1 Introduction: the dissociation of ethics from practice

Ethics talk has never been more prevalent than in the first few years of the twenty-first century. Corporate scandals have shaken the international business community over the last few years and seem to have reanimated many people's interest in ethics. As a result, codes of conduct, ethics management programs and ethics offices are being created with breathless haste. Even skeptical corporate executives are beginning to acknowledge that there may be more to ethics than "motherhood and apple pie." Many have even come around to the idea that ethics is something that has to be institutionalized, resourced and managed. To the extent therefore that they are interested in keeping their organizations out of trouble and limiting their potential liabilities, these "upright" captains of industry now stand ready to invest time, effort and money in the promotion of ethics. In the face of this wave of unprecedented interest, many business ethicists have concluded that the business community no longer sees business ethics as an oxymoron. In fact, an investment in business ethics has become a prerequisite for an organization's continued participation in formal business networks.

Given these conditions, one would expect this to be a good time to be a business ethicist. In some respects, however, it is both the best of times and the worst of times. It is the best of times in that business ethics and corporate governance are becoming standard features in both tertiary curricula and corporate training budgets. All of a sudden, everyone seems to have awoken to the importance of teaching people ethics. The assumption is that teaching ethics builds integrity, encourages responsible behavior, and generally puts moral considerations on the business agenda. There are also benefits, such as enhanced employee morale, lower staff turnover, and enhanced corporate reputations that are associated with ethics training.

In other respects, however, this is the very worst of times for business ethics. Many corporate ethics programs have become no more than "insurance policies" against corporate liability and are implemented and managed with an indiscriminate "checkbox" mentality. Having an organizational ethics program is begrudgingly accepted as a "must-have" check on business practices. As such, it is conceived of as something quite separate from what business is actually focused on. In fact, such consideration as ethics does receive is perceived as time spent on "soft issues," i.e. matters that distract from "business as usual."

The approach to business ethics that is currently being extolled in many business and academic forums may implicitly be contributing to the dissociation of ethics with business practice. Ethics is portrayed as a set of principles that must be applied to business decisions. In this conception, ethics functions as a final hurdle in a deliberate decision-making process. The questions that inform this process are usually something along the line of: "May we do this?" or even more cynically: "Can we get away with this?" When approached in this way, ethics becomes something that people consider *after* they have interpreted events and determined what they want to do. When ethics functions as an integral part of business practice, however, it informs individuals' perceptions of events from the start and plays an important part in shaping their responses. This kind of ethics is not based on the deliberate application of general principles, but draws instead on tacit knowledge and individual discretion. The kinds of questions that ethics as practice would have us ask are of a decidedly different order. It asks us to consider: "How do we want to live?" and: "Who do we want to be?" When an organization's investment in business ethics becomes a mere insurance policy, really meaningful and significant questions such as these are never raised or addressed.

In itself, the claim that ethics and business practice are becoming dissociated may not seem particularly controversial. There are many business ethicists who would not only readily agree that such a thing is happening, but would also welcome it. Some would argue that ethics as practice is disappearing because it is an outdated notion. It is true, of course, that the association of ethics with practice is a very old idea. It is based on the ancient Greek concept of *phronesis*, or practical wisdom. Those who are critical of this view argue that it is more suited to the kind of small, ancient communities within which it was conceived than the complex contemporary world that we now inhabit. To think of ethics as part of everyday practice, they argue, is to associate it too closely with the "messiness" of individual perception and contextual biases. It simply allows individuals too much discretion to ensure the orderly conduct of business. In small communities, where individuals knew one another personally, such trust may have been possible. However, within the context of an impersonal global economy, we need something more solid and reliable to protect our interests. In contemporary business and society, it is only the law that can ensure responsible behavior. Those who subscribe to this line of reasoning therefore invariably turn to stricter legislation, more exacting compliance measures and the threat of imprisonment to keep business practitioners in line.

Despite its widespread implementation, this legislative approach does not seem to be working as well as its proponents might have hoped. News of fresh business scandals continues to arrive at our doorsteps almost every morning. Judged on the basis of their performance, then, rules and legislation alone appear to be poor substitutes for the kind of practical wisdom that is inscribed in the notion of ethics as practice. In fact, efforts to formulate unambiguous normative guidelines for the conduct of business may paradoxically cause us to neglect those very aspects of human life that both legality and morality attempt to protect.

Both legality and morality are concerned with establishing criteria for acceptable behavior. Both make these judgments on the basis of existing social norms and values. These norms and values are expressions of those things that the members of a particular community consider important enough to protect and nurture. The protection of our lives and property, for instance, is guaranteed by law. Naturally these primary security needs are exceptionally important, but there are things that speak to the very core of our self-understanding as human beings that we don't necessarily want to secure through legislation or regulation. Consider, for instance, the implications of legally enforcing things like fidelity, trust, responsibility and care. The world would be a sad place indeed if we felt compelled to adopt a law to ensure that friends cared for one another and trusted each other. However, it would be an even sadder place if we didn't think these things important at all. Ethics is, in a sense, the practice of such things in everyday life.

