



**EIILM UNIVERSITY**  
S I K K I M

## **Business Ethics**

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# **CHAPTER 1**

## **Perspective on Business Ethics And Values**

### **Stories and Business Ethics**

Business ethics begins with stories. Stories illustrate and reinforce the sense of values, justice and fairness. Czarniawska: four types of dramatic story in the European classical tradition, which all represent different kinds of business ethics issues:

- Romances: the quest of a single individual to achieve some noble goal that is only achievable because human beings have an innate goodness. Such heroes become metaphors for their particular brand of ethical management.
- Tragedies: about people who try to behave well, by challenging fate, but come to personal grief. E.g. whistleblowers who reveal corporate wrongdoing but in doing so lose their families, their homes, etc. Metonyms are used.
- Comedies: stories about how human imperfections and weaknesses make the achievement of a happy ending difficult. The use of synecdoche.
- Satires: work ironically. By contrasting people's behavior with their words, or by defining the context in which the words are said, it is made clear that people mean the opposite of what they said.

The italicized words are also defined:

- Metaphor: makes comparisons by referring to one thing as a different thing. E.g. calling employees in an organizations 'assets'.
- Metonymy: uses an attribute of something to represent the thing itself. Chairpersons sit in a chair when they hold a board meeting. The chair is their attribute, so they become known as chairs. In

tragedy a single attribute can undermine a person's integrity; a good person is often brought low because of a part of their behavior or character.

-Synecdoche: uses a part of something to represent the whole. Business people wear suits and so that particular aspect of them comes to represent them and their role (e.g. "are the suits arriving to check us out").

-Irony: speaking or writing in such a way as to imply the opposite of what is being said.

There is in business ethics a narrow point of balance between

-Romance and satire: heroes of romances can easily become the subject of satirists' scorn

-Tragedy and comedy

If we can understand how the plots of these stories can lead to either good or bad outcomes, we can develop an intuitive knowledge of how to encourage more happy endings than bad ones.

One of the long running business ethics stories concerns a moral decision that faces profit seeking organizations. It is a conflict between public duty and self-interest.

### **The business case for business ethics**

Should private, profit seeking organizations behave in a socially responsible and moral way, beyond the requirement of the law, because it is the right thing to do or because it pays them to do so? Bad behavior can be bad for business, resulting in a poor image. Conversely, if a company is associated with good behavior, using renewable resources, not employing child labor and providing good training and development opportunities for its staff, it should be good for sales. However, benefits of good behavior are not guaranteed. Bad corporate behavior will only diminish reputation, and good behavior boosts it, if it becomes known. There are measures of social, ethical and environmental performance, but these are mostly designed to meet the needs of the ethical investment community rather than consumers and purchasers.

There are a number of standard measures or more properly indices available for assessing the social and environmental performance of corporations:

-FTSE4Good: calculated from a number of factors that cover three areas of o Working towards environmental sustainability

Developing positive relationships with stakeholders o Upholding and supporting universal human rights

-Dow Jones sustainability indices (DJSI): tracks the financial performance of companies that have committed to long-term sustainability.

-SERM rating agency: SERM rates companies on a scale of AAA+ to E according to how well the companies manage their environmental and socio-ethical risks. Twenty-five dimensions are used in three fields: environment, health and safety and socio-ethical.

-Ethical Investment Research Service (EIRIS): carries out research on companies world-wide and provides information for those who wish to invest ethically.

Does business ethic pay? Webley & More: there is no single and definitive measure of ethical performance, which is a problem. They chose proxy or surrogate measures that are indicative of whether a company is behaving in an ethical and environmentally protective way but not conclusive proof that they are. Measures:

1. Whether a company has a published code of ethics that has been revised within the past five years
2. Companies' SERM rating

3. Companies' ratings on Management Today's 'Britain's most admired companies' survey that is carried out by Michael Brown of Nottingham Business School Companies that have 1, score better on both 2 and 3. Measuring financial performance is easier:

- Market value added (MVA): difference between what investors have put into a company over a number of years and what they would get from it if they sold it at current prices
- Economic value added (EVA): the amount by which investors' current income from the company is greater or less than the return they would get if they had invested the money in something else of equal risk = opportunity cost of placing money in a particular company.
- Price-earnings ratio (P/E ratio): the market value of a share in a company divided by the shareholders' earnings
- Return on capital employed (ROCE): a measure of the return that the capital invested in a company makes for its owners.

The first and second sets of measures can be combined, researching the relationship between ethical standing and financial performance.

The results indicate that companies that have a code of ethics (better SRM rating and 'most admired company' table score) achieve better MVA and EVA.

Other findings suggest that far from good social performance leading to improved financial effects the cause and effect relationship worked the other way around. Companies that do well financially find themselves with some money that they can spend on good works and improving their social and environmental performance. As social performance improves, turnover declines. Social performance endangers financial performance, but does not of itself support that companies flush with profits are inclined to spend some of the profits on social performance.

There is an association between good social performance or ethical business practices and good financial returns. It is not clear however, that it is the good social performance that increases profits. It may be the other way round.

So, it is not clear that there is a business case for business ethics, although on the defensive principle there is one for managing the financial risk of unethical or improper organizational behavior. It is necessary to turn to other ways of deciding whether companies and organizations

should act ethically and responsibly: whose interest should companies and organizations exist to serve?

### **Stakeholder theory**

As different people may be affected differently by the same action then it is important to take these various impacts, some good and some bad, into account.

Know who the characters in the story are. For any organization there are a number of definable groups who have an interest, or a stake, in the actions of that organization. The question is what constitutes that stake. The issue is threefold:

- What responsibilities/duties (if any) does an organization owe to its stakeholders? The fact that a stakeholder group may have a legitimate interest does not, of itself, mean that the organization owes anything to it. At one extreme of the spectrum an organization may be obliged to do what the stakeholder group requires. At the other extreme end the organization might owe the stakeholder group nothing.
- How should an organization decide between its obligations to two or more stakeholders if they demand incompatible things from an organization? What criteria should the organization use when deciding which stakeholder group wishes it should prioritize? Often those who scream the loudest are prioritized.
- What legitimate interests justify a group of people being regarded as a stakeholder in an organization? Often a stakeholder is seen as any group that is affected by an organization's actions. But this would give a commercial company's competitors a voice in its activities because their performance would be affected by the organization's performance, which would not seem fair.

### **Business and organizational ethics**

The subject matter of business ethics is an attempt to answer these three questions. There are four different 'answers', or perspectives, that are given in modern western capitalist societies.

Organization: any configuration of people and other resources that has been created to coordinate a series of work activities, with a view to achieving stated outcomes, of objectives.

Four broad theories of the firm, and the assumptions and implications of these perspectives for prioritizing the various stakeholders' needs and for the exercise of moral agency<sup>1</sup>:

- The classical-liberal-economic approach
- The corporatist approach (rijnlands: particular german approach to a market-based, capitalist oriented economy)
- The pluralist perspective
- The critical perspective

Within these four categories different assumptions are made about the relationship between

- Organizations and the state
- Organizations and their employees
- Organizations and their various stakeholder groups (beyond the employee group)

#### 1. The classical-liberal-economic approach

This theory of the firm places the organization within an economic system that is made up of a myriad interconnecting but legally separate parts, and where relationships between these many parts are defined in terms of free exchange. Money acts as the facilitator of exchange. The argument is that, with no individual person or company able to affect price, the resulting transactions, and the prices that draw both suppliers and customers into the marketplace, reflect people's wishes. 'free' markets. Advocates of this theory: Milton Friedman, Friedrich von Hayek and Ayn Rand. Individual choice, free of government coercion, is seen as the only ethical influence in shaping economic and social development. The last writer, Rand, is very influential but less well known. "Randianism"

<sup>1</sup> Moral agency within organizations is the ability of individuals to exercise moral judgment and behavior in an autonomous fashion, unfettered by fear for their employment and/or promotional prospects.



rejects government in anything other than its minimalist form, i.e. that which can be justified to protect individual rights, such as the police, the law courts and national defense. All other functions can and should be operated by 'the people', preferably via market mediation, and paid for. Rand credited with developing the philosophical position that is known as objectivism. Objectivism has three key elements:

1. Reason is man's only means of knowledge, i.e. the facts of reality are only knowable through a process of objective reason that begins with sensory perception and follows the law of logic. Objectivism rejects the existence of god, because it lacks empirical support.

2. Rational self-interest is the objective moral code. Altruism (the greatest good is service to others) is rejected as an unhelpful and illogical human attribute. Individuals are required to pursue their own happiness, so long as it does not negatively affect anyone else's.

3. Laissez-faire capitalism is the objective social system. Laissez faire means unrestricted. Laissez faire capitalism refers to a preparedness to let markets 'sort themselves out'. The belief is that a market will self-correct in time.

The attachment of modern-day libertarian economists to a myopic focus upon competition can be critics for ignoring two other significant elements of economic systems, which are:

-Command: the extent to which power, coercion and hierarchy affect economic relationships

-Change: the way that capitalism effects change and is itself affected by change.

These three central elements of capitalism, competition, command and change, have ethical and moral implications and it is argued here that they are interconnected, not subject to easy and simplistic separation.

Within the simple competitive model of economic behavior, managers are expected to behave in ways that reflect what is known as economic rationality. This normative theory is open to challenge in terms of its descriptive rigor, hence the existence of alternative theories of the firm.

In this classical liberal perspective espoused by Anglo-American corporations the sphere of inclusion in decision making is mostly an exclusive shareholder orientation. This is 'short-term' focused.

## **2. The corporatist approach**

This approach does not deny the primacy of competitive market forces, but an exclusive equity shareholder perspective is eschewed in favor of a broader-based set of perspectives in some of the organization's decision making. These additional perspectives are those of employee representatives, debt financiers, and in some cases state interests. This broadening of the decision making base offers a longer-term view to certain aspects of corporate decision making.

This approach is common in Germany, Sweden and Japan.

Whether the corporatist approach is preferred by some because it offers a greater likelihood of economic, and thus political, stability, with the greater apparent value placed upon the interests of individual citizens/employees merely an ancillary benefit, or whether the rationale for employing this approach is reversed (i.e. the ethics of the corporatist approach are argued to be the main reasons for its adoption), is not critical for the discussion. What is relevant, is that both the classical-liberal-economic (individual choice) and the corporatist (social cohesion) approaches can cite ethical justifications for their superiority as economic and social systems.

## **3. The pluralist perspectives**

There are two main pluralist perspectives (on a pluralist continuum, but these two are not the extremes!):

-Type A pluralism: sees broad stakeholder interest being represented by elected or appointed members of corporate boards. Development of corporatist perspective, but with the stakeholder groups being drawn more widely. In type A pluralism, stakeholder groups are required to do

more than argue their particular, vested-interest, case. They are expected to be representative of societal interest. In classical-libertarian-economic perspectives individual's decisions are deemed to give expression to society's preferences; within type A pluralism, societal preferences are given voice by the presence of stakeholder groups on company boards or committees.

