

The Decline of Ethics in a Material World

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ST GEORGE'S HOUSE



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The recent British election took place against the backdrop of a double crisis: an economic crisis and a crisis in our democracy. It was probably this double helix of angst that produced the coalition government – the public felt that none of the parties was to be trusted alone with the governance of the nation.

Public disaffection was extensive. There was anger against dishonourable bankers for their arrogance and greed but there was also anger at the people who should have checked their conduct. The people on the boards of banks, who are supposed to represent the interests of shareholders, had no notion as to how huge profits were being generated but were happy to reap personal rewards without asking questions. The blue chip accountancy firms who were supposed to audit and ask difficult questions also failed the test and the lawyers who were turned to for legal advice were no better, signing off transactions as legally ethical that they barely fathomed. Most took the fees and ran. Then there were the appointed regulators were often so close to those they regulated that no independent scrutiny was really taking place. There was no way the very big banks could be allowed to fail because of the effects on our society as a whole and in this knowledge they had taken huge risks for which government in the end had to pick up the tab.

The public soon realised that it was they who would have to underwrite the consequent debt – with higher taxes, cuts to public services, job losses and a whole shift in their quality of life. So there was fury that the central institution in our country – parliament - had failed to curtail the excesses of the financial sector with effective regulation. Nor had there been adequate curbs on the extraordinary bonuses that were claimed even after the crisis. The boast of



government had been 'no more boom or bust' but it began to look as though they too had no idea of the unethical sources of this wealth generation. And unethical it was. Can it be right to press prime mortgages upon people who could not afford them, encouraging the less well off in our societies into serious debt and the risk of home seizure in default? Is it right for high risk Casino banking to be underwritten by retail high street banking – your money and mine? How can off balance sheet accounting ever be justified. On top of this, the political class had been exposed as abusing public trust by making claims for allowances which could not in any good heart be deemed necessary for the fulfilment of their roles as MPs. The scandals around expense claims had inflamed public anger, as they were paying. Though, what was much more egregious than the cost of cleaning moats or the purchase of porn, was the acquisition of property whereby not only were the mortgage repayments met by the taxpayers but also the cost of upgrading kitchens and bathrooms and gardens, thereby enhancing the value of the property which would then be sold by the MP at a profit that he or she pocketed. As a result of exposure a large number of MPs did not stand again for election and another significant swathe were rejected by their constituencies because of disclosures about their conduct. The new parliament is renewed by a third, a turnover unheard of in recent parliamentary history.

In case it is thought that I am drawing a veil over abuses in my own neck of the woods, I should explain that in the House of Lords a practice operated where some people claimed their country cottage as a main residence, which more than doubled the per diem that can be claimed for daily attendance and with the addition of first class travel expenses without receipts boosted the claims yet further. Again this was a practice that was dangled before new

Lords as being what everyone did – happily not everyone succumbed. But it meant that some people who did not have an out-of-town residence quickly acquired one, either by investing in a cheap flat somewhere or claiming on their elderly parents' home in Nether Walton.

Like many of you, I was left wondering why essentially decent people, who entered politics for good purposes, had behaved in this way. Very few acted criminally. Almost all insisted that they had played by the rules, that "everyone did it" and that it was sanctioned by the Fees Office. This was the culture of parliament created to compensate for salaries that were considered below par for professional politicians.

It is not new. Only two decades earlier after the Neil Hamilton saga of receiving cash in brown paper bags and free nights at the Paris Ritz, Lord Nolan was brought in to create rules of what was unacceptable conduct in public life. Like our unwritten constitution, ethics were supposed to be understood without having to be written down in a codified form. We were supposed to breathe in what was right. Some inner voice was supposed to tell us when our actions crossed an invisible line. Unfortunately our inner voices seemed to speak with many tongues or had been subdued to a whisper.

This is not going to be a lecture bemoaning the loss of a wondrous bygone age of righteous conduct and decent behaviour. You are not going to hear warnings that we are all going to hell in a handcart because we have forgotten how to behave honourably. That this is all about a different calibre of people or about the arrival of folks from overseas with a different set of standards. I do not believe there were 'good old days' when all people behaved ethically; there were always gross and petty corruptions and deeply

ignoble acts perpetrated behind veils of professionalism, honour and propriety. Today's revolution in communications and a shift towards greater accountability has led to revelations of unethical conduct that might in the past not have been revealed.