Ethics in business is about the capacity to respond appropriately to the many competing pressures and expectations that push and pull individuals in the course of their daily participation in complex organizational and business networks. It requires an intuitive and continuous balancing act, in which an individual's character, values, and relationships all register in significant ways. This is precisely why the law cannot adequately serve ethics as practice. Practical wisdom is not simply the ability to identify and apply relevant rules. It is the capacity to make decisions in situations where there are no regulatory parameters to defer to, or where the rules are of such an imprecise, ambiguous nature that they require the exercise of discretion. To act with this kind of wisdom is simultaneously to be responsive to others, true to oneself and decisive in the absence of certainty. As such, it is not dissimilar to the kind of insight and skill that is required for any important practical decision in today's complex business environment.

Business ethics is supposed to be as much about business as it is about ethics. As self-evident as this may seem, business ethicists are often guilty of not paying enough heed to the complex dynamics of contemporary business life in the way that they approach the subject. This may be due, at least in part, to the fact that many still subscribe to the view that normative imperatives should be unchanging, irrefutable standards that define what is acceptable in business behavior. Morality, from this perspective, should be defined "objectively." That is to say that moral imperatives have to be articulated independently from the pressures and expectations that inform people's experiences and perceptions in particular situations, relationships and contexts. Proponents of this view believe that it is only once normative imperatives have been formulated in this way that they can be brought into relation with, or "applied," to specific cases. It is not hard to see why so many people continue to think this way about morality. We prefer not to have the messiness of the real world interfere with our sense of "right" and "wrong." To have to constantly rethink or renegotiate those norms on which we rely for guidance is disorientating and undermines our sense of certainty. It seems to open a door to the kind of relativism and moral subjectivism that renders ethics meaningless. It is tragic to note, however, that, because of our lack of nerve, the kind of moral responsiveness and personal discretion that is such a key feature of ethics as practice is slowly and systematically being suppressed in business life. While some business ethicists have been occupying themselves at the top of their academic ivory towers with the philosophical reinforcement of ostensibly immutable normative principles, those who make their living in the corporate jungle around them are making up their own rules for the game. If business ethicists are unable to appreciate this game, and are unable to participate in the dynamics that shape business practitioners' moral sensibilities, the association of ethics with practice will continue to weaken until it effectively ceases to exist.

The tendency to dissociate ethics with particular situated practices often undermines the meaningfulness of business ethics interventions.

Business ethicists who support the abstraction and generalization of ethical imperatives often develop standardized ethics management models that are intended to serve as a vehicle for interventions in any organization. However, because it is mostly large corporations that can afford to implement such models, they are often designed with these organizations in mind. In the process, not enough consideration is given to the fact that small and medium-sized businesses, as well as "not-for-profit" organizations often do not have the resources to implement and manage such programs. These enterprises are simply left to forge ahead without much attention to the moral dimensions of their business practices. A tacit sense of normative propriety nevertheless develops among the employees of such organizations and as they grow and expand it becomes increasingly difficult to change or alter entrenched perceptions and expectations.

In addition, pre-packaged business ethics strategies often rely on the institutionalization of standardized codes and compliance procedures. These codes and procedures are not tailored to reflect the unique sensibilities that may have developed within a particular organization or the expectations and dynamics that exist within specific industries. This limits their relevance and ability to effect change.

There are many who believe that ethics officers and ethics offices play an important role in making ethics a central concern amongst an organization's workforce, but often little consideration is given to how a small minority of individuals are supposed to shape and transform the cultural dynamics of a complex organizational system. Ethics surveys and climate studies are regularly employed, but are mostly incapable of detecting or describing the tacit, unwritten rules that are the primary source of moral orientation in many organizations. No expense is spared in the internal communication of an organization's moral commitments and ethical standards, but these efforts often do little to change the perception among ordinary employees that ethics is simply the latest in a succession of temporary management obsessions. In ethics training initiatives employees are taught to use ethics "quick tests." Case study analyses are employed to hone the moral reasoning skills of workers who are unlikely to be given sufficient discretionary freedom to use them.

In all of this, individuals are never asked to reconsider fundamentally who they are, what they really care about, and how they can leverage these beliefs to make their workplace a better environment.

When one considers the practical effect of ethics' dissociation from practice on each level of a typical ethics program, one begins to appreciate why it is so important to address and reverse it. If we are willing to revisit our most basic assumptions about ethics in organizations, it may be possible to infuse our theory and practice with some much needed new perspectives. In what is to follow, I will briefly consider the main elements of organizational ethics programs, and point out some of their limitations. The goal of this analysis is to identify where we should focus our attention in re-establishing ethics as an everyday part of business practice.