-Type B pluralism: does not dispute the possibility of stakeholder groups being physically represented within corporate decision making processes, but this is neither a prerequisite, nor part of the basic arguments. Economic rationality is seen as being moderated by concerns for, and recognition of, wider social implications of corporate decision, with these factors being weighed by individual decision makers. Type B pluralism argues for recognition of the realities of everyday market conditions, but also a more socialized set of assumptions of human behavior. Whilst a market-based economy is seen as the foundation upon which organizational coordination takes place, structural issues and problems within markets are recognized, i.e. power imbalances between competitors, information asymmetry between producers and customers, and the capricious nature of capital. Greater responsibility, ethicality and humanity are required of corporate decision makers. Etzioni describes a deontological approach: an approach that believes that moral reasoning and action should be guided by universal principles that hold irrespective of the context in which an ethical dilemma might exist. People need to develop a sense of shared identity, and have significant involvement in the community.

#### **4. The critical perspective**

The critical perspective is composed of many different theories about human and collective behavior, including the politics of organizations. All about research and theories which have been developed to explain actual behavior within organizations. Organizational life is far more complex and messy than classical-liberal economics would prefer to work with. Two major kinds:

-Behavioral theories are amoral in their stance in that, unlike the liberal-economic, corporatist and pluralist perspectives, they do not put forward a preferred ethical foundation for their theorizing. They act as organizational windows through which we can observe the ways in which employees

at all levels in organizations appear to react, and behave, when faced with ethically complex situations.

-Critical theorists however, have an avowed commitment to societal change, for the emancipation of employees, from the shackles of capitalism. They make different analyses, and there is no consensus on the preferred replacement of market-based societies.

Boundaries of jurisdiction or spheres of justice

The fear of market-based relationships as the bedrock (grondslag) upon which all societal and interpersonal relationships are based is articulated by a number of writers. As a way of handling this problem, some writers argued that societal life should be seen as a series of spheres, which contain and constrain differing elements of societal existence. One of these spheres is the economic, in which markets are recognized as the most effective mediating mechanism, and competition the most defensible form of organizational coordination. The relevance of contract and competition as mediating elements is largely constrained within this sphere. Within spheres representing non-economic interpersonal relationships we find notions of trust, care, welfare, sharing, friendship, leisure and possibly even altruism.

From a moral perspective one of the problems with dividing the human world into separate spheres is that it might suggest the spheres are independent to the point of allowing differing forms of behavior to prevail within each. Therefore, the spheres should not be seen as totally autonomous and independent. But there may be boundary conflict. The dynamic of change is recognized, is debated and matures through processes that are demanding but which, it must be stressed, are subject to 'social capture' by active groups and voices if participation is shirked by the general polity.

Social capture is a term used to describe a mechanism (e.g. a committee, regulatory body or political process) which is established to oversee a particular facet of social life, but which becomes dominated or heavily influenced by, the very sectional interest mechanisms it was intended to monitor or control.

One of the principal virtues of competitive markets, as the mechanisms by which business and social interaction is mediated, is that the 'invisible hand' of the market is amoral, i.e. value neutral. The writer Plant argued that from a market perspective, at least three principles would favor a market for example human body parts:

- There is a clear demand
- The current donor system is failing to meet demand
- Ownership of the human organs is clear and would not be undertaken by the donor if it were not in their personal interest.

Another writer, Titmuss, investigated whether private blood banks should be introduced. He discussed four economic and financial criteria:

- Economic efficiency
- Administrative efficiency
- Price – the cost per unit to the patient
- Purity, potency and safety – or quality per unit.

On all four units, the commercialized blood market fails.

This chapter laid out arguments for claiming that the market is:

- The only defensible economic and social system for protecting the freedom of the individual to exercise personal choice, which allows the development of economic and societal relationships that are free from government coercion and intervention. This is the liberal-economic perspective.
- Something that is preferable to alternative economic systems, but which needs to be carefully watched and, if necessary, modified from time to time to ensure that the economic system is compatible with broader societal aims. This incorporates the corporatist and pluralist perspectives.
- An intrinsically corrupting system that pits human beings against each other with only an elite few dictating the life chances of many. This is the critical perspective.

Descriptive, normative and reflective approaches

Two ways of discussing ethical matters, normatively and descriptively are often proposed.

- Normative discussion: concerned with rules and principles that ought to govern our thoughts and actions. Prescriptive claims, and how can they be shown to be legitimate or valid.

- Descriptive discussion: focuses on how things are rather than how they should be. Gives account of the values and ethics of a particular group and tries to explain how they have emerged. Analyze value systems to look for norms and the tensions between them. Is more analytical rather than prescriptive. This book is descriptive.

Ethics involves learning what is right or wrong, and then doing the right thing, but "the right thing" is not nearly as straightforward as conveyed in a great deal of business ethics literature.

Many ethicists assert there's always a right thing to do based on moral principle, and others believe the right thing to do depends on the situation, ultimately it's up to the individual. Many philosophers consider ethics to be the "science of conduct." Philosophers have been discussing ethics for at least 2500 years, since the time of Socrates and Plato. Many ethicists consider emerging ethical beliefs to be "state of the art" legal matters, i.e., what becomes an ethical guideline today is often translated to a law, regulation or rule tomorrow.

Values, which guide how we ought to behave, are considered moral values, e.g., values such as respect, honesty, fairness, responsibility, etc. Statements around how these values are applied are sometimes called moral or ethical principles.

Business ethics is the concept, which means various things to various people, but generally, coming to know what is right or wrong in the workplace and doing what's right. This is in regard to effects of products and services and in relationships with stakeholders. In times of fundamental change, values that were previously taken for granted are now strongly questioned. Many of these values are no longer followed. Consequently, there is no clear moral compass to guide leaders through complex dilemmas about what is right or wrong.

Attention to ethics in the workplace sensitizes leaders and staff to how they should act. Perhaps most important, attention to ethics in the workplaces helps ensure that when leaders and managers are struggling in times of crises and confusion, they retain a strong moral compass. However, attention to business ethics provides numerous other benefits, as well, these benefits are listed later.

Note that many people react that business ethics, with its continuing attention to "doing the right thing," only asserts the obvious, "be good," "don't lie," etc., and so these people don't take business ethics seriously. For many of us, these principles of the obvious can go right out the door during times of stress. Consequently, business ethics can be strong preventative medicine. Anyway, there are many other benefits of managing ethics in the workplace.

Business ethics has come to be considered a management discipline, especially since the birth of the social responsibility movement in the 1960s. In that decade, social awareness movements raised expectations of businesses to use their massive financial and social influence to address social problems such as poverty, crime, environmental protection, equal rights, public health and improving education. An increasing number of people asserted that because businesses were making a profit from using our country's resources, these businesses owed it to our country to work to improve society. Many researchers, business schools and managers have recognized this broader constituency, and in their planning and operations have replaced the word "stockholder" with "stakeholder," meaning to include employees, customers, suppliers and the wider community.

Business ethics in the workplace is about prioritizing moral values for the workplace and ensuring behaviors are aligned with those values, it's values management. Yet, myths abound about business ethics. Some of these myths arise from general confusion about the notion of ethics. Other myths arise from narrow or simplistic views of ethical dilemmas.

The following 10 myths about business are; more a matter of religion than management; our employees are ethical so we don't need attention to business ethics; business ethics is a discipline best led by philosophers, academics and theologians; business ethics is superfluous (it only asserts the obvious: "do good!"); business ethics is a matter of the good guys preaching to the bad guys; business ethics is the new policeperson on the block; ethics can't be managed; business ethics and social responsibility are the same thing; our organization is not in trouble with the law; so we're ethical and managing ethics in the workplace has little practical relevance.

Many people are used to reading or hearing of the moral benefits of attention to business ethics. However, there are other types of benefits, as well. The following list describes various types of benefits from managing ethics in the workplace.

Attention to business ethics has substantially improved society. Ethics programs help maintain a moral course in turbulent times. Ethics programs cultivate strong teamwork and

productivity. Ethics programs support employee growth and meaning. Ethics programs are an insurance policy; they help ensure that policies are legal. Ethics programs help avoid criminal acts “of omission” and can lower fines. Ethics programs help manage values associated with quality management, strategic planning and diversity management. Ethics programs promote a strong public image. Overall benefits of ethics programs. Last and most formal attention to ethics in the workplace is the right thing to do.

There are 6 Key roles and responsibilities in Ethics Management. Depending on the size of the organization, certain roles may prove useful in managing ethics in the workplace. These can be full-time roles or part-time functions assumed by someone already in the organization. Small organizations certainly will not have the resources to implement each the following roles using different people in the organization. However, the following functions points out responsibilities that should be included somewhere in the organization. First, the organization's chief executive must fully support the program. If the chief executive isn't fully behind the program, employees will certainly notice and this apparent hypocrisy may cause such cynicism that the organization may be worse off than having no formal ethics program at all. Next, consider establishing an ethics committee at the board level. The committee would be charged to oversee development and operation of the ethics management program. Next, consider establishing an ethics management committee. It would be charged with implementing and administrating an ethics management program, including administrating and training about policies and procedures, and resolving ethical dilemmas. The committee should be comprised of senior officers. Then, consider assigning and developing an ethics officer. This role is becoming more common, particularly in larger and more progressive organizations. The ethics officer is usually trained about matters of ethics in the workplace, particularly about resolving ethical dilemmas. You might consider establishing an ombudsperson. The ombudsperson is responsible to help coordinate development of the policies and procedures to institutionalize moral values in the workplace. This position usually is directly responsible for resolving ethical dilemmas by interpreting policies and procedures. Finally, note that one person must ultimately be responsible for managing the ethics management program.



## **CHAPTER 2**

### **Ethical Theories and How to Use It**

This chapter will give you tools for ethical thinking that you can use in analyzing such issues. They should help you to move from an intuitive response to ethical matters to a systematic and analytical approach.

Individual Processes

Adaptability and responsiveness

Principle Virtue Ethics Ethical learning and growth Policy

- McIntyre

- Individual growth

- Care – Gilligan

- Communitarianism

- Ethical Egoism

Deontological Ethics

- Kantian imperatives

- Discourse ethics

- Rights

- Utilitarianism

- Justice as fairness

Institutional Structure

Fixity and consistency

#### **Framework for ethical theories**

Those ethical theories on the left of this dimension determine what is right and wrong from predetermined principles and standards. They take no regard of the consequences of an action. Those theories to the right of the dimension measure the rightness of a thing according to whether it brings us to, or closer to, a desired state.

The theories in the top half of the framework emphasize individuals' responsibility to develop themselves and the groups they belong to, by acquiring judgment and self-knowledge.

The theories in the lower half of the framework are concerned to develop fixed structures, institutions, that are independent of us but which determine our principles and govern our ethical deliberations.

### **Virtue ethics (McIntyre)**

Virtues are personal qualities that provide the basis for the individual to lead a good, noble, or 'happy' life. The person most associated with virtue ethics is Aristotle, and he placed the 'great-soul-man' on a pedestal. The great-soul-man displays those virtues that were regarded as of the highest order. Whilst the individual is the focus of Aristotle's attention, it is an individual within a society. Virtue ethics is not a system of rules, but rather a set of personal characteristics that, if practiced, will ensure that the individual is likely to make the 'right' choice in any ethically complex situation.