My Catholic upbringing always confronted me with the reality of the human condition, that we are all essentially flawed and all ethically compromised; each and every one of us at the mercies of our own human frailty. Not one of us beyond reproach. Yet to acknowledge our weakness and shortcomings is not to surrender to the inevitability of moral wrongdoing or deny the need for ethical standards. It should not let us off the hook. What I would like to explore in this lecture are the ways in which the changes and complexities of our modern world call for a reconnection with the meaning of ethics because unethical conduct may today be even more lethal and costly to the fabric of our world than ever before.

We recently saw one such incident - the creation of what came to be called a "dodgy dossier" to support a belief that Sadaam Hussein had weapons of mass destruction to justify engagement in the Iraq War; a war of choice which was presented as a war of necessity. The ethics of those who dissembled, exaggerated and massaged the truth should be a source of shame and public admonition. Decisions of such magnitude and dire consequence should not be subject to political gamesmanship and trickery to pull the wool over the eyes of parliament or the public or to make good a promise made to the President of the USA. Ethics and pragmatism are not happy bedfellows. When you have made a commitment to an ally to support a war and it then looks as though you may have difficulty selling it to the public, the temptation to gild the evidence is considerable. Our former Prime

Minister is unrepentant because he feels the wickedness of Sadaam justified his actions.

I have seen these accommodations happen all too often in the courts where my clients convince themselves in the face of the evidence that they did no wrong, that their intentions were innocent and come to believe it. I have also seen police participate in what they describe as noble corruption – securing a conviction they believe to be just because they are dealing with a known criminal - but doing it by unjust means, inventing confessions, planting evidence and obscuring evidence that may call into question the prosecution.

The problem with such conduct is not just a corruption of that particular process but a poison is created which seeps into the system as a whole.

But when we examine recent ignominy, we should not forget that a similar kind of ethical skullduggery took place fifty years ago over Suez, where a fiction was concocted that Israel was about to be attacked by Egypt in order to justify seizure of the Suez Canal. The truth was that for trade and strategic reasons Britain and France wanted to prevent Nasser of Egypt nationalising the canal. As often happens the truth was exposed. There was nothing very ethical about Suez. A trudge through history can provide many other examples of moral transgression.

The difference now is that ethical failures may have even more grievous consequences in our technological age. The rearrangement of the political chess pieces in the Middle East has greatly strengthened the hand of Iran and we now have talk of strikes against her by Israel. Tyrants everywhere have had their hands strengthened.

When Robin Cook took on the role of Foreign Secretary, there was a lot of ridicule as he described his intention to pursue an ethical foreign policy.

There was umbrage in certain quarters that there had ever been anything

other than ethical foreign policy but this was paradoxically coupled with the cynical belief that ethics were a naïve hope in foreign possible anyway. Not because of us, but because of the other guys. It is interesting that he was the cabinet minister who resigned over the Iraq war. Is it possible to be ethical given global pressures and the economic interests of our own nation?

I returned from my annual holiday to the renewed concerns about the ethics of newspapers, with serious allegations about the intercepting of the mobile phones of public figures and the alleged instruction given by an editor to do what had to be done to get a story. This was coupled with an insidious attempt to expose the private life of William Hague.

I was immediately reminded of a friend who came south to work for one of the big tabloids. He attended an editorial meeting where he watched financial calculations being made of a cost/ benefit kind in deciding whether to run with a salacious story built on slim evidence. It was decided that the revenues from increased sales still made it worth risking a libel action. He left and went back up north to a less illustrious but more ethical career.

Where do our ethics come from? Are they to any extent innate? Is there such a thing as moral intuition? And in our individualistic world – where narcissism rules - are ethical standards as various as we are? Are all ethics becoming privatised? Tony Blair would claim he was doing what he believed to be right when he made his decisions, as though that evaluation was enough justification even if others did not share his idea of what was indeed right.

From the early stages of our existence societies have created rules and proprieties to help people live together. Legal systems come out of these foundations and traditions. I always describe the Universal Declaration of Human Rights not as the creation of universal law but as a moral template – developed out of universal values - against which all law must be tested.

