

**4th APBCLEF
Day 4 Key Note
6th Sept. 2015**

Strengthening Ethical Judgment

**Adrian Evans
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Better legal ethics = less of rules, more of judgment

- We hear lots about being a good lawyer, but goodness is not primarily about being skilful
- When things go bad, we need to find ways to strengthen law students and lawyers character (and not just punish them),
- *Competence* is essential, of course (and we spend nearly all our law school time on developing competence), but good and bad are essentially moral concepts
- There is no profession-wide effort to nurture goodness, possibly because the very idea sounds flaky or soft to many lawyers. This is because lawyers like black and white *rules*.



Better legal ethics = less of rules, more of judgment

- A particular problem for legal ethics is that we spend nearly all our time in law schools developing students' capacity to get around rules
- So we emphasise our 'right' to avoid something, rather than the responsibility to consider whether an obligation ought to apply to us, and to our clients
- Law schools typically provide 3-5 years of very powerful conditioning on this point...

**KEEP
CALM
and
FOLLOW
THE RULES**

OR

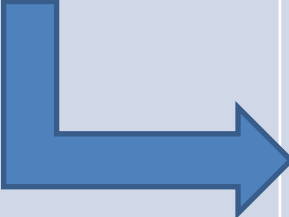


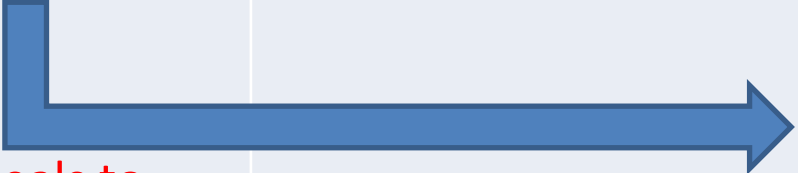



**THERE ARE
NO RULES.**

We've
made
them
up.

Better legal ethics = less rules, more judgment



- The first challenge is to get law students and new lawyers comfortable with systems of ethics, where judgment is a required skill, and not just get them to learn rules about what they can do and can't do in any situation
- Let's return to the 3 'methods' or approaches to ethics, as mentioned in Plenary 1. These systems of ethics are critical to developing students' and lawyers' sense of judgment.

Ethical Type	What it is	What it looks like
Kantian Ethics	<p>Fairness</p>  <p>(appeals to lawyers)</p>	 
Consequences	<p>Necessity</p>  <p>(appeals to politicians)</p>	
Virtue Ethics	<p>Character</p>  <p>(appeals to?)</p>	

For example...


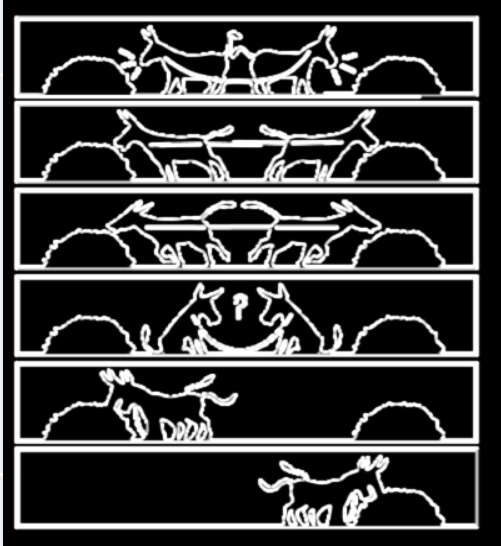



‘Climate Justice’ is a term coined by the IBA.

Climate Justice bridges all 3 systems of ethics:

- consequentialism (oppose emitters to limit global temp. rises)
- Kantianism (because climate justice emphasises human rights or fairness, especially to refugees) and
- virtue ethics (the virtues of compassion; and a desire for justice)

Three different ethical *methods* or approaches

Method	What it is	What it looks like...
<p>Kantian Ethics</p>	<p>‘Right’ actions are those that primarily enhance individuals’ wellbeing by treating them as ‘ends’ rather than ‘means’.</p> <p>The Kantian approach is important for human rights lawyers because it emphasises the rightness or fairness of the legal process</p> <p>‘Fairness’</p>	
<p>Consequentialism</p>	<p>‘Right’ or morally good actions or policies are those that bring about better consequences for more people than any of the other realistic alternatives. Consequentialists justify their behaviour according to the need to achieve outcomes over and above, if necessary, concerns for process or fairness</p> <p>‘Necessity’</p>	
<p>Virtue Ethics</p>	<p>The categorisation of an act as ethical or unethical is not determined by its impact as such, but by the quality or character of its actor.</p> <p>Virtue ethics says that an act will be good if the person acting has a good character and their motives are noble.</p> <p>‘Character’</p>	

Discuss this problem in 3 groups, each using one of the three methods...

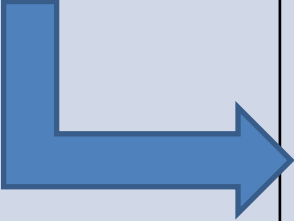

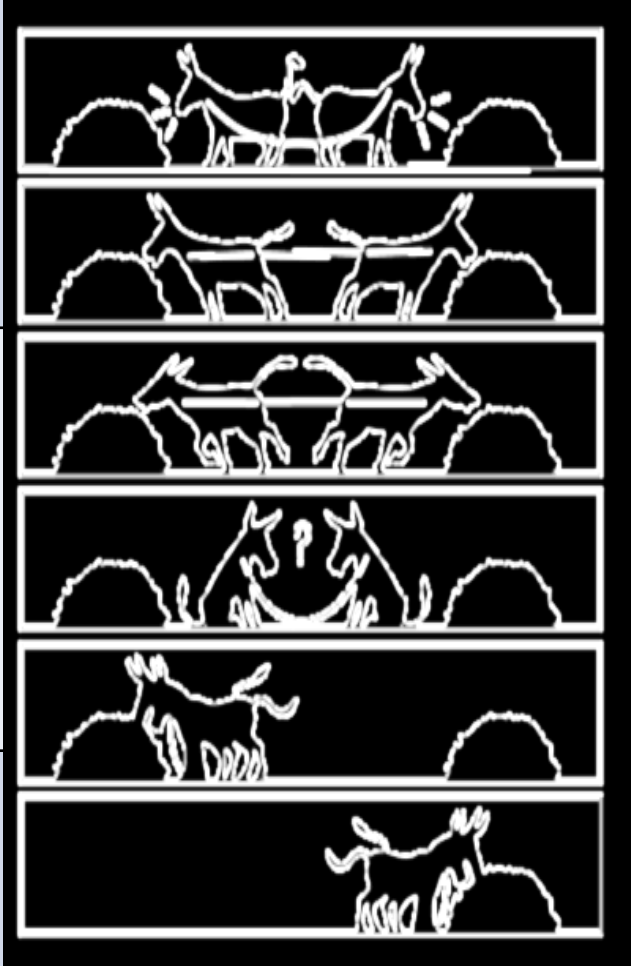
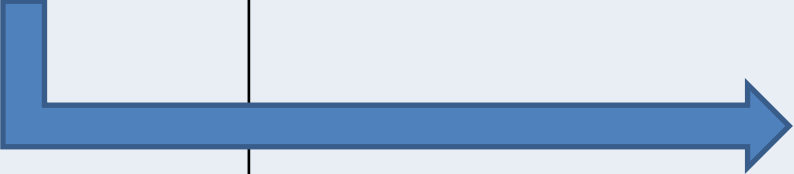
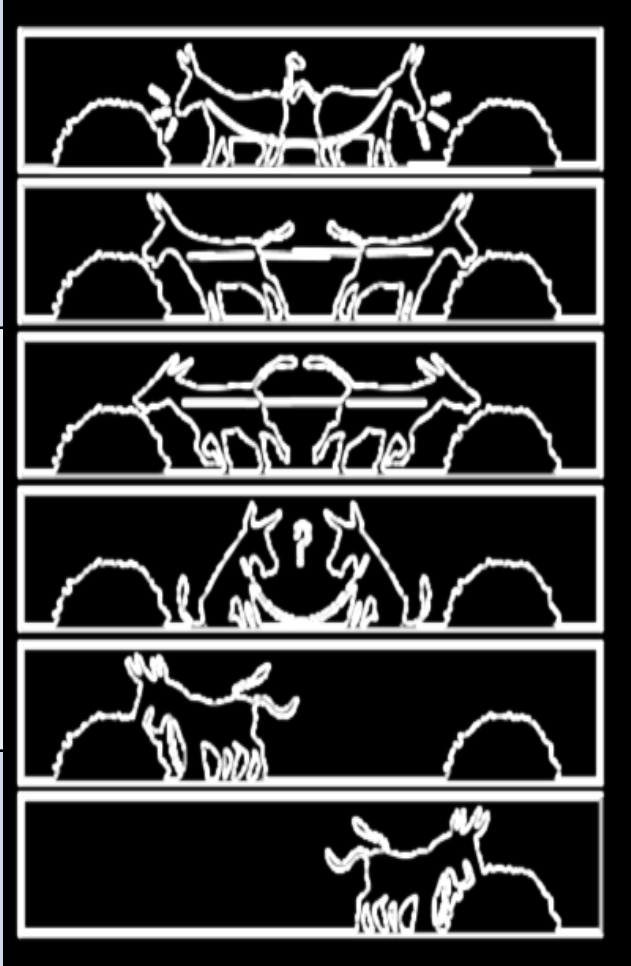


- There are five workers on a train track who cannot hear an approaching runaway train carriage
- They will be killed unless you do something
- You are standing on a bridge above the train tracks. Next to you, an old but heavy man is leaning against the bridge railing
- You can see that if you topple the old man into the path of the carriage, it will be derailed and the workmen's lives will be saved


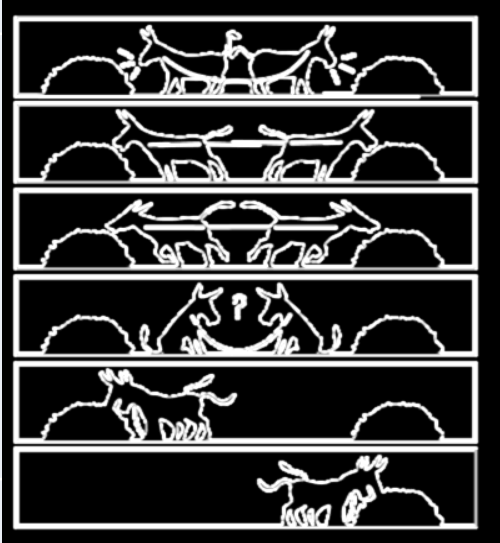



**Unfortunately, the old man will die.
What will you do?**

Ethics is more than rules

- Law firms' business models and financial futures, all depend on developing this quality of judgment in all their lawyers
- As law firms and legal educators, we will do best to develop this mature sort of law graduate rather than the commercially effective but often, it seems, morally limited individual
- The graduate we want to create will be as knowledgeable as any, and more skilled in a practice-ready sense than most; but they will also be aware of and be developing their values and virtues
- They will understand that society ultimately only needs us - and values our profession - for three things: the virtues of judgment, integrity and a love of justice. In short - goodness.

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Instruction to facilitator:

Discuss this scenario in 3 groups, each group using a different method. Then engage spokespersons for each gp in defending their position.

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Unfortunately, the old man will then die. **What should you do?**

4th Asia Pro Bono Conference and Legal Ethics Forum Session Presentation Plan Template

Name of Session:

Plenary 4 - Ways to better develop a noble legal profession through pro bono, legal ethics and professional responsibility practices.

Session Description/Aim (modified):

This session will draw on the discussions around pro bono and professional responsibility from the previous 3 days of the conference. It will focus on their connection with the key principles of legal ethics and how this inter-connection is essential to the development of a noble legal profession. In this session a three person panel will provide their perspectives on the particular challenges and methods of ensuring a noble legal profession in the region.

Total Session Minutes: (60 min)

Facilitator:

Adrian Evans, (Monash University) Adrian.Evans@monash.edu

Co-Presenters:

1. Adrian Evans, (Monash University) Adrian.Evans@monash.edu
2. Leah Wortham, (Catholic University of America) wortham@law.cua.edu
3. Roger Normand, (Justice Trust, USA) roger.normand@justicetrust.net

Session Plan:

Step	Activity Description	Time (Min)	Presenters	Materials Needed
1	Brief follow-on/ recap from key note, re ways of thinking about ethical choice	10 mins	Adrian Evans	Laptop and projector
2	Interactive session for small groups designed to develop a model of the ideal ethical lawyer, and to reflect on ways to learn about legal ethics while retaining a sense of balance and wellbeing	20-30 mins	Leah Wortham	
3	Uncertain at this stage (31/8)	20 mins	Roger Normand	
Total	Time	60		