Plato had identified four virtues, those of wisdom, courage, self-control and justice. For Aristotle, justice was the dominant virtue, and furthermore liberality (the virtuous attitude towards money); patience (the virtuous response to minor provocation); amiability (the virtue of personal persona); magnanimity, truthfulness, indifference (in relation to the seeking of public recognition of achievement), and wittiness. The original Platonic virtues were seen as central to the attainment of a 'good' life, whereas the other virtues were seen as important for a civilized life. For Aristotle, those personal qualities that were regarded as virtues were reflected in behaviors that represented a

balance, or mean, in terms of the particular personal quality being considered. Neither of these personal qualities is appealing as they are both likely to lead to detrimental outcomes in the long run. The virtues described by Aristotle were only available to the elite of society. Check table 3.1.

Gilligan (1982) has taken issue with the use of justice as the pre-eminent determinant of moral reasoning. He argued that the form of reasoning often displayed by women is different from that held by men. Gilligan's argument contains a strong sense of the wisdom of the female perspective that she referred to as 'care'. The concept of 'care' should be regarded as highly as

justice when interpreting responses of research subjects to moral reasoning scenarios. Care is reflected by an approach that seeks to find a way forward that now only provides some form of equitable resolution to a conflict, but also holds out the possibilities for maintaining a working relationship between the protagonists, so that future cooperation might be possible.

The notion of virtue is heavily dependent upon the period in which the concept is being considered. Unethical means cannot be justified by good outcomes. A good deed is not a good deed if it is done with bad motives. In Aristotelian terms, a virtuous life is one that allows individuals to achieve their telos, or end, to its full potential. The emphasis is thus upon both means (virtues) and ends (telos).

For Franklin, virtue was dependent upon some specified notion of utility. Some of his virtues can be achieved most effectively by the suppression of individual rights, whilst others not primarily because they benefit the individual concerned, but because they contribute to the economy and efficiency of business. Thus, whilst the ends can be regarded as beneficial in themselves, they would not be regarded as virtues from an Aristotelian perspective, because they are driven by a concern with ends and not means.

## **Deontological ethics**

### **Kantian ethics**

Kant's ethical philosophy was that actions must be guided by universalisable principles that apply irrespective of the consequences of the actions. In addition an action can only be morally right if it is carried out as a duty, not in expectation of a reward. Knowing what to do in a situation will be determined by a set of principles that have been established by deductive reasoning, independent of, or before, the specifics of the decision in hand have been considered. For Kantian ethics the context and consequences of a decision are irrelevant. For Kant actions have moral worth only when they spring from recognition of duty, and a choice to discharge it. The duties were formulated around the concept of the 'categorical imperative'. A categorical imperative refers to a command/principle that must be obeyed, with no exceptions.

The Golden Rule: do unto others as you would have done unto yourself.

## Justice and rights

The libertarian perspective (Robert Nozick, 1974) adopts the notion of negative freedoms. That is, it holds as its primary tent the individual's rights of 'freedoms from'. Differences in personal wealth, talent, physical attributes and intelligence are seen as being obtained in the 'natural' sense, in that their ownership owes nothing to social or political institutions. Nozick coined the term 'entitlement theory' to express the view that what has been acquired legally and fairly cannot be taken away within a libertarian concept of justice. With no limits attached to what individuals can achieve in a liberal society, it is for every individual to improve their own life-chances.

## Rawls, justice as fairness

Rawls' theory presents a normative approach to deciding what a just society would look like in what he describes as 'the original position', allowing each of us to contemplate a 'just' society without the burden of our life experiences and prejudices tainting our views. We are required to envisage a situation in which we have no knowledge of who we are. We are placed behind what Rawls refers to as a 'veil of ignorance'. Rawls argued that the rational person would adopt a maximin strategy. This is a risk-averse strategy that works on the basis of studying all the worst-case scenarios that exist within each option before us. Having identified all the worst-case possibilities, we then select the one that is the least worse. Rawls argued that there are two guiding principles that will explain the reason for each choice made:

1. Each member of society would be entitled to the same civil and political rights.
2. Open competition for occupational positions exists, with attainment being based upon merit, but with economic inequalities being arranged so that there is no way in which the least advantaged stratum in the society could as a whole do any better.

The second principle is referred to as Rawls' difference principle, because he was not arguing that everyone could be or should be the same. The first principle has a strong socialist egalitarian moral perspective, while the second principle clearly assumes market-based, self-interest-driven behavior. Rawls also acknowledged that there have to be limits to what people can reasonably be expected to do on behalf of others less fortunate than themselves. He termed this limit the 'strains of commitment'.

## Ethical learning and growth

These ethical theories hold that policy ends should be yardsticks against which the morality of actions should be judged, and that they can only be achieved indirectly.

## Individual growth and organizational learning

Covey (1992) distinguished character ethic from personality ethic. The character ethic proposes basic principles of effective living, things like integrity, fidelity, humility, courage and so on. The personality ethic proposes 'quick-fix solutions' drawn from a public relations approach that aims to present a good image of oneself and easy behavioral tricks used to manipulate others.

He adopted also the principle of process of personal growth in the spheres of emotion, human relationships and character formation. People have to go through the necessary stages to achieve greater effectiveness.

Senge (1990) saw individuals' learning as necessary for the development of learning organizations. These were the only kind of organization that will be successful. Learning is a personal moral development. Learning becomes an ethical end in itself.

## Communitarianism

This approach argues that people are inherently social and that they can only achieve their moral potential by being part of growing and developing communities. By contributing to the ethical growth of a group people also become ethical individuals. A tenet of the communitarian perspective is that different communities might be expected to develop their own values and moral principles. Amitai Etzioni (1993) is the most high-profile advocate of a communitarian approach.

## Ethical egoism

Ethical egoists argue that an individual should pursue their own interests by applying their reason to the task of identifying and achieving their own best interests. Ayn Rand's ethical stance is known as objectivism. It gives primacy to people's capacity for rational thought. The theory's ethical position is that each individual should seek their own happiness through a productive independent life in which their own rational judgment is their only guide. It encourages a robust belief in self-help and accepts that people who cannot or will not take responsibility for themselves would have to bear the consequences.

## Teleological ethics

This term means that the rightness or goodness of an action is not intrinsic to that action but can only be judged by its consequences.

#### Discourse ethics

Discourse ethics is a normative approach that deals with the proper processes of rational debate that are necessary to arrive at a resolution of ethical questions. It does not lay down what is right and wrong but it does distinguish right and wrong ways of arguing about right and wrong. Habermas believes that knowledge develops through social interaction and discourse. He holds that disagreement can be resolved rationally through debate which is free of compulsion, in which no disputant applies pressure to another, and in which only the strength of the arguments matters. Formal validity - Are the arguments logically rigorous?

Sincerity/truth - Are the arguments intentionally misleading, inconsistent or economical with the truth?

Content justice - Treating your opponents unfairly or imposing impossible requirements on them.

Procedural justice - Preventing an opponent from fully and freely participating in the debate.

The stakeholder theory proposes that for every organization, stakeholder groups can be identified:

- Who are affected by

- Who can affect, or

- Whose welfare is tied into the actions of a corporation. It may be necessary to add a criterion of legitimacy to the identification of stakeholders. Donald and Preston (1995) presented four perspectives on the roles of stakeholder management. Descriptive -

- Instrumental -

- Managerial -

But underpinning each of these roles was the fourth normative one: stakeholder theory can be used to develop moral or philosophical guidelines for the operations of corporations. In particular it forces corporations to make a broad ethical appreciation of its actions that considers its impact on communities as well as on the profit and loss account.

#### Utilitarianism

This theory accepts utility, or the greatest happiness principle, as the foundation of morals. It holds that actions are right in proportion, as they tend to promote happiness, wrong, as they tend to promote the opposite of happiness. Bentham (1994): the greatest happiness of the greatest

number is the foundation of morals and legislation. The term utilitarianism was coined by John Stuart Mill. Utilitarianism is a calculating approach to ethics. It assumes the quantity and quality of happiness can be weighed. Bentham identified the following features of happiness that ought to be considered when measuring it:

Cost-benefit analysis is a natural tool of a utilitarian approach because it measures not only the direct costs and benefits to an organization but also externalities.

## **Ethical Theories**

### **1. Buddhism**

- A school of thought that emphasizes individual harmony
- Eightfold path involves right understanding, thought, speech, action, livelihood, effort, mindfulness, concentration
- Nirvana is a state of enlightenment: desires and ambitions are extinguished
- Enables people to live in harmony with themselves and nature
- Nirvana achieved by life of simplicity: abandoning possessions and pleasures
- All living creatures should be treated with compassion, kindness, and love
- Virtues are important for good life: eightfold path, and nonviolence and patience
- Ethic is inclusive and egalitarian
- All are equal and entitled to same rights
- Focus on the individual who is ultimately responsible for own actions.
- Also emphasizes the importance of relationship with others
- these relationships are often considered more important than individual rights

### **2. Confucianism/Taoism**

- Good life involves searching for peace and enlightenment by achieving harmony
- Focuses on defining and cultivating the Tao, or way to a harmonious society
- Harmonious society is achieved by following tradition rituals and roles
- Morality is a social or cultural product
- People are not individuals but part of the whole
- Relationships and roles within community are important
- Duty to family and community is more important than individual desires
- Is a virtue ethic: kindness, uprightness or righteousness, decorum or propriety, wisdom or integrity, and faithfulness to self and others.