Ethical rules are codes of conduct directed at the maintaining of behaviour which is respectful of others and conducive to the wellbeing of the group. However, the atomisation of our society and the breakdown of community ties may mean that the community no longer exercises a restraint on the conduct of others.

I believe that people are potentially good as well as potentially bad; they are socially conscious as well as selfishly assertive and anti social. My own work around human rights has convinced me of the universal nature of those capacities - though I optimistically believe that the capacity for goodness is the richer seam and that societies have to devise ways of appealing to our better selves.

The Golden Rule that you should treat others as you would wish to be treated "Do as you would be done by" is a precept in all societies. Inevitably there is variance about its interpretation. I remember running up against different ethical considerations over scholarships when I chaired the British Council. The Council managed the Chevening and other UK scholarships for foreign students to come and study in UK universities. Not just a charitable enterprise on our part – making friends with tomorrow's leaders has great benefit to our country. A scholarship has much greater value than just the fees and living expenses which are offered – education at a top British University has significant implications for future earnings and life chances. We had stringent rules about the criteria for application or identifying candidates but a recurring problem was that staff in some countries saw no problem with pushing their cousin or nephew. Nepotism had no meaning when people were brought up to feel strong responsibilities to their wider

family members, their kinfolk, – much stronger than now exists in British society.

I saw this clash described recently in an American journal with projects in Afghanistan where it was discovered that jobs were readily given to family members. Clansmen explained that of course they would employ their cousin's son as a builder but not just to help family. If he failed to turn up for work or was slacking, the cousin would beat the daylights out of him and the construction would be completed. Ethically we have decided that the fair society requires jobs to go on merit but we should be conscious that the other side of that coin is that our overseas friends think our ethics are wanting in the way we fail to care for our elders in the heart of the family.

We can be grandly superior about ethical standards in developing countries and levels of corruption but the picture is not plain here. There can be elasticity about our own principles. There is often a tension between our commitment to the commonweal, and on the other hand our self interest and desire to look after 'number one'. And it may be that this conflict of impulses is growing.

The moral voices in our head are very often those of our parents and our teachers, our religious advisors and our mentors. 'It is wrong to hurt others, to cheat, to take what should go to someone else, to spread malicious rumours.' The big ten commandment wrongs are one thing but the subtler harms we can commit are usually entrenched in us by loss of adult approval.

The Jesuits believe that the formative years of childhood provide the foundation of our moral understandings. But the pool of influence enlarges as we expand our community of peers. Who will we feel we are letting down if we behave in a certain way, whose knowledge of our conduct would invoke shame, whose view do we care about? (Is your mother in Glasgow still in

your head?) One of my own friends recently left his wife after a long marriage and he admitted he had felt unable to do it for years because he could not face the disapproval of parents.

Our moral universe will also be affected by the novels we read, the stories we hear, the conduct we observe. What will determine how we act will often be the culture around us, as many studies have shown. We are socialised by the context in which we find ourselves. It is not just adolescents who are deeply influenced by the crowd with whom they hang out. Professionals, Businessmen, Politicians are too. A politician can be torn between his loyalty to his party or prime minister as against his personal ethics. The pressure to remain with the party group, especially when the whips are leaning on you, is considerable. Marching to a different tune is painful. Ambition can also create moral equivocation. A minister with his eye on promotion may be more willing to review his deeply held opinions on for example the legality of war. Pleasing those you look to for protection or advancement can mean self interest trumps principle. The whistle blower or the person who tenders her resignation is not always lauded. Elizabeth Wilmshurst. Going against the momentum of the pack takes courage because the political spin machine can be set in motion to destroy you; (as happened Scott Ritter, the weapons inspector.) The ostracisation of the person who expresses objection can be cruel.

Our ethical conduct is also affected by the norms of behaviour we witness. I have never been convinced by the trickle down theory of economics but I am convinced that fish rot from the head. Unethical conduct has a capacity to cascade down the ranks. If we see others behaving badly up above and all around, we too are more likely to fall from grace. I think it happened in Iraq

where a certain tone was set by the US forces in their handling of Iraqi detainees. And with our own intelligence officers over the interrogation of detainees where unacceptable practices were carried out by others.

Research on taxation found that people were content to pay tax if they felt it was set fairly and every one else was paying tax too. If everyone seems to be avoiding tax or taking home office stationary or claiming for taxis they do not take, why should you be the patsy who doesn't? If every other MP is claiming for a new kitchen, why shouldn't you?

