show why decisions are made and how, and to enable people to make concrete ethical decisions and to act accordingly in an ethically sound manner.

SAMBA is composed of the following four steps:

1. **S**ee and Understand the Reality
2. **A**nalyze the Reality from a
   Moral Standpoint
3. **B**e the Ethical Judge!
4. **A**ct Accordingly!

For each of the four steps, tangible and achievable goals provide orientation. In addition, a number of guiding questions are provided to facilitate the practical and goal-oriented implementation of each of the four steps.

6.1 See and Understand the Reality

GUIDING QUESTION:
A. *What is your own horizon of knowledge, understanding, thought, language, and belief?*

GOAL:
The goal is to become aware of one's own horizon of knowledge, understanding, thinking, language, and belief/worldview, as well as assumptions based on these or connected with them.

In the course of an ethical decision-making process, as introduced above, it is important to strive for a critical distance – be it to reality or to morality – in order to make an ethical decision as objectively as possible. The first step in the right direction is to take a look at one's own horizon of knowledge, understanding, thinking, language, and belief/worldview, as well as the assumptions based on them or connected with them, and to deal with them self-critically. This horizon of knowledge, understanding, thinking, language, and belief/worldview could be the current state of research (knowledge horizon), current hermeneutics (understanding horizon), current limits of human reason (thought horizon), current language with its word creations, formulations, sentence constructions, forms of expression, and images (language horizon) and an attachment to and/or anchoring in a religion, faith, or worldview community or the consciously chosen opposite, namely a consciously chosen distancing from one or any religion, faith, or worldview community (faith/worldview horizon). "Although good ethical decision-making requires us to carefully take into account as much relevant information as is available to us, we have good reason to think that we commonly fall well short of this standard – either by overlooking relevant facts completely or by underestimating their significance. The mental models we employ can contribute to this problem. As we have explained, mental models frame our experiences in ways that both aid and hinder our perceptions. They enable us to focus selectively on ethically relevant matters. By their very nature, they provide incomplete perspectives, resulting in bounded awareness and bounded ethicality. Insofar as our mental modeling practices result in unwarranted partiality, or even ethical blindness, the desired reflective process is distorted. This distortion is aggravated by the fact that our mental models can have this distorting effect without our consciously realizing it. Thus, although we cannot do without mental models, they leave us all vulnerable to blindness and, insofar as we are unaware of this, self-deception." (Pritchard et al., 2013, p. 125)

GUIDING QUESTION:

B. *What is the current reality?*

GOAL:

The aim is to describe reality as objectively and neutrally as possible. For this purpose, studies from other thematically appropriate and adequate scientific disciplines can also be consulted. Part of this definition and delineation of reality are also the applicable legal regulations and standards that also constitute reality.

This description of reality should not be based on subjective and personal impressions, but (empirical) studies from other sciences that can competently contribute something to arrive at a perception of reality that is as objective and neutral as possible. Thus, for example, jurisprudential explanations of the legal situation, sociological analyses of social aspects or psychological studies with regard to human behavior and experience would have to be consulted. It goes without saying that this does not imply the expectation of becoming an "expert" in these different fields of science, but rather of forming an adequate picture of reality on the basis of the core statements from the relevant sciences.

One's own horizon of knowledge, understanding, thinking, language, and belief/worldview shapes the perception of reality, so that a dialogue with reality begins. It is a *dialogue* because one's own horizon of knowledge, understanding, thinking, language, and belief/worldview influences the perception of reality and the perception of reality can change the horizon of knowledge, understanding, thinking, language, and belief/worldview.

6.2 Analyze the Reality from a Moral Standpoint

GUIDING QUESTION:
A. *Where do you suspect an ethical question/challenge/problem?*

GOAL:
The goal is to determine the suspected ethical issue/challenge/problem.

For the time being, it is only an assumption, since the precise identification of an ethical question/challenge/problem is itself already oriented towards and based on an ethical reference point. (E.g. one recognizes global poverty in its ethical relevance as global injustice with the help of the principle of justice, which however (please see below in this section) has to be introduced and (please see below in this section) – rationally justified and reviewed for plausibility). However, this ethical reference point(s) must first be identified and then ethically justified, in order to then – and only then – be able to precisely determine the ethical question/the ethical challenge/the ethical problem.

This step, too, is to be classified as a dialogue event in the above sense, because the subject making an ethical decision is influenced by reality, and the ethical penetration of reality is shaped by the subject and his or her horizon of knowledge, understanding, thinking, language, and belief/worldview in the course of a mutual interaction.