- Confucius golden rule: what you do not like when done to yourself, do not do to others
- Taoism emphasizes harmony and holistic concept of life
- Emphasizes living in harmony with nature and the rhythms of the universe

### **3. Hedonism**

- Philosophy emphasizing that the good life is one devoted to pleasure
- Only pleasure has intrinsic value that can lead to happiness
- Differ over definition of pleasure: is it of the body or pleasure of the mind ?(ataraxia or serenity)

### **4. Stoicism**

- The good life involves happiness, achieved through wisdom
- Universe is well-ordered, guided by underlying logos or reason
- People should strive to make their lives just a well ordered
- Living in harmony with the universe
- Exercise control over things that can be controlled such, as emotions and intent
- Remain indifferent to thing such as consequences that cannot be controlled
- Live wisely, control or eliminate desires and accept things uncontrollable (E.g., body size)

### **5. Virtue Ethics**

- Emphasizes the role of character in guiding moral choices
- A virtuous person is someone whose moral choices are guided by good character rather than by simply weighing the consequences
- Ancient Greeks: virtue meant excellence
- Being virtuous meant doing things in a way that reflected rational thought, making the best of skills, talents, and opportunities
- Aristotle: virtue is a matter of developing the unique human ability to reason.
- Act in accordance with right reason
- Rational part of the soul must control the irrational parts by choosing the middle path
- Middle path is mean between the extreme of excess and deficiency
- Moral virtue is the result of habit and training.
- People can be taught to be virtuous



- Aquinas: people can achieve perfection only by using reason to know God
- Thomists: doing the right thing in obedience to god
- Idea of virtue as right conduct overtook ancient Greek idea of virtue as good character idea
- WD Ross: modern philosopher: prima facie duties: fidelity reparation, gratitude, justice, beneficence, self-improvement, non-maleficence
- These duties are not the result of rational thought, but understood intuitively as part of the fundamental nature of the universe

## 6. Existentialism

- Philosophical movement that focuses on individual autonomy and the necessity of making reasoned decisions for oneself
- A good person is one who makes individual moral choices and takes responsibility for those choices
- Absolute moral values do not exist
- Authenticity: the idea of being true to oneself when making moral choices is the only virtue
- Kierkegaard
- Each person has a direct relationship with and direct access to god
- People must make and judge their own moral choices
- Must move beyond judging their actions according to reason or societal standards and be accountable only to the judgments of god
- Authentic choices are those that involve consistency of perception, thought and action
- Inauthentic person runs away from the responsibility of creating self
- Nietzsche urged people to make their own moral choices rather than unthinkingly accept the values of majority
- Faith in god was disappearing and with it the universal values provided by that faith
- In absence of universal values, people must determine their own values
- Sartre: atheist who believed humans had no particular purpose in living
- No divine master plan, all events are random, nothing makes sense, and life is absurd.
- Existence precedes essence: essence created by defining self, determining identity, and choice of values
- Everything is a matter of choice
- Everything is a matter of choice: no moral milestones exist to help guide choices

- Places great importance on authenticity
- A good person is one who recognizes own freedom and responsibility and makes authentic choices

## **7. Divine command ethics**

- Believe right/wrong are defined by Supreme Being
- Divine commands are recorded in sacred texts of religions
- Socrates: is something right because it is favoured by the gods. Or do the gods favour it because it is right?
- Duns Scotus: god's commands define what is right
- Aquinas: god commands people to do only good and right things, god knows what is right and good through the natural law of reason
- God and humans share the ability to reason, so people can use this ability to come to know god's commands

## **8. Utilitarianism**

- Utility: the ability of an action to bring about benefit, advantage, pleasure, good or happiness and to prevent mischief, pain, evil, or unhappiness
- What is morally good is generally that which promotes social welfare, solidarity, and harmony in human relationships
- Act utilitarianism: moral choice results the greatest good for the greatest number of people
- Rule utilitarianism: rule governing our actions produces the greatest good for the greatest number of people

## **9. Kantian Ethics**

- Moral choices must be judged not by consequences but by the good will of the moral agent
- Only thing that is good for its own sake is a good will
- What is a good will: that which accords with duty
- What is duty: that which is rational
- To have a good will is to act on moral principles that are justified by reason.
- Only one moral principle justified by reason: the categorical imperative
- Categorical imperative: a rule that is absolute and must always be obeyed
- Act only according the that maxim [principle or general rule] whereby you can at the same time will that it should become a universal law of nature

- People with a good will must choose the course of action that they would want everyone to choose ALL the time
- No exceptions to the categorical imperative
- E.g. moral duty to always tell the truth, even if it leads to bad consequences

### **10. Egoism**

- People should act in their own interest
- Focuses exclusively on the greatest good for the individual person

### **11. Intuitionism**

- Denies the importance of reasoning in making moral choices
- Some truths are understood by intuition, an experience independent of reasoning
- Moral rules are intuitive or self-evident and cannot be justified by appealing reason
- Moral intuition is simple a gut feeling about right and wrong
- People should listen to their hearts and appeal to their compassion

### **12. Post-modernism**

- Challenges the reliance on reason
- Judging moral choices according objective values, is a waste of time
- Moral values are entirely subjective; most people make their own decisions about right/wrong without seeking guidance

*The Schizophrenia of Modern Ethical Theories* (1976) is a popular paper in ethics by Michael Stocker. The central claim of the paper is that some modern ethical theories fail to account for motive in their theories, producing a sort of schizophrenia because the agent is unable to use his reasons or motives as a basis for his actions. According to Stocker, motive is important to ethics and should be considered as well, rather than only “duty, rightness and obligation” which he believes are the main focuses of current theories. Stocker believes that this focus is not compatible with the motives required for goods such as love and friendship.

Stocker uses the example of a friend visiting you in the hospital. It is nice at first, however he reveals that he chose to spend time with you not out of concern for you in particular, but because he felt it was his moral duty. In this case, we feel that there is something missing in this action—we would much prefer to be visited by someone who cares about us directly, not just his duty.

## **CHAPTER 3**

### **Personal Values in Work Place**

#### **Introduction**

Ethics, which is a branch of philosophy and is therefore concerned with formal academic reasoning about right and wrong. Ethics are drawn from the books and debates in which philosophical theories about right and wrong are proposed and tested. And provides principles and arguments for thinking about the issue. Ethics have to be studied.

Values are the commonsense, often taken-for-granted, beliefs about right and wrong that guide us in our daily lives. Values are acquired informally through processes of socialization. We acquire values from our interactions with our friends, family, colleagues and from the organizations we work for or belong to. The emotional force of values would lead you to an intuitive feel for the right thing to do. Values are learned. Values are core ideas about how people should live and the ends they should seek. They are shared by a majority of people within a community or society. They are simply expressed generalities, often no more than single words such as peace and honesty. There are overlaps between ethics and values.

Attitudes, like values, are evaluations of whether something is good or bad. But unlike values they are evaluations of particular things, issues, people, places or whatever. Attitudes, because they relate to specific circumstances, are more changeable than values.

A belief is an acceptance that something is true or not. This acceptance does not imply any judgment about whether that is good or bad.

Different types of values can be distinguished that might affect thinking about ethical issues:

- Moral values - concern interpersonal behavior, e.g. honest is desirable
- Competence values - concern one's own valuation of one's behavior, e.g. behaving imaginatively is desirable.
- Personal values – concern the ends, or terminal states, that are desirable for the self, e.g. peace of mind.
- Social values – concern the ends that one would desire for society, e.g. world peace is desirable.

The first two items in the list concern instrumental values that are about how a person should live and behave. The second two items are terminal values that concern the ends or purposes that we should be striving for.

### **Perceptions of values**

There are various stances people may take in relation to their values then different people may have different potential strengths and weaknesses in their approach to ethical issues in organizations. Fragmentation is the idea that things in the social world are disordered and disconnected. A fragmented view of values would see them as diverse, various and expressed through conflict between different views and opinions. There are no wholes in a fragmented social and ethical world. The contrary view is that Rokeach expressed: values, far from being fragmented, are simple and whole. Billig (1996) agreed this view but pointed out that this makes them difficult to apply to particular situations. Two reasons for this:

- 1.The simplicity and wholeness of values is broken by not knowing which value should be applied.
2. Simple and whole values can only provide general guidance. When it comes to dealing with specific situations values need interpretation.

Ambiguity can arise in organizations when simple values are inadequate because they cannot deal with new circumstances or are in conflict with other values. When ambiguity occurs those who seem to offer a resolution gain power and they bring with them their new values and ideologies (Weick, 2007).

Values can be seen as something that emerge from dynamic processes of sense-making as well as being one of the process inputs. Weick (1995) identified seven properties of sense-making:

- 1.Identity construction – when someone considers deceiving others at work by manipulating performance statistics they will consider how they see themselves.
- 2.Retrospective sense-making – according to Weick sense-making will occur after people have acted. Values follow actions and do not precede them.
- 3.Sense-making is done through enactment – people make sense of things by taking action.
- 4.Sense-making is social – if people talk with their colleagues about what they have done then the practice may become accepted through sense. Different groups have different perceptions of right and wrong.

5.Sense-making is ongoing – as situations change, then people will re-formulate their position on the matter in discussion with each other.

6.Sense-making is focused on ‘extracted cues’ – this means that people in an organization will concern themselves with some things in the daily stream of events and ignore others. Those cues become the raw material from which a view and actions are taken.

7.Sense-making is driven by plausibility – the process of sense-making is based on personal assessment of risk and benefit.

Values express a potential tension between wholeness (wanting a consensual set of values) and fragmentation (the value sets are broken up and reformed). People’s responses to this tension and their method of making sense of it can be classified in five headings: Traditionalist, Modernist, Neo-traditionalist, Postmodernist and Pragmatist.

### **The traditional view of values (religion)**

From the traditional viewpoint a group, whether a work group, an organization, a profession or a country, is defined by its possession of shared values. A group’s values derive from the ancient traditions of the group or are presented if they did. A group based on traditional values sees them as a whole. By turning their gaze inwards and not outwards to other groups and societies, they fail to recognize the fragmentation and diversity of values that surrounds them.

### **The modernist view of values**

The modernist position is that the twentieth and, so far, the twenty-first century have been characterized by value fragmentation. However, this is seen as a transitory phase and it is thought that, through the application of reason, the pieces can be put back together and true values defined. Those who take this position believe that values are tangible, and can be unambiguously stated and defined through formal and rational debate. The modernist believes that values can be determined by ethical study.

### **The neo-traditional view of values (culture)**

The neo-traditional approach emphasizes the function of culture as a device for mediating the tensions between fragmented values and the need of societies and organizations for a common purpose and mutual understanding. Neo-traditionalists see values in the context of organizational and social cultures. They argue that the fragmentation of values can be overcome and that

organizations and societies have unified values. But such an end cannot be achieved by rational analysis, which sees values as objects for analysis and not as shared myths, which is how neo-traditionalists view them. Myths can act as the glue that holds an organization or society in unity because of their simplicity (which needs no sophisticated explanation) and because of their ability to finesse dilemmas.

#### The postmodern view of values

The postmodern stance sees nothing in the social and intellectual world as tangible or fixed. At this vantage point fragmentation is accepted as part of the human condition. Large ideological schemes, such as capitalism and communism, that used to dominate people's thinking no longer have credibility. In the postmodern view there are no eternal truths of values. What we think of as objectively true emerges through discourses that are embedded in power and knowledge relationships where some have more influence on the outcomes of the discourse than others. But what emerges is in any case uncertain because the language we use is opaque and carries no single, clear messages (Legge, 1995). The words we use to express our values have no fixed meaning. Statements of values have to be treated as texts and deconstructed. Deconstruction is not intended to overcome fragmentation but simply to map the instabilities, paradoxes and aporetic states that define it.

#### The pragmatic view of values

The pragmatism of this stance is that of the American philosopher Richard Rorty (1989, 1990). He shares the postmodernists' scepticism about the possibility of an objective truth and of a fixed hierarchy of values. In these circumstances the issue for Rorty is not how to represent, or mirror, the world in our thinking but how to cope with its ambiguity. If a belief helps us to interpret our other beliefs and vice versa then it is useful. The justification of belief is therefore conversational. The line taken by pragmatists is that the inability to ground values in some overarching theory such as Christianity, Marxism, Islam or capitalism does not prevent people making sensible and practical arrangements for living in a civil and well-mannered life.

From a pragmatic view, in summary, it is recognized that there is confusion and conflict over the ends of a good organization or society and that the meanings people ascribe to values change and develop as they debate and discuss issues with others. Nevertheless pragmatists believe that by maintaining the conversation with good humor and irony it is possible to make organizations and societies more bearable.