But there is an even wider scenario. If a national culture develops in which wealth and earnings become a superior measure of value than anything else, those whose life's work has been about service to others start to feel undervalued. In recent times the overwhelming sense has been that if you are any good at what you do, you do you should be raking it in. Everyone else is. Money has become the measure of value. Anyone on a middle or modest income has been deemed a loser. People who have chosen jobs in the public sector have felt denigrated. Many of the ethical shortcomings and petty corruptions we have seen in recent times have reflected this obsession with money and an elevation of the private sector above the public – the complaints of low pay by MPs, their rush from the Cabinet or the Ministry to boards and consultancies. Or the willingness of Peers to make interventions on behalf of paying corporate clients or their lobbyists. The corrupting sense of entitlement to freebies and benefits-in-kind that flowed from Downing Street in the Blair years. The rush to riches once out of office.

How people behave affects cultural values and cultural values affect how people behave.

People often adjust the rules to suit their own interests according to how they see the context. We were all expected in Mandelson-speak to be totally comfortable with people being filthy rich. But should we be so comfortable if the gap between rich and poor grows to such an extent that we are not only seeing injustice but also the destabilising of our society. In 1960s Chief Executives of companies on average earned 9 times the annual earnings of their average worker now they earn 66 times. The salaries of chief executives are often ludicrous. The bonus scandal, even when the rewards are for failure, is still a running sore. To criticise is to be accused of engaging in the politics of envy rather than the politics of justice.

We now also have debate about the incredible levels of pay of senior civil servants, chief executives in local authorities and managers in the BBC. They have spiralled out of all imagining but this has largely been a reflection of the wider problem - that we have become mad about money and seduced by the business model. Why shouldn't I be paid what I would receive doing a similar job in the private sector is the claim? We will not get anyone who is any good says the headhunter if we do not pay the going rate in the city.

The simple answer is that public enterprises are not profit making but about the creation of common goods. If you want those commercial rewards, you are in the wrong sector. The ethos that serving the nation in certain capacities carries esteem and value unrelated to money is evaporating.

Why?

It may be that this is the price we have paid for getting rid of the class system. Some new measure has to be found for having made it and money has replaced old callibrations. Instead of attaching real value to the contribution someone makes to the commonwealth we see everything in monetary terms. Perhaps in our shaking the ancient dust out of institutions

we have done something disturbing to the institutional loyalties which operated as a preventative check on unbecoming behaviour. We have abandoned the notion of honour. We used to be so good at inventing ways of reinforcing ethical standards. E.g. the QC system meant ambitious barristers knew they had to keep their noses clean and avoid sharp practice or the silk gown would never come their way.

So, as we have urgently sought to democratise our politics, we have ended up with career politicians who may feel their job deserves reward commensurate with other high calibre jobs.

I also think that some of the distortions are a result of introducing market values into places where they do not belong; that we have been seeing a blurring of the public/ private divide and failed to take account of how the underlying principles in the two spheres are different. Efforts to make public services more efficient and cost effective have meant replacing heads of public institutions with executives from the world of business or introducing market methodology and competition to sharpen up performance. The ethic of the market which is about profit is different from the ethic of the 'commonwealth' and I say that without making any value judgement.

The whole process of privatisation of public services presents serious challenges because in trying to drive down costs there is a tendency to drive down quality and the ethical consequences are very serious.

I firmly believe that the public sector has a lot to learn from business. That means being business-like and efficient in working methods but there is a folly in seeking to run public services as if they are businesses. The introduction of markets creates huge layers of bureaucracy and often brings a de-professionalising of the people who are at the heart of the service –

teachers, doctors, nurses, social workers. Introduction of the market to services is in my view bringing about a shift in ethics.

The best description of different ethical approaches operating in different spheres comes from Robert A. Hinde, the distinguished behavioural scientist. Profit dominates the business world and profit is not a dirty word unless excessive and exploitative; the competitive marketplace brings benefits to the consumer such as lower prices and a wider range of products. Hinde points out that the Golden Rule of 'do unto others as you would wish them to do unto you' turns into the ethic of legitimate competition – 'I will do the best for myself because I know you are trying to do the best for yourself.' The rules of the game are known to each party; each expects to get the best deal possible for himself. The benefit to the consumer in a market economy is that by and large they get a better price. The presumption between the parties is that each is acting in the same way. Rational behaviour in the business sphere is self interested behaviour; it is not pro-social behaviour. Many economists would tell you that pro-sociality is fine in personal life but in the marketplace destroys the benefits to consumers that the competitive market place brings. They would be very insistent that the market is better for more people than the abstractions of the commonwealth.

Of course there are ethics within business: that the quality of the goods should be the best, that they should be sold at a fair price, that those employed receive a fair living wage. There are elements of prosociality in aspects of business. The small shopkeeper who relies on regular customers will not want them to feel over-charged. Even bigger enterprises may operate on the assumption that a reputation for fair dealing works better in the long run, e.g. John Lewis. However, as companies become enormous, complex and multinational, and (particularly with the internet) there is no direct

contact between the buyer and seller, the need for ethical constraints diminish.

I recognise that increasingly major corporations have programmes of corporate social responsibility and seek to make contributions to the greater good of communities but this has often been in response to a crisis of trust with the public over terrible cases of environmental disaster, exploitation of workers, child labour, risk taking with the lives of poor people (as we saw in the Union Carbide Bhopal disaster where 8000 died and many thousands more since.)

The point I am seeking to make is that the world of business has its own precepts which citizens in developed market economies accept because the market model brings the benefit to the public of competition and lower prices.

The public is now being persuaded that the same system can work in public services.

Here in Britain we live in a pluralist system with a developed welfare state, providing publicly funded education and healthcare and legal services for those accused of crime. We have other social services and amenities: care for the elderly and disabled, libraries, rubbish collection, parks, public swimming pools, museums and subsidised arts. The Common Good has figured large in the post Second World War consensus and I believe it has been one of the reasons why we have been a nation at ease with itself – a good place to live. But that consensus is now being unravelled.

In Britain we have had an independent high calibre civil service, an exceptional justice system, uncorrupt judges, committed medical professionals, public servants and scientists, all admired throughout the world for the high level of their skills and integrity. I would suggest that the

probity of the British professional is unsurpassed. But I think we are putting this good stuff at risk.

I want us to consider the issue of legal aid. Successive governments have sought to drive down the cost of criminal legal aid. As our world has become more technical so too has the law and that makes processes expensive. There have also occasionally been abuses with people earning far too much money from the public purse. Cutting legal aid is easy because the public will not be outraged in the way they are when it happens to health budgets or education. So legal aid cuts were the first things Labour in office did. The cost of legal aid could have been reduced by simply cutting every fee by 10 – 15%. But instead, they invented a completely new way of purchasing legal services involving a market model and competitive tendering, so that we will see is barristers and solicitors bidding for the same work. Instead of the old system of going to your chosen solicitor who would then brief a preferred tried and tested barrister with expertise in particular kinds of case – child abuse or terrorism or psychiatric cases - the solicitors firms in an area have to tender for the legal aid franchise eg. North London. The lowest pitch wins the contract. Tender, Grabbit and Run will undercut the other bidders. Of course, this often means paying non-lawyers or young lawyers with insufficient skill pathetic wages to attend police stations in the middle of the night and then attend court in the day. What is not understood is that when the private sector seeks tenders it frequently does not accept the lowest bid, knowing the quality will be impaired and the brand damaged.

Advocacy even for jury trials is being kept 'in house' to keep costs down and is conducted being by solicitor-advocates, many of whom are excellent. However, the pressures are such that out of necessity short cuts are

frequently taken and quality is being driven down. The person in court is also the person who has taken the statements from witnesses creating the kind of proximity between advocate and client in a criminal case that can erode professionalism. There are plans to change the professional rules so that the barrister too can be a one-stop shop taking statements from witnesses as well as fighting a case. Criminal cases are fraught with ethical issues and rather like the sensible doctor having a nurse present when conducting intimate examinations it is wise to have the solicitor/barrister duo of advisers.

To survive, many law firms have had to merge and small committed firms have gone out of business. Pressures mean that oversight of trainees is being sidelined. To cut costs solicitors of lesser experience are doing cases well beyond their experience with huge cost to clients.

The next phase is to have barristers chambers bid for a contract to do the work of specific solicitors' firms and again competitive tendering is being introduced so that those willing to work for the lowest sums will get the contract. Trying to get justice on the cheap jeopardises justice. An independent Bar is a vital component in the hands of a litigant in any democracy but what we are seeing is the destruction of the independent Bar in publicly funded work – starting with criminal work and will move to family work. It will leave a small specialist Bar for the well off litigant.

I am now told that solicitors firms who are doing the advocacy of trials in house instead of using barristers can also go to another firm of solicitors for the services of their salaried solicitor-advocate and claim a percentage of the fee, as it was originally one of their cases. I am also told that there are barristers who will pay a kickback to solicitors if a big remunerative case is sent their way.

What we are seeing is the Americanisation of our legal system. For any of us who have ever had much contact with the American system, it really only works for the rich. If a case comes to a law firm that is not skilled in particular work or they are too busy they will charge a referral fee for passing it on. In medicine American junior doctors expect a fee for referring a patient to a named consultant, architects expect to pay to be considered for a job. You put the work my way and I will see you alright leads to choices being made for reasons that are not always to do with expertise. Already in the UK the lines between corporate hospitality and offering bribes for cases is being breached with junkets and other offerings. We are travelling down a road which will undermine professional probity and, if we are not careful, the pace will accelerate across the professions in the name of modernisation and cost cutting.

Criminal cases invariably involve forensic evidence and over the years the Crown used the forensic science laboratories of the Home Office, where highly trained and expert scientists worked on cases. Increasingly cases rely upon forensic science – DNA, explosives, firearms, footprints, fingerprints, fabrics, glass. The Forensic science labs have now been privatised and turned into a company The Forensic Science Service which has to bid for work.

There were no real competitors but people were encouraged to set up small businesses to compete for the work. Of course they are competing in a completely artificial market but the purpose was to drive costs down. As a result police forces put out tenders for contract work – e.g. for all their DNA work - and the lowest bidder gets the contract. Again, people undercut each other and the consequence is that the quality of forensic science is lowered – with less time on each case, pressure of case turnaround and the cutting of corners.

Experts make a sworn statement to provide independent, truthful science wherever it leads but lawyers and judges report a greater willingness to provide what the client needs - a willingness to help the client because work flows from being accommodating. So insiders in the science field describe how you increasingly get the expression of certainty where there is doubt and the expression of doubt where there is certainty. Commercial pressures take you in the direction of pleasing the customer.

I think that by over-promoting the value of business methodology we have been undervaluing public service and lost the language for describing why it matters. Those things which have real value cannot be measured. By buying into the belief that the only incentives that work are pay and bonuses we are coarsening the values of the good society. People want their work to be acknowledged. They want to be appreciated. They do not respond well to denigration.

I do not believe high pay is what attracts decent people to a prestigious role or jobs of social importance. I am quite convinced that many excellent applicants for jobs step forward because the job is interesting and challenging and carries honour – and being a banker working in derivatives is not all its cracked up to be! Greg Dyke went to the BBC for less money because it was an honour to head the finest public service broadcasting corporation in the world.

It may be that as our societies become more complex, it is inevitable that ethical standards will be sorely tested and the assertion of good conduct will be a struggle. This is why I think we need a more substantial public debate about what ethics are and how they should operate in the 21st century.

Now before close I want to emphasise that alongside some reductions in ethical standards, we have also seen huge advances. The rising resistance to racism and sexism, the concern for human rights – an increased tolerance in our society of those who are different, which is an awesome ethical shift.

Most of our young care about the world they live in, are exercised about war and poverty and our failure to be good stewards of the environment – they are often hugely ethical until the pressures of Mammon are applied.

A famous American jurist Irving Younger said there were three ways to think of legal ethics.

1. What is unlawful? Conduct which could lead to prosecution.
2. What is unethical? Those actions which involve breaches of established standards, which dishonour the profession and could lead to disciplinary action.
3. But his final question for aspirant lawyers was: What kind of person do you want to be?

We too must ask that question but in a collective sense: What kind of society do we want to be? The Good Society is an ethical society and so the lesson must be that at all times we must be alert to the ways in which we may be selling the pass. At all times we must remain conscious of how each of us, in the small daily acts of living, set the standards. In the end, we are all our society's ethicists.

Helena Kennedy.

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