GUIDING QUESTION:
B. *Is there really an ethical question/challenge/problem?*

GOAL:
The aim is to verify again and make sure whether it is really an *ethical* question/*ethical* challenge/*ethical* problem, or a question/challenge/problem of a different nature (e.g. practical, pragmatic, economic).

While a practical problem requires a practical solution, a pragmatic problem needs a pragmatic solution "for something" that serves "someone", and an economic solution requires an economic answer that serves a rational and wise pursuit of self-interest, the ethical question turns out to be oriented towards an answer that is "in itself" right or good or wrong or bad, i.e. unconditionally and unconditionally ethically convincing. It needs to be verified whether it really is an *ethical* question/an *ethical* challenge/an *ethical* problem.

Furthermore, especially in view of the above-described dialogue process as a mutual interaction between the subject making the ethical decision and his or her horizon of knowledge, understanding, thought, language, and faith/worldview, it is important that the ethical decision-making process and the subject making the ethical decision and his or her horizon of knowledge, understanding, thinking,

The "transcendental method" is also a method among the ethical justifications: "The transcendental method (from Latin *transcendere* – to go over, to exceed) is a reductive procedure, i.e., it traces moral action back to the constitutive conditions of its possibility by reconstructing the genesis of the concept of morality to its unconditional origin. This reconstruction, which unfolds the implications of the concept of morality a priori in such a way that a logical series of concepts emerges, in which the conditional is regressively inferred from the conditional and leads to an unconditional beginning that is itself no longer conditional, no longer questionable, and that is at the same time the unsurpassable ultimate ground and the highest norm of all (morally justified) ought." (Pieper, 2017, p. 190f)

Furthermore, ethical justifications also include the "analytic method": "Just as every methodological procedure must formally satisfy the demands of logic, no ethical procedure can do without analysis, insofar as a complex object can only be represented by a conceptual dissection of the moments it contains. In this sense of a conceptually dissecting procedure, dissecting a complex phenomenon into its implicit partial moments, every ethical method is at the same time an analytical procedure" (Pieper, 2017, p. 193).

Finally, the "hermeneutic method" belongs to the ethical justifications. "The *hermeneutic* method (from the Greek *hermeneuein* – to interpret, to explain), as it has been developed mainly by Hans-Georg Gadamer in following Martin Heidegger, elevates the historicity of understanding to the principle of interpretation. It emphasizes the importance of tradition through which the interpreter's preconceptions are as much predetermined as the interpreter reinterprets them in the horizon of meaning of his expectations and integrates them into his self-understanding. The hermeneutic method, too, is a procedure that every ethics must use to a certain extent, namely wherever it has to deal with ethically relevant statements that have to be interpreted, be it that these statements are available in the form of texts of other moral philosophers, be it that they are part of the argument of the discussion partner in a conversation: Each time, foreign statements have to be appropriated in an understandable way, which is only possible within the horizon of an already existing pre-understanding of meaning. In order to be able to claim meaning, meaning must already be understood. In order to understand meaning, one must always have made claims to meaning. Hermeneutics is concerned with the elucidation of the historical mediatedness of moral self-understanding" (Pieper, 2017, p. 196f, emphasis in original).

GUIDING QUESTION:
E. *How would you define the ethical question/challenge/problem?*

GOAL:
The goal is to define the ethical question/challenge/problem with the help of ethically grounded ethical reference point(s).

Rationally and ethically grounded clarity regarding ethical reference point(s) now allows the ethical question/challenge/problem to be carefully, conscientiously, and precisely identified.

This process of defining the ethical question/challenge/problem is furthered by "*ethical situation hermeneutics*: the collaboration of individual disciplines cannot be exhausted in bringing together empirical and normative elements like building blocks that are subsequently assembled. This can be illustrated as follows: an essential element of ethical judgment about situations or types of situations lies in exploring a problem interpretively. It seems that the morally relevant aspects of the situation must first be perceived as such before situational ethical questions can be posed, broken down into empirical and normative aspects, and processed. In reality, however, the supposedly preparatory situational inference always implies a preliminary and maybe only implicit judgment process that relates normative and empirical assessments to one another. Only in the light of normative presuppositions do certain observations stand out from the irrelevant background and do certain empirical questions become significant; only certain observations and empirical presuppositions justify the assumption that a certain morally relevant case might exist. What is more, the hope of being able to work through normative and empirical questions separately after the situation has been interpreted is usually deceiving. Because, as a rule, new or more specific factual insights give rise to further normative questions and require new or more precise normative findings for further empirical clarification. The interdisciplinary cooperation that is characteristic of ethics discourses therefore usually takes place as an *iterative process in* which empirical and normative-ethical questions and insights must be repeatedly related to each other. This dialogue presupposes translation competencies on both sides" (Werner, 2021, p. 249, emphasis in original). The ethical question/challenge/problem that emerges in the process must be answered or mastered in the course of ethical decision-making.

6.3 Be the Ethical Judge!

GUIDING QUESTION:
A. *What is your ethical assessment?*

GOAL:
The goal is to take a position from an ethical standpoint and make an ethical evaluation. This ethical position and ethical evaluation can initially include both a response and a mastery of the challenge as well as the problem, and subsequently a concrete ethical proposal for a solution.

Making ethical judgments is a challenging task. "The detailed definition of the standards of right and good is controversial. Nevertheless, there is a consensus about the subject matter of morality. Moral questions arise in the context of vulnerability, pain, suffering, inequality, and oppression" (Pauder-Studer, 2020, p. 14). It is helpful if the person who has to make an ethical decision is aware of

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the following: "Our starting point, then, is the observation that each of us from time to time experiences a gap, a discrepancy between what is good and what only appears to be good. This own experience of discrepancy is from the outset something different than a *claim* brought in solely from the outside, from other people, that something that is demanded of them is good in contrast to what is immediately desired (the child should sleep, but it wants to play). It is about the own experience of a discrepancy (I wanted to play, but it is good to sleep). Such experiences cannot be provided to anyone by talking, the most one can do is remind them of it" (Hastedt, 1994, p. 17, emphasis in original).

Taking an ethical position in the sense of an ethical decision has to fulfill certain requirements. "Given the complexity of the current problem and the openness of the valid orientations, however, the unavoidable ethical discussions cannot be decided according to instinct or with the simple mind of a good person, but require some knowledge and skills" (Hastedt, 1994, p. 7). In the course of this, we should be aware of one characteristic of ethics. "Maybe ethics *is* often uncertain and untestable. But maybe that isn't such a bad thing. It does not follow, in any case, that we should strive to make decisions in 'value-free' ways instead, for example, by scientific or economic or other 'practical' standards. The reason is that we *can't*. There simply is no such thing as 'value-free' decision making. Instead, all decision making – indeed, one could argue, all action – is *value-laden* (as it's often put). Indeed, any time we choose to do one thing rather than another, or anything at all rather than nothing, we are acting on certain values and leaving others to the side. When the needs and legitimate expectations of others as well as ourselves are at stake, the values involved are ethical by definition. The only question is how explicit and deliberate we are going to be about them." (Weston, 2017, p. 488, emphasis in original)

Against this background, a differentiation between "is" and "ought" is possible. "The distinction between facts and values is a characteristic of the philosophy of modernity. Both Hume and Kant were pioneering for this distinction. But while Hume limited the possibility of rationality to theoretical rationality (correspondence of beliefs and facts), Kant distinguished between theoretical reason which allows for the knowledge of facts, and practical reason, which examines maxims of action for their universalizability" (Nida-Ruemelin, 2005a, p. 46f). This universalizability, which is demonstrated by fulfilling the principle of generalizability, has to be shown in the ethical evaluation. "In 'Morality as a System of Hypothetical Imperatives' [Foot, Philippa: Virtues and Vices. Berkeley 1978], Philippa Foot distinguishes between two different 'uses' of 'ought' in judgments about what others ought to do: the *hypothetical* use, which presupposes that the subject of the judgment has a desire or interest, broadly understood, that would be served by his doing as we judge he ought; and the *categorical* use, which makes no such presupposition. For example, when we say someone 'ought to leave now, to catch the 6 o'clock train,' we presume that she wants to be on that train. If we learn she is really headed somewhere else, we withdraw the judgment. But moral judgments aren't like that: we don't, for example, withdraw our judgment that Hitler ought not to have issued his terrible orders when we learn that they

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fit perfectly into his plans." (Markovits, 2014, p. 16, emphasis in original) Here, the focus of ethics and thus the focus of ethical decision-making becomes visible: "For the clarification of concrete ethical problems, there is often a multitude of empirical and prognostic questions to be answered. The focus of ethical reflection, however, is not the descriptive and explicative preoccupation with moral questions, but the generation, verification, and substantiation of *normative* statements. Ethics – understood as *normative* ethics – does not ask primarily about what is, but about what should be *done*. Such ought-statements, however, have a different status with regard to eudaimonistic questions than in the field of discussion of normative questions. Whereas *evaluative* statements, which are always dependent on certain conceptions of the good and successful life, have only the status of *advice* or *recommendations,* norms or principles of the morally right raise a universal and categorical claim to validity, which – as soon as it can be reasonably justified – gives them priority over all other practical considerations" (Duewell & Huebenthal, 2011, p. 2, emphasis in original).

Within the categorical use of the ought and thus of ethical evaluation, one can start from the following basic categories, which can be helpful in ethical decision-making: "Basic categories of the moral evaluation of actions are the categories of the morally forbidden, the morally permitted, and the morally demanded as well as the corresponding subcategories. These categories are basic because the moral evaluation of actions always presupposes that what is morally forbidden can be distinguished from what is morally permitted and morally demanded – irrespective of what substantive standard of moral rightness it applies, what reasons for moral ought it assumes, and what normative ethic it is based on" (Stoecker, 2011, p. 13f).

But this is not sufficient. "A simple trichotomous model, as suggested by deontic logic – the logic of the ought or of normative propositions – does not do justice to the differentiating power of our moral judgment. As moral judges, if the action to be judged seems neither morally reprehensible nor morally required, we are hardly ever satisfied with assigning it to the third basic category provided by deontic logic. For this category includes both actions that, although not morally required, are morally very desirable, and actions that, from a moral standpoint, are neither reprehensible nor desirable, and it is part of the practice of moral judgment to distinguish between these two kinds of actions. The category of the morally permissible therefore requires an internal differentiation between the morally desirable and the morally neutral [...]. A further internal differentiation is obvious for the subcategory of morally desirable acts. A morally desirable act can be morally inappropriate for different reasons: it can be an act that is morally desirable, but whose omission cannot be regarded as morally reprehensible even if performing the act seems reasonable to the actor. However, it may also be an act that is morally desirable but cannot be expected of the potential actor because it would demand more of him/her than morality may reasonably demand of him/her. If an actor performs such a supererogatory action that exceeds what is morally demanded, as is the case according to the conviction of some authors, with a living organ donation [...], he or she acts as a 'moral hero', i. e. in a way

that demands special admiration or respect from us and that therefore cannot be assigned to the same basic category without a corresponding qualification as, for example, picking up a hitchhiker on a balmy summer night, which will generally be regarded as 'merely' a morally desirable act" (Stoecker, 2011, p. 15f).

Furthermore, there should be an additional differentiation on our radar, which opens up another field for ethical evaluation: "There are two conceptual registers in which we broach the issue of moral facts – the deontic (i.e., concepts of duty and ought) and the evaluative (i.e., notions of good and bad). It is obvious that these two domains or registers do not exist completely unrelated to each other. It has already become clear that the category of a normative reason maintains intensive relations to both" (Henning, 2019, p. 40). These also bring challenges for ethics, which ethical decision-making has to take into account in order to respect the plurality of ethics. "The increasing differentiation between *evaluative* questions of the good life and *normative* questions of what is morally right is closely interrelated with the pluralization of concepts of the good life and the secularization of state authority. If a uniform, widely shared concept of the good life is replaced by a *plurality of the different*, often contradictory concepts of the good, ethics must also address the question of how the resulting conflicts of values and interests can be peacefully and justly resolved. The question of the *just settlement of conflicts of values and interests* is the subject of a separate reflection on what is *morally right*. Since modern times, this question has increasingly come to the forefront of ethical reflection efforts and appears to dominate the current context of discussion as well" (Duewell & Huebenthal, 2011, p. 1f, emphasis in original).

In addition, ethical evaluation informs to keep in mind the following three possible moral orientations that can influence us when making ethical judgments:

- "*Legalism:* the legalist appeals first to laws and principles when required to make a moral decision" (Gillmore & Hunter, 1974, p. 3, emphasis in original).
- "*Antinomianism:* This is the approach with which one enters into the decision-making situation armed with no principles or maxims whatsoever, to say nothing of rules. In every 'existential' moment or 'unique' situation, it declares, one must rely upon the situation of itself, there and then, to provide its ethical solution." (Gillmore & Hunter, 1974, p. 3, emphasis in original).
- "*Situationism:* The Situationist is characterized by his emphasis on human welfare. The Situationist enters into every decision-making situation fully armed with the ethical maxims of his community and its heritage, and he treats them with respect as illuminators of his problems. Just the same he is prepared in any situation to compromise them or set them aside *in the situation* if love seems better served by doing so." (Gillmore & Hunter, 1974, p. 4, emphasis in original)

The "rule-transcending uniqueness of the concrete" introduced above in chapter 5 can help here with regard to the three possible moral orientations as a concept. The rule-transcending uniqueness of the concrete means that ethical principles, norms, and values can collide or diverge in a concrete encounter with concrete

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