Gustafson (2000) identifies a number of characteristics of postmodern (though we would prefer to call it pragmatic) ethics.

- Not separating personal values and principles from those applied at work.
- As postmodernists do not accept any grand metanarrative ethical theories they have to look instead at particulars and circumstances. These can only be expressed in stories and myths that expressed humanity's fears, confusions and expectations. o A disbelief in Utopian ideas.
- Postmodern ethics can be seen as a 'tempered guest', no definitive answer can be found.

The five stances can be characterized in relation to their position on ethical fragmentation. A traditionalist sees a unified world united by time-hallowed values. From the other four positions the ethical world is seen as fragmented but with different responses to this perception. The modernist believes that unity can be restored through rational development of individuals. The neo-traditionalist believes unity can be restored only by a return to concern for neglected values. The postmodernist accepts the inevitability of fragmentation and enjoys it. Pragmatists learn to live with fragmentation.

### **The ethical limitations and dangers of managerial roles**

Managers can take one of the five positions in their approach to ethical issues, and each has characteristic ethical strengths but also its own ethical dangers or limitations. The analysis is shown in figure 4.1 (p. 168) and it illustrates how twelve managerial roles show varying degrees of closeness to the five positions of: Prophets, Subjectivists, Rhetoricians, Quietists and Balancers.

The roles are accounts of positions that people may adopt and abandon according to preference and circumstances. The degree to which the twelve roles reflect the four stances will be in proportion to their distance in the matrix of figure 4.1 from each stance.

The roles are defined by two dimensions. The first dimension concerns a person's beliefs about the whole or fragmentary nature of the wider cultural field in which they live and work. The second dimension concerns the extent to which a person believes their own ethical values to be a whole or, to a greater or lesser degree, a changeable set.

The managerial roles can be categorized into three elements:



- 1.Principle – represents a low fragmentation of values, principles are fixed.
- 2.Policy – represents a medium fragmentation of values, policies change and adapt.
- 3.Aporia – represents a high fragmentation of personal values , it means being uncertain.

#### The ethical limitations of prophets

Prophets want to act on the world, or at least their organization, without the constraint of comment or caution from others. Their monocular ethical vision means they may do great harm if their vision happens to be wrong or bad. In contrast to system designers gurus are positive prophets.

#### The ethical limitations of subjectivists

Subjectivists are doubters. They are the opposite of the prophets who doubt little. Questioning the way things are done shows engagement with the world, but it is beset with anxieties as the grounds of their questioning shift. The ethical limitation of the subjectivists is that they do not believe in the existence of objective ethical standards and think everyone has to make their own choices while recognizing that individuals' own choices implicitly impose expectations on others. The cynic is the epitome of the subjectivists who fail to cope with existential angst.

#### The ethical limitations of rhetoricians

Rhetoricians enjoy debates in which some win and others lose. The term rhetoric is ought not to be seen as a common, unavoidable human skill. The game player, the ritualist and the pragmatist make compromises and accommodations in their day-to-day work. They may lose their own sense of moral agency because compromise shifts responsibility, in part, to others.

#### **The ethical limitations of quietists**

Quietism is the resignation of self to achieve contentment. It is a disengagement from the ethical problems of the world. Its ethical limitation is that a quietist manager would not see it as their role to react to wrongdoing within their organization. The intellectual role exemplifies this ethical danger. Quietists are inclined not to act against unethical organizational behavior.

#### The balancers

There are two managerial roles, the culture designer and the transactional manager, that are intermediate between the four stances. The ethical problem is maintaining the equilibrium. The balancers could become quietists, rhetoricians, subjectivists or prophets when deviating from the equilibrium.

## Reflection

It is not just what our values are that matters, but also how important those are for us. Cathexis refers to the strong sense of attachment that people may have towards their values and it is this commitment that drives people to act in the world.

Our connections with our values are not straightforward. This suggests that the belief, that the role of senior management is to promulgate a mission and asset of values that everyone can accept looks naïve.

People do not simply 'have' values. Their values are constantly being redefined and prioritized as they find themselves in different situations and talking to different people.

You only buy into something because you think it will be advantageous, not because you think it is right.

## Summary

Ethics represents an intellectual approach to matters of morality at work whereas values represent a response based on beliefs that people hold with emotional attachment. Both perspectives need to be considered when dealing with business ethics matters.

People may take one of five viewpoints on the role of values in business ethics: the traditional, the modernist, the neo-traditionalist, the postmodernist and the pragmatist. The position they take will reflect their responses to ethical issues at work.

Which of these they adopt will depend, among other things, on their career history and experiences in organization and on their education and training.

This document will be useful to anyone who works with individuals from different cultural backgrounds, either in a face-to-face context or through remote team working. The aim of the document is to help you to develop a better understanding of the factors that influence successful cross-cultural communication and international team working. It will also provide you with some guidelines on how to maximise your effectiveness when working in an international team.

The Cochrane Collaboration's international status and the nature of its work mean that colleagues from different backgrounds and cultures are often working together on collaborative projects. This document aims to give you, as a member of the Collaboration, a better understanding of cultural differences and some of the issues you or your colleagues may face when working in an international team. The document focuses on differences in working style and how these can be problematic but also very beneficial within international teams.

The document is divided into four sections:

1. Defining culture.
2. The benefits of international team working.
3. The difficulties of working in an international team.
4. Overcoming the difficulties of working in an international team.

The document is by no means exhaustive and is not intended to be prescriptive. You may find that you are familiar with much of the material discussed here, and feel that you already have effective ways to deal with the issues highlighted. Nevertheless, we hope this document will raise your awareness of cross-cultural issues further, and provide you with more suggestions to help you to increase your effectiveness within international teams.

#### 1. Defining culture

Culture is a very complex subject encompassing a variety of aspects of everyday life including art, music, philosophy and customs. When discussing cross-cultural differences in a work context it is usual to talk about culture in terms of issues such as a group's belief systems, their everyday behaviour and their values; in other words, the issues that impact on their working style and working relationships. The group itself may be a specific ethnic or religious group or a particular nationality.

For the purposes of this document we will be discussing international differences, but many of the points raised will apply regardless of the type of cultural group you are referring to.

A point to bear in mind when reading through the following sections is that organisational culture plays a big part in determining how individuals behave within the workplace. The Cochrane Collaboration has a strong ethos and set of values that affect its culture. This culture, as well as national culture will influence what individuals within the Collaboration view as appropriate and inappropriate behaviour. As individuals tend to be attracted to organisations that reflect their own values, it is likely that most people within The Cochrane Collaboration will be able to relate to the organisation's values. However, as noted in Section 4, cross-cultural difficulties can often arise as a result of individuals making assumptions regarding how similar other people are to them. Although there may be much commonality between members of the Collaboration you cannot assume that people have the same beliefs, values or priorities as you.

#### 2. The benefits of international team working

Anecdotal and research evidence demonstrates that there are real benefits to groups of people from different cultural backgrounds working together. The specific nature of those benefits varies from one individual to the next, depending on personal circumstances and the organisation you work for. Within the context of The Cochrane Collaboration the benefits of international team working can be divided into three categories:

You may feel that you benefit in many more or different ways to the benefits outlined below. We have provided here some of the key benefits of international team working often cited by team members.

*Increased knowledge* - Working with people from different backgrounds exposes you to a wider variety of experiences and knowledge than you may have the opportunity to access in your home environment. It also helps you to keep up to date with healthcare issues and progress at an international level.

*Broader skills* – Being part of an international team can greatly enhance your interpersonal skills and give you a broader perspective.

*A valuable experience* – As more and more work teams cross national boundaries, having experience of working within an international context is becoming increasingly important. Experience of working as part of an international team within The Cochrane Collaboration may be very useful to you in future roles.

#### b. Benefits to The Cochrane Collaboration

One of the key principles of The Cochrane Collaboration is collaboration. Encouraging international team working helps the achievement of that principle. Some of the other benefits to the organisation are listed below. As you will note, many of these clearly link to The Cochrane Collaboration's principles.

*Common goal* – International communication within The Cochrane Collaboration helps to ensure that everyone remains focused on the same goals and objectives. *Keeping up to date* – Encouraging individuals to collaborate internationally, rather than working only within their home country, helps the Collaboration ensure that all of its members are sharing knowledge. Access to this wide range of information helps everyone to keep their work up to date and of high quality.

*Benefit of others' experience* – Communication between Cochrane members helps to avoid duplication and maximise economy of effort. Having people from different backgrounds working

together on projects and reviewing each others' work helps to minimise bias. *Greater creativity* – Research shows that heterogeneous groups are more creative than homogenous groups. Heterogeneous groups tend to consider issues from a broader range of perspectives than homogenous groups and so generate a wider range of ideas.

*Continuous improvement* – Heterogeneous groups often question each other more than homogenous groups; frequent challenge of the status quo helps to ensure that opportunities for improvement are always considered.

*Wider participation* – International team working enables those individuals working in countries where Cochrane Collaboration methodologies are new to get support and assistance to help them to promote the Collaboration. Without international team working it would be far more difficult to establish and sustain Cochrane Collaboration activity in these countries. International team working helps us all to better understand the difficulties of promoting Cochrane methodologies within different cultures and countries. Better understanding and sharing of experiences will help the Collaboration to provide appropriate support to individuals and groups. In turn this will help the Collaboration to promote its methodologies worldwide.

#### c. Benefits to users of *The Cochrane Library* and healthcare consumers

Ultimately, consumers benefit from all of the points raised above. However, there are a couple of additional benefits of international team working that are particularly relevant to consumers:

*Greater relevance* – Not surprisingly, research has shown that international team working helps to increase the flexibility and responsiveness of the organisation. In terms of The Cochrane Collaboration, international teams should help to ensure that the organisation is focusing on the most appropriate healthcare issues at an international level, and that appropriate consideration is given to local needs and requirements. They also help to ensure that these issues are addressed and presented in a way that is relevant to people making choices in health care.

*Promoting access* – International team working promotes the work of the Collaboration at an international level that has a direct impact on dissemination of the organisation's outputs. Not only is it likely to influence availability of information it is also likely to impact on the way in which information is presented.

### **3. The difficulties of working in an international team**

Whilst there are huge benefits to international team working, working with people from different backgrounds is not always straightforward. It can often be the source of those difficulties that

make those experiences so valuable, but that does not necessarily make it any easier. Some of the key areas that international teams often experience problems in are discussed in this section.

#### Different value systems

One of the ways in which cultures differ is in their underlying value systems. Peoples' values are expressed through what they say and what they do. Therefore people working together from different cultural backgrounds may find that they approach and execute tasks differently because of differences in their cultural values.

As noted in Section 2, having people within a team who have different perspectives and styles can be extremely valuable; however, different approaches have to be recognised, understood and fully utilised if they are to benefit the team.

Too often differences in style are simply seen as problems to be solved (usually by encouraging everyone to work in the same way). Understanding differences in value systems helps us to understand how and why individuals may behave differently to ourselves. This can help us work more effectively together and make the most of the benefits that those differences offer.