The typical ethics management process and its limitations

The Federal Sentencing Guidelines for Corporations includes a description of seven steps that should be taken in the establishment of an ethics and compliance program.[1] The Guidelines include elements of best practice ethics management techniques, such as the development of a code, the implementation of ethics training, setting up reporting channels, ensuring proper communication of ethical standards and raising ethical awareness, as well as the enforcement of discipline.[2] These elements are typical of most ethics programs and can, for the purposes of our discussion here, be meaningfully divided into three basic elements or phases, namely: *motivation*, *formulation* and *integration*. These are summarized in Table 1.1, and discussed in greater detail in the rest of this chapter.

The first of these has to do with the process of establishing a rationale for an ethics program within an organization. Ethical risk assessments are often employed to this end. The *formulation* phase of an ethics program typically includes the establishment of some source of normative orientation. This is mostly done by means of an organizational code of conduct. In most cases, the *integration phase* of an ethics program is a

[1] The FSG's seven steps include (1) formulating compliance standards and procedures such as a code of conduct or ethics; (2) assigning high-level personnel to provide oversight (e.g., a compliance or ethics officer); (3) taking care when delegating authority; (4) effective communication of standards and procedures (e.g., training); (5) auditing/monitoring systems and reporting mechanisms, whistle-blowing; (6) enforcement of disciplinary mechanisms; and (7) appropriate response after detection.

[2] For a more detailed analysis of the various elements of an ethics management program, see: Dawn-Marie Driscoll and W. Michael Hoffman, *Ethics Matters: How to Implement Values-driven Management* (Bentley College Center for Business Ethics, 1999).

Table 1.1 ***Phases and elements of a typical ethics management program***

Motivate	Formulate	Integrate
Identify ethical risks Get Board and leadership commitment	Identify existing and desired values Formulate codes of ethics and codes of conduct	Train Communicate Assign responsibilities for ethics
	Evaluate	

multifaceted process that includes the appointment of an ethics officer, the roll-out of a training and communication program, the establishment of reporting channels, the enforcement of rules and regulations through the implementation of disciplinary procedures against offenders, and doing regular audits.

Ethics programs typically also include a fourth element, namely, "evaluation." However, various forms of evaluation are typically included as part of the motivation, formulation and integration of such programs in organizations. As such, they are more meaningfully discussed within the context of each of these three aspects of a typical ethics program. The motivation phase of an ethics program, for instance, typically includes an assessment of the ethical risks that are present within an organizational environment. To formulate meaningful points of normative orientation for the members of an organization, some sort of evaluation is usually done to find out what they value and believe. As part of the process of integrating ethics into the life of an organization, it is usually necessary to establish how values are reflected in formal and informal systems and how they are integrated across organizational functions and silos. Evaluation is also part of how an organization reports on its activities.

Motivation: fear of penalty and ethical risk

One of the main challenges for practitioners in the ethics and compliance field is to motivate the leadership of organizations to invest money, time and effort in ethics. The fact that the collapse of companies like Enron and WorldCom could be directly attributed to unethical behavior, have, of course, made their task a little easier of late. The introduction of stricter legislation and other forms of regulation have imposed new parameters on business activities and have bolstered the case for ethics interventions in organizations. In the US, for example, it has become easy to use compliance with the Federal Sentencing Guidelines (FSG), the protection of an organization against lawsuits and liability, or the new SOX requirements[3] as a rationale for ethics programs.[4]

From a business ethics perspective, the fact that the US Sentencing Commission provided parameters for federal judges to follow in their sentencing of business organizations is not its most significant contribution. More important is the Federal Sentencing Commission's introduction of guidelines that incentivize business organizations to proactively fight corporate misconduct by implementing structured ethics and compliance programs. According to the FSG, if a business organization charged with corporate misconduct has these elements in place and cooperates fully with investigating authorities it might be given a reduced fine, or even avoid prosecution altogether. Many organizations did the math and realized that investing in an ethics program would probably cost them less than they stand to lose in the event of a lawsuit. The problem, of course, is that when ethics programs are motivated by this kind of logic, they can end up being no more than relatively cheap insurance policies against costly lawsuits. There are unfortunately many such corporate ethics programs that look good only on paper. This is hardly the kind of commitment to ethics that the Federal Sentencing Commission hoped to encourage in organizations.

The spate of corporate scandals that followed the initial introduction of the Federal Sentencing Guidelines in 1991 compelled the Federal Sentencing Commission to reassess the compliance-driven approach that it had initially adopted. In the process, the members of the Commission became convinced that an important element was missing from business organizations' compliance programs. In 2004, the Commission decided literally to replace every reference to "compliance" in the

[3] Joshua Joseph, "Integrating Business Ethics and Compliance Programs: a Study of Ethics Officers in Leading Organizations," *Business and Society Review*, 107 (3) (2002), 309–347.