A number of models have been proposed to explain how the value systems of countries differ. The most frequently cited model is that proposed by Hofstede<sup>1</sup>. He suggests five fundamental dimensions to national culture. These can be summarised as:

1. *Hierarchy* – Hofstede calls this dimension 'power distance'; it relates to the extent to which individuals within a culture accept unequal distribution of power. At one end of this continuum are cultures that value hierarchy. In these cultures, the emphasis is placed on leader status; individuals will expect the team leader to provide direction and make decisions. Individuals within these cultures tend to be accepting of rules and questioning authority may be discouraged. At the other end of the continuum are cultures that place a lot of emphasis on team involvement, with wide consultation and group decision-making being common. Questioning authority is likely to be accepted or even encouraged in these cultures.

2. *Ambiguity* - This dimension, labeled by Hofstede as 'Uncertainty Avoidance' deals with the degree to which individuals feel comfortable with ambiguity. At one end of the continuum are cultures that encourage risk taking; in these cultures individuals are likely to feel very comfortable trying new and different ways of approaching things. At the other end of the continuum are cultures that place more value on routine, regulation and formality. Individuals in

these cultures are likely to prefer tried and tested ways of doing things rather than taking risks with unknown methodologies.

3. *Individualism* - This dimension relates to the extent to which the individual values self-determination. In an individualistic culture people will place a lot of value on individual success and the need to look after oneself. At the other end of the dimension are collectivist cultures in which individuals will place more value on group loyalty and serving the interests of the group.

4. *Achievement-orientation* – Hofstede describes one end of this dimension as masculine and the other end as feminine because it relates to values that have traditionally been associated with gender in western society. A culture at the masculine end of the continuum will be very achievement-oriented, valuing things such as success, achievement and money. At the other end of the continuum are cultures that place more value on aspects such as quality of life, interpersonal harmony and sharing.

5. *Long-term orientation* – This dimension was a later addition to Hofstede's work. At one end of the continuum are cultures that focus on long-term rewards; at the other end are cultures that are more concerned with immediate gain.

## **CHAPTER 4**

### **Values and Heuristics**

#### **Definitions**

Heuristics = are a means of discovering or finding out something. They are mental tricks of the trade or rules of thumb that are used, almost unconsciously, to simplify the process of decision making. They are cognitive devices that limit the need to search for, and evaluate, further options. The terms also carries with it the idea of discovering things by trial and error rather than by systematic analysis of all appropriate information.

Bayes theorem = includes both prior and current information when calculating a probability.

#### Heuristic thinking

The idea of heuristic thinking can be illustrated by contrasting it with a rational approach to making a non-ethical decision such as choosing a car to buy. If this decision were to be approached from an analytical and rational position you would have to go through the following stages

- Identify all cars available on the market
- Identify all factors that are important (cost, reliability, acceleration, color etc.)
- Decide on relative importance to you of the above criteria by either putting them into rank order or assigning weights to them
- Research each car on market and decide how they score
- Calculate the degree to which car would satisfy your wishes.
- Choose the car that scores highest in these calculations.

This process is the subjective expected utility. (makes a personal (subjective) assessment of what is important (utility) and chances (expected) that would actually provide that value). This is a time-consuming process, and a heuristic approach would simplify it.

#### -Availability heuristic

- Not every car available would be evaluated, only the one you have been made aware of.
  - Recency heuristic the car of a friend you drove weights heavily in your decision.
  - Halo and horns heuristics
- you dislike the color purple, therefore the car has a lot of factors that turn against your preferences.



This model looks like the model of 'Pros and Cons' (of Gigerenzer et al. 1999).

### **Decision-making heuristics**

Simon's (1983) concept of bounded rationality □ introduction of the concept of satisfying, which is the process of searching for and evaluating options until one finds one that is good enough. □ this solution may not be the best/optimal one, but his work emphasized that fully rational decision making was at best an aspiration and that the way people actually made up their minds about things was less analytical and was based more on trial and error – which is one definition of a heuristic.

#### **Other heuristics**

- Recency effect heuristic that causes people to put more weight on information they have collected recently and to undervalue things they may have learned in the past.
- Halo and horns heuristic leads people to latch on to one aspect of an interviewee to which they have a strong like or dislike. This one feature then dominates the recruiter's whole assessment of the individual.
- Recognition heuristic applies to situations where a person has to decide which of two objects has a higher value on a particular criterion. 'If one of the two objects is recognized and the other is not, then infer that the recognized object has the higher value'.

Heuristics-and-biases program of research established the existence of heuristics in judgment but suggested that they were a problem. □ far from being a distortion of decision making they are both necessary and effective. They reject the rational, subjective, expected utility model as a description of decision making and instead propose the idea of fast and frugal heuristics. The rules are for limiting the search for information and options, and for making choices, that employ a minimum of time, knowledge and computation. They argue that fast and frugal heuristics are bounded rationality in its purest form.

6 strategies were tested, the first 3 were based on heuristic principles.

- 1.Minimalist: Choose one of the ten cues at random.
- 2.Take the last: Choose whichever cue worked well last time this kind of decision had to be made.
- 3.Take the best: In this strategy some of the information about the reliability and usefulness of the cues is used to decide which cue is likely to provide the most accurate answer.
- 4.Franklin's rule (based on rational model).

5.Dawe's rule (based on rational model).

6.Multiple regression (based on rational model).

Heuristic strategies only used cues one at a time and when a decision had been reached ignored all the other cues. The fast and frugal researchers see heuristics as (generally) effective strategies for making decisions. This leaves open the possibility that ethical thinking, as well as judgment, might be a heuristic process.

### **Values as heuristics in ethical reasoning**

Heuristics operate in ethical decision making and that values are the basis of these heuristics.

While most of the fast and frugal research concerns cognitive heuristics, emotions and social norms can also act as heuristics. This heuristic might be particularly powerful in academic recruitment procedures in which academics apparently appoint those whom they think their colleagues would approve of. 4 categories of moral emotions have been identified that, once elicited by some event, act as a trigger or create a tendency to act in a particular way:

- Other condemning – contempt, anger and disgust
- Self-conscious – shame, embarrassment and guilt
- Other suffering – compassion
- Other praising – gratitude and elevation.

Because values are closely related to emotions and social norms, emotions and social norms can act as heuristics (then it is possible that values can also do so).

### **Illustration of values acting as heuristics**

The way in which values may act as heuristics can be illustrated by considering a well-known management development exercise groups have to decide how to allocate scarce resources between people who are described in thumbnail sketches which are deliberately brief and partisan. Observations of people doing the exercise suggest that they used their preferred values to select the information from the thumbnail sketches that they consider useful.

People who used the morality criterion to choose whom rescue assumed that the cure could be understood from the working notes. And that there was, consequently, no barrier to using his behavior to decide his order of rescue. Other people, using a utilitarian value, assumed that it was impossible to make sense of the working notes. rationalized into insignificance, that information which inhibited the application of their preferred values.

## How values are used as heuristics

Values are simple but strongly held beliefs such as the importance of honesty. People use values as filters to reduce the amount of information they take into account when making a decision. Values may act as a fast and frugal heuristic for limiting the amount of search behavior. There is a fourth heuristic search strategies:

4. Choose a cue that you like because it fits with your values.

Values may be simple in themselves, but in at least two ways they are complex matters of controversy.

-Interpretation of values. Their very simplicity makes them banal. □ means that they have to be interpreted before they can be of use in making decisions.

-Second source of argument and conflict over values is the multiplicity of conflicting values in any given society.

The problem for someone faces with an ethical matter is to choose which of many values to apply to the situation. people choose the best heuristic to help them make their mind up/take a decision.

## Value heuristics and priority setting

Resource allocation is a particular form of priority setting. It involves deciding which things are more important and which less. Right answers to problems of priority setting cannot be found by technical means. Priority setting is a matter of values. The person setting the priorities has to decide which values they will use to determine relative importance. Whether a particular set of priorities is right or wrong depends upon the values used to judge it. This makes that priority setting an ethical matter.

6 values concerning priority setting in the allocation of resources:

### 1. Utility

Is a value concerned with allocating resources in a way that maximizes the common good (or beneficial impact of services). Utility values the maximization of the quantity of good done. Utility is the heuristic that underwrites much management theory, and management science in particular. The development of QALY's (quality-adjusted life years) provides an illustration of this approach. This is a measure of the benefit, to the average patient, of a medical treatment in terms of additional years of life and of the quality of life.

## 2. Individual need

This value holds that resources should be allocated in proportion to people's needs. Needs can be attributed to groups of people but those who adopt this value prefer to consider people as individuals. Needs are not the same as wants or demands. The problem with individual need as a value is that it wills the expenditure of money without any regard for the availability of that money.

## 3. Deservingness

This heuristic divides people into two moral classes, the deserving and the undeserving. When resources are being distributed according to the deservingness heuristic the favorable allocation is given to the former and the unfavorable portion to the latter. Deservingness is an Edwardian concept. This traditional view saw the provenance of all poverty and need in individual moral failure and indolence. New possibilities for morally classifying people have emerged since Edwardian times. People can be allocated to moral categories according to whether they are, on the one hand, greedy, truculent and ungrateful or, on the other, meek, humble and full of gratitude. The final moral criterion is group membership. The deserving person is one of us, the undeserving person is an outsider. If you are attracted to the value of deservingness you will have little patience with these people and decide to spend less on their treatment.

## 4. Ecology

They see clients as morally autonomous agents who are not passive recipients of services but actors within the resource-allocation process. Put simply the ecology value states that the voices of all the parties interested in a decision should be heard. Those who value this perspective are pluralists who assume there will be many different points of view that have to be accommodated. The ecology heuristic is concerned with identifying the different perceptions of the many groups involved with a service and trying to create a consistent policy from that variety. Ultimately this concatenations is achieved by giving more weight to the views of those who are most closely involved with the service.

## 5. Fairness

Fairness is concerned with impartiality between individuals. Fairness emphasizes the importance of giving everyone equal access to services or at least an equal chance of access. This makes the use of arbitrary mechanisms for allocating scarce resources possible. People who apply the

fairness heuristic are interested in the standardization and consistency of services to customer and clients.

#### 6. Personal competence and gain

This is a heuristic which, when applied to the allocation of resources, causes decisions to be made to the decision-makers' benefit. The benefit can be of two different kinds.

- The first is the sense of worth and self-esteem that can come from having done a job properly. This implies that the decision has been made using appropriate methods and that no short cuts, which offend against the decision-makers beliefs, have been used.
- The second sense relates to personal advantage. In this sense, the decision-makers allocate resources in a way that brings some material or personal benefit to them. Personal gain does not necessarily imply gain for the decision-maker because they may value being able to help their friends or family, but it does imply that decisions are made according to private rather than public considerations.

#### **Integrity and loyalty as value heuristics**

There are two other values that play an important role as heuristics for deciding what to think, say or do in an ethical matter. They are integrity and loyalty. A commitment to either loyalty or integrity can act as a heuristic for deciding what should be done in a situation.

Integrity is defined as basing action on sound judgment and seeking a unity or wholeness of thought and action.

- Aquinas argued that the practice of virtue requires people to act knowingly, voluntarily and according to a fixed principle or habit.
- Winstanley and Woodal argued that the development of integrity is based upon ethical judgment and a sense of responsibility, the development of appropriate virtues.

Snow argued that integrity therefore is defined by its possessor's self-reflection and awareness. 'Give me a man who knows something of himself and is appalled.

Loyalty is an unthinking faithfulness to a person, group or purpose. If a loyal person were to reflect on their actions they would have to question whether they were being loyal to the right thing. In a situation where high loyalty is demanded, but there is no opportunity for developmental openness (which would allow an individual to develop their own values and ethical reasoning). Loyalty is seen as a matter of instinct and experience and not as a matter of self-reflection.

## **Ethical horizons**

If capitalism is, or has the potential to be viewed as ethical, then HRM similarly has a good chance. If not, it is difficult to imagine how an ethical system for managing people at work can emerge from an essentially unethical economic order.

Limits of loyalty concerns the breadth of the unit to which a person gives their loyalty.

- Loyalty to self, family.
- Loyalty to the groups and associations a person has chosen to belong to (civil society).
- Loyalty to the employing organization
- Loyalty to society at large.

Limits of integrity concerns the breadth of the arena in which a person seeks to achieve a unity of their thoughts and actions

- The personal and private arena
- The personal a public arena of associations and networks (civil society).
- The corporate and organizational arena within which a person is employed
- The arena of the wider society, polity and economy.

Analysis of the actions open to an employee, when they discover wrongdoing by their organization, according to the levels of ethical horizons.

What has been argued is that a preference for integrity or loyalty and preference for a particular ethical horizon can act in a heuristic manner. The combination of the two values leaves a person with a restricted range of actions to choose from. The values act as a heuristic for closing down and restricting search behavior and so make coming to a conclusion easier. As has been pointed out earlier the problem for the person facing the situation is to decide what values to apply. Integrity and loyalty are commonplaces in western society; both are regarded as good things, each of the ethical horizons is valued in society.

## **Session Overview**

If students have not been assigned advanced reading, I begin the session with a brief review of the concepts of moral muteness, moral myopia, and moral imagination. It is also possible to begin immediately with the scenarios and then talk about moral muteness, moral myopia, and moral imagination in the session summary. If reviewing prior to the exercises, I also provide examples of the types of rationalizations that support these conditions (e.g., the customer is

always right; if it's legal, it's moral) from the article "How Advertising Practitioners View Ethics." I also make the point that some advertising practitioners can and do see ethical issues and talk briefly about the part of the article entitled "Seeing, Talking Advertising Practitioners," explaining the concept of "moral imagination." I highlight the key finding regarding the importance of an organizational culture and climate that are conducive to and supportive of ethical decision making. This motivates the importance of recognizing and countering the reasons, rationalizations, biases and heuristics that impede ethical sensitivity, which is the purpose of the exercise with the scenarios. If students have read the journal articles, I ask for a few reactions to the concepts of moral muteness, moral myopia, and moral imagination before beginning the exercise with the scenarios.

The scenarios lend themselves well to small group discussions. If students have not had a reading assignment, it is especially helpful to provide time for small groups. I typically assign each group one or two scenarios on which to focus and also ask them to read the other scenarios as well. The students are given the same instructions and questions as specified above for the advance assignment. After the small group discussions, students reassemble in the large group to debrief each scenario.

After the debriefing, I end the session by reviewing some of the biases and heuristics in the article, "Teaching Ethics, Biases and Heuristics," many of which came up in the discussion. I conclude with a few words about the importance of developing courage, which is often needed when one is required to counter the prevailing norms.

Below, examples of the types of issues that students typically bring up when discussing the scenarios are provided as bullet points. In parentheses in a few places, I have indicated how a specific response ties to the journal articles.

### **Scenario 1**

This scenario presents a situation involving ethics at the level of individual decision making. Several account planners falsely identified themselves as "students" working on a class project to get respondents to cooperate with a telephone survey. It is possible to add another wrinkle to the discussion of the scenario by asking, "What if the individuals involved were actually university students working at the agency as interns?"

*1. What are the main arguments that you are trying to counter? What are the reasons and rationalizations that support engaging in the behavior? What biases and heuristics might be involved?*

- If the respondents will give the information to students, it is not really confidential or proprietary. The respondents are just being difficult.
- This is good client service for a major client. (We must please the client at all costs.)
- This is just a part of doing business. (Everybody does it—the social proof bias.)
- Bradley wasn't actually involved. He would be prying into other people's affairs if he spoke up.
- The account planners really need the information, and by coming through with the information, they are heroes. (The self interest bias.)
- Bradley is new, and he must fit in to be accepted by the group.
- Account planners at an important, big agency wouldn't do something really bad. (The overconfidence bias.)

*2. What is at stake for the key parties, including those who disagree with you?*

- The account planners certainly have a stake in completing the assignment and satisfying the client.
- Respondents have a stake in not being misled regarding the purpose of the research and the identity of the sponsor.
- Competitors of the agency's client could be hurt by information that is given out under false pretenses.
- If this deception were to be exposed publicly, it could damage the reputations of the agency, the planners, and the client.
- If the deception were to be exposed, it could have a negative impact on university students who are actually try to do research for their courses in that respondents might be less trustful and less willing to participate.



- If deception of this nature becomes widespread, respondents would lose faith in researchers, and it would be very difficult and very expensive to conduct any type of research.

### 3. *What levers can you use to influence those who disagree with you?*

- The respondents have a right to know to whom they are giving their information and the purpose of the research. According to codes of ethics for marketing research, this is blatantly unethical behavior (e.g., American Marketing Association—[www.marketingpower.com](http://www.marketingpower.com); Marketing Research Association—[www.mra-net.org](http://www.mra-net.org); Council of Survey Research Organizations—[www.casro.org](http://www.casro.org); European Society for Marketing and Opinion Research—[www.esomar.org](http://www.esomar.org)). Researchers have an obligation to avoid misrepresentation and to identify the sponsor. “... (I)t is always wrong to mislead research participants because deception represents a clear violation of the individual’s basic right to informed consent, and it shatters the trust inherent in the implicit contractual relationship between the researcher and participant.”<sup>2</sup>
- Point to the potential damage to the agency, the client, and the planners themselves. To make this vivid, concrete, and personal (concrete vs. abstract bias), one could use the *New York Times* test. That is, pose the question, “How would we feel if the *New York Times* headline read, ‘Agency planners lie about identity to get sensitive information’?”
- Consider the situation in terms of the wider purpose of account planning and the agency more generally—to gain customer insights and create great ideas for their clients, rather than to trick people into giving up sensitive information.
- Point to the importance of being willing to say “no” to some client requests, particularly ones that are impossible to fulfill ethically, and the advertising professional’s responsibility to do so.
- Find allies, people who agree with you and are willing to stand with you.
- Provide actionable alternatives. Suggest other, more appropriate ways to get the information. Moral imagination involves being able to generate moral alternatives that others do not.
- Watch out for and avoid false dichotomies. That is, thinking such as, “Either we have to be unethical and succeed, or be ethical and go broke.”

*4. What is your most powerful and persuasive response to the reasons and rationalizations? To whom should the arguments be made? When and in what context?*

- Students' responses will depend on their answers to the previous question.

## **Scenario 2**

This scenario presents an issue regarding the aggregate effect of advertising on society—specifically, the effect of images of ultra-thin women on young girls and their conceptions of beauty.

*1. What are the main arguments that you are trying to counter? What are the reasons and rationalizations that support engaging in the behavior? What biases and heuristics might be involved?*

- It's the client's right to use any type of model that they want. We don't want to impinge on the client's right to free speech. (The First Amendment misunderstanding.)
- The client is always right, and it is our job to please the client.
- We're just doing what the client told us to do, just following orders. (The obedience to authority bias.)
- Ultra-thin models are legal. (If it is legal, it is moral.)
- Everybody's doing it. (The social proof bias.) If we don't use ultra-thin models, the client will go to some other agency, and they will use them.
- If the campaign doesn't succeed, the creative team will ruin their winning record. (The self interest bias.)
- If the campaign doesn't succeed, the agency will lose the client, and some agency personnel could be laid off.
- An unsuccessful campaign could have very negative effects on the client; its employees could be laid off.
- This is an award winning team. Don't do anything to put a constraint on their creativity. (Ethics is bad for business.)
- Bringing something like this up would hurt morale. Don't tamper with a winning formula.

- Sarah is new, and she needs to win the confidence of her team. She should at least postpone raising this type of objection until later.

*2. What is at stake for the key parties, including those who disagree with you?*

- The creative team is under a great deal of pressure to come up with a breakthrough campaign.
- The client needs a big win.
- The agency also needs a big win.
- Young women could be negatively affected by this campaign.
- Sarah could get off to a bad start with her staff.

*3. What levers can you use to influence those who disagree with you?*

- Point to the fact that this is not a “free speech” issue. Efforts to counter “bad speech” are good, not bad.
- Professionals have an obligation to educate their clients regarding being responsible.
- Point to the possibility of differentiating the campaign from competitors’ campaigns by breaking with the industry norm and *not* using ultra-thin models.
- Explore the possibility of creating a long-term differential advantage for the client and the agency by being socially responsible and using only models that look like real people and are likely to encourage healthy images of beauty among young women.
- A truly great creative team does not need to rely on gimmicks like ultra-thin models.
- Find allies within the agency who will support your stance.

*4. What is your most powerful and persuasive response to the reasons and rationalizations? To whom should the arguments be made? When and in what context?*

- Students’ responses will depend on their answers to the previous question.

### **Scenario 3**

This scenario involves shifting an overage on a bill at a printer from one client to another and raises issues of individual decision making and organizational practice. An agency employee proposes the bill shifting, and the printer cooperates and shifts the bill. This scenario was based

on the scenario that was reported to be the beginning of a series of scandals between Grey Advertising and Color Wheel, a major printer.

*1. What are the main arguments that you are trying to counter? What are the reasons and rationalizations that support engaging in the behavior? What biases and heuristics might be involved?*

- In the end, the bills will all even out. There is no real harm done. This type of deception is trivial.
- No one will ever know the difference. The team will not have its winning record marred. Specifically, the agency won't have to admit the mistake to the candy client. (The self interest bias.)
- Two big, important companies, the agency and the printer, wouldn't do anything really wrong. (The overconfidence bias.)
- Admitting the mistake to the client would hurt the morale of the team.
- This is accepted industry practice. (The social proof bias.)

*2. What is at stake for the key parties, including those who disagree with you?*

- The candy company gets \$20,000 of free work now, but their future bills will be inflated. The information that the client is receiving regarding agency costs is distorted.
- The automobile client is overcharged by \$20,000. How can one be sure that this client will be repaid? What accounts are kept for bill shifting, which is in essence "under the table?"
- Lauren's team doesn't want to mar their winning record.
- If this bill shifting comes to light, the agency and the printer could be sued.

*3. What levers can you use to influence those who disagree with you?*

- Reframe the issue by asking if the agency would be willing to "steal" \$20,000 from the automobile client. Is this good client service?
- Point to the agency's fiduciary responsibility to its clients. Is the agency looking out for the client's best interest?
- Point out that this could be a slippery slope or an addictive cycle. That is, this type of bill shifting will necessitate other distortions in billings or at least make it easier to justify other similar practices. (The process bias.)

- Shift the issue from the short term to a long term time frame. What would be the cost to the agency if it lost the large automobile client? No doubt, much more than \$20,000. What is the lifetime value of a client?
- What was the root cause of the \$20,000 over budget expenditure? By shifting the bill, the root cause is likely to be buried or ignored. If the client is told, the agency and the printer will have to come to grips with the root cause. They will be more likely to learn from the mistake and avoid repeating it.
- This type of behavior could lead to jail time. It is much easier to imagine the embarrassment and pain of telling the client of the \$20,000 overage than it is to imagine oneself in an orange jumpsuit. (The concrete vs. abstract bias.)

*4. What is your most powerful and persuasive response to the reasons and rationalizations? To whom should the arguments be made? When and in what context?*

- Students' responses will depend on their answers to the previous question.

#### **Scenario 4**

This scenario deals with issues at both the organizational and individual level and is based on actual occurrences that were revealed in the Grey/Color Wheel trial.

*1. What are the main arguments that you are trying to counter? What are the reasons and rationalizations that support engaging in the behavior? What biases and heuristics might be involved?*

- The printer, who is giving these parties, is at fault, not the agency. The agency employees merely attended the events.
- The printer foots the entire bill. The agency doesn't pay one penny.
- This enables the agency and the printer's employees to become personal friends and bond. This will benefit the agency's clients when they need a special favor from the printer.
- Everybody does this; it is a part of doing business. (Social proof.)
- If there were anything wrong with this, people, especially agency leaders, would not attend or at least would not be so open about their participation. (The overconfidence bias.)

*2. What is at stake for the key parties, including those who disagree with you?*

- The lavish expenditures increase the printer's overhead and as such, will raise the cost to the agency's clients.
- It will be difficult for the agency's employees to be objective in choosing printers. They may feel indebted to the printer, or they just may want to keep being invited to the parties.
- If this behavior comes to light, it could ruin the reputations of all involved—the printer, the agency, employees of both. It would certainly reflect poorly on those who attend the parties, and it might injure by association on those who don't attend.
- If this behavior comes to light, people could go to be sued and convicted, as happened.
- Having parties at strip clubs excludes people who do not feel comfortable in that environment—often women—and as such, prevents them from sharing in the benefits that come from relationship building.
- Having parties at strip clubs could negatively affect the organizational climate and culture of both the agency and the agency client. Specifically, it could encourage or reinforce attitudes that objectify and/or demean women.
- Competitors of the printer that are unwilling to provide huge perks are at a disadvantage in winning business from the agency. While this might not initially seem to affect the advertising agency, decreased competition among printers could result in increased printing prices for advertisers and agencies.

### *3. What levers can you use to influence those who disagree with you?*

- Point to the manner in which this behavior lessens the value provided to clients in that the printer's prices will be increased to cover the additional overhead expenses caused by the lavish entertaining.
- Highlight the manner in which this behavior hinders good client service by the agency, e.g., loss of objectivity in purchasing print, failure to obtain competitive bids from other printers.
- Point to the potential reputation and legal problems for the agency and the printer.
- Point to the damage to morale that may occur with employees not included in the parties hear about them. Either they may resent not being included, or they may be repulsed by the behavior of their colleagues.
- Point to the negative impact on organizational culture.

- Suggest alternative, more appropriate ways to build relationships with the printer that the agency could initiate.
- Point to the potential harm to other parties such as the competitors of the printing firm. For example, this behavior could create a “playing field that is not level” in that other printers who are unwilling to entertain agency managers in this manner are at a competitive disadvantage. Decreased competition could result in increased costs for the advertising agency.

*4. What is your most powerful and persuasive response to the reasons and rationalizations? To whom should the arguments be made? When and in what context?*

- Students’ responses will depend on their answers to the previous question.

### **Scenario 5**

This scenario raises an issue of organizational policy and practice related to buzz or viral marketing. Influential individuals are given new cars to drive and talk up to others, but they are asked not to tell anyone about their deal with the automobile company. This scenario can be altered in various ways, for example:

- a) What if the automobile company had not required the individuals to refrain from telling others about their deal with the company?
- b) What if the individuals were asked only to drive the cars around and not talk them up or hand out literature and trinkets?

*1. What are the main arguments that you are trying to counter? What are the reasons and rationalizations that support engaging in the behavior? What biases and heuristics might be involved?*

- Consumers are smart. They would not be unduly influenced by a sales pitch even if they do not know that the company has retained the opinion leader to give it to them.
- This is a car, not a prescription drug. No one is hurt by a sales pitch for a car.
- The influential individuals are not really hired by the automobile company. They are not on salary. They are merely loaned a car.
- Everybody is doing it.
- This practice is not illegal.

*2. What is at stake for the key parties, including those who disagree with you?*

- Consumers do not know when they are hearing a sales pitch vs. a trusted source's genuine, unpaid recommendation.
- Practices like this can increase the public's skepticism about advertising and marketing in general and as such, lessen the effectiveness of marketing communication.

*3. What levers can you use to influence those who disagree with you?*

- Media publicity about surreptitious marketing practices could be damaging to the client's and the agency's reputations.
- Deceiving consumers is counter to good customer service. It could cause backlash if consumers find out about the deception.
- Highlight the potential for increasing consumer skepticism and public distrust and the possible negative effects on advertising and marketing in particular and on society in general.

*4. What is your most powerful and persuasive response to the reasons and rationalizations? To whom should the arguments be made? When and in what context?*

- Students' responses will depend on their answers to the previous question.

## **Scenario 6**

This scenario presents issues of individual and organizational ethics. It is based on situations reported in the trial of Ogilvy & Mather agency executives regarding their behavior related to the anti-drug advertising account of the Office of National Drug Policy.

*1. What are the main arguments that you are trying to counter? What are the reasons and rationalizations that support engaging in the behavior? What biases and heuristics might be involved?*

- Rodrigo's boss has specifically told him to revise his timesheets. He is only following orders.(Obedience to authority bias.)
- Rodrigo might have worked more hours than he recorded. At least, his boss thought so.
- Rodrigo works faster than most media buyers, and he provided the client with enough value to justify the additional hours.
- Others in the agency are doing similar types of revisions.(Social proof bias.)



- This client probably just did not appropriately appreciate the value the agency provided and had not been willing to pay what it should—hence, the revenue shortfall.
- There could be some negative repercussions for the agency, e.g., lost bonuses, layoffs.
- There could be negative repercussions for Rodrigo personally, e.g., displeasing his boss; appearing to lack business savvy; not being a team player. (Ethics is bad for business.)

*2. What is at stake for the key parties, including those who disagree with you?*

- The agency needs to recoup a revenue shortfall of several million dollars.
- Rodrigo would like to please his boss and be viewed as someone with business savvy who is a team player.
- The client is being overbilled by several million dollars.
- In as much as it is a governmental client funded by taxpayer dollars, taxpayers are being cheated.
- The agency and/or the managers involved could be sued and convicted.

*3. What levers can you use to influence those who disagree with you?*

- Reframe the behavior as stealing from the client, which is the opposite of good client service and appropriate fiduciary responsibility.
- Reframe the behavior as cheating taxpayers.
- Point to the damage that could be done to the reputations of the agency and the managers involved if this behavior is revealed.
- Point to the reputational damage and the legal costs that will be incurred if the client sues.

*4. What is your most powerful and persuasive response to the reasons and rationalizations? To whom should the arguments be made? When and in what context?*

- Students' responses will depend on their answers to the previous question.

## **Conclusion**

The module can be concluded with a review of the reasons, rationalizations, biases, and heuristics that came up most frequently in the discussion. It is also helpful to highlight the “levers” that came up most frequently, which often include variations of the following:

- Frame the situation in the long run vs. the short term

- Consider the agency's wider purpose
- Point out the costs to various parties
- Point out addictive cycles
- Consider what responsible client service really entails
- Position yourself as an agency of continuous, positive change
- Provide actionable alternatives
- Find allies
- Use persuasive arguments.

As mentioned in the session overview, it may be helpful to say a few words about the importance of courage. Even when one intellectually recognizes reasons, rationalizations, biases, and heuristics and understands the appropriate responses, it takes courage to put them into action. Some enablers of courage include the following:

- Developing a network of like-minded people
- Developing "scripts" in advance through exercises like the discussion of the scenarios
- Understanding what is truly at stake
- Knowing that the alternative is untenable
- Focusing on the possibility of positive change
- Forgiving yourself of your mistakes without denying them so you can learn from them.

## **CHAPTER 5**

### **Individual Responses to Ethical Situations**

This chapter concerns people's responses to ethical issues at work. Responses include what people say, how they say it and how they behave. There are two main cognitive processes involved in choosing responses; categorization and particularization.

We will use a matrix to describe the categories. There are two dimensions: degree of ethical integrity and dialectic of ethical purpose.

- Degree of ethical integrity: the position at the extreme left of the horizontal axis represents clarity and certainty about values. A person at this point on the scale sees moral issues in a straightforward way, which helps them to know what should be done in a situation or how an issue should be analyzed and resolved. A person at the extreme right is more likely to be confused. A person in this condition will find the plurality of views on an issues difficult to reconcile and they will often change their minds.
- Dialectic of ethical purpose: the vertical dimension represents stages in the dialectical development of a personal and conscious view of right and wrong. It models a developing personal responsibility for recognizing the presence of ethical issues at work and addressing them. Four stages:

Self-consciousness: a person sees their moral universe as a personal one. They accept responsibility for themselves but wish to remain apart from ethical issues in the wider world. They show this unwillingness to accept a moral responsibility by turning a blind eye.

The obligation of duty: people at this stage take a stand and, without much critical reflection, do what their backgrounds and their consciences tell them is their duty. o Achieving the common good: people try to reconcile competing ethical demands by using such notions as organizational values and mission statements, economic utility or public interest. It involves difficult debates about values and priorities (to create a consensus).

Developing principles: through self-analysis and debate, people create their own set of moral precepts and values. People are aware of the plurality and fragmentation of the moral world and make choices about how to respond to it.

## **The ethical categories**

- Ethical neutrality: people put ethical issues into this category when they argue that nothing should be done about an issue that troubles them. There may be many reasons for this response. People may have applied ethical bracketing or ethical closure. This causes them to suspend their normal ethical standards when they would obstruct them in getting the job done.
- Ethical awareness: it causes a person to feel uncomfortable because an issue offends against their instinctively held values. The individual has an intuitive knowledge of what their duty is. They know what is right, but cannot say why. Their reaction to an issue may only involve making their feelings known but it may extend to active opposition to the proposal under consideration.
- Ethical convention: it is thought that it can best be resolved by applying accepted