[4] Paula Desio, "An Overview of the Organizational Guidelines" in *An Overview of the United States Sentencing Commission and the Federal Sentencing Guidelines* (Online at www.eoa.org, 2005).

1991 Guidelines with "ethics and compliance." In the new Guidelines, the criteria for effective compliance and ethics programs are discussed separately (in guideline §8B2.1), underlining the importance that the Commission attaches to such programs. The Commission also elaborated on these criteria, generally introducing greater rigor and assigning significantly more responsibility to the governing authority (e.g., the Board of Directors) and executive leadership of an organization. To meet the new standards, an organization must demonstrate that it has exercised due diligence in fulfilling the Guidelines' requirements. In addition, it has to show that it has promoted "an organizational culture that encourages ethical conduct and a commitment to compliance with the law." As Ed Petry points out, other agencies, like the SEC, the New York Stock Exchange, Congress, the Department of Justice, and various rating agencies have all joined the Sentencing Commission in weighing in on the issue of corporate culture.[5]

As a result of these developments, the interest in measuring various dimensions of organizational culture has grown. In fact, it could be argued that in the US today, "managing organizational culture is the new compliance." This has lead some organizational theorists to argue that the current interest in organizational culture is a mere continuation of the managerialist strategies initiated by Frederick Taylor early in the twentieth century. From this perspective, the current obsession with corporate culture is just a veiled form of the managerial impulse to exercise control over employees.

Although the interest in assessing and managing organizational culture has gained new momentum in the last few years, it pre-dates the new Federal Sentencing Guidelines. In fact, organizational culture became a buzzword as early as the 1980s. Some of the key texts that played a role in the theoretical development of the concept of organizational culture, are Peters and Waterman's *In search of Excellence*, William Ouchi's *Theory Z* and Deal and Kennedy's *Corporate Cultures* (1988).[6] Martin

[5] Ed Petry, "Assessing Corporate Culture Part 1," *Ethikos* 18(5) (March/April, 2005).

[6] Thomas J. Peters and Robert H. Waterman, *In Search of Excellence* 1st edition, (New York: Harper & Row, 1982); William G. Ouchi, *THEORY Z* (Reading, MA: Addison-Wesley, 1981); Terrence E. Deal and Allan A. Kennedy, *Corporate Cultures* 1st edition, (Perseus Books Group, 2000). Some argue that the notion of organizational culture emerges from the interest in "organizational climate" that preceded it. Organizational climate has been used to refer to a broad array of organizational and perceptual variables that have

Parker criticizes these three texts for their "self-help tone" and the fact that they promise to deliver efficiency, job satisfaction and a number of other benefits through management-driven cultural interventions.[7]

Whatever lies behind the current widespread interest in organizational culture, it has resulted in a proliferation of new survey instruments. The interest that business ethicists have in measuring corporate culture is related to the belief that insight into an organization's culture would allow corporations to manage their ethical risks proactively. Ethics consultants and ethics officers therefore often use ethical risk analyses to substantiate their proposals and requests for ethics interventions and programs. There is nothing that motivates a board of directors like a statistical analysis that clearly demonstrates employees' and other stakeholders' negative perceptions of an organization. Such an analysis typically includes some form of interaction with an organization's internal and external stakeholders, as well as an assessment of its compliance environment and a survey to gain insight into its employees' beliefs and expectations.

In many cases, general quantitative surveys are employed to this end. These surveys are called by many different names, such as "Climate studies," "Organizational culture surveys" and "People's surveys." They typically serve multiple purposes. Some include questions that are specifically formulated to gauge the ethical orientation of an organization's employees. They may, for instance, probe things like employees' willingness to report misconduct, the number of incidents of unethical conduct that they had witnessed, and their perceptions with respect to their organizational leadership's commitment to ethics. However, most

the ability to reflect what happens in individual and organizational interactions, and that can also affect behavior in organizations. On the more specific topic of ethical organizational climate, Victor and Cullen's (B. Victor and J. Cullen, "The Organizational Bases of Ethical Work climate," *Administrative Science Quarterly*, 33[4] [1988], 101–125) definition is also widely used. They define ethical climate as: "the prevailing perceptions of typical organizational practices and procedures that have an ethical content." Since it owes its existence to psychological research, the notion of "organizational climate" faced a series of difficulties. For example, a debate ensued around what the unit of analysis should be – should the individual, organization, or various subunits within an organization be studied? It was also argued that climate studies overlaps with most constructs in organizational behavior and lacks the clear focus that would allow it to function as a viable theoretical construct.

[7] Martin Parker, *Organizational Culture and Identity: Unity and Division at Work* (London: Sage, 2000), p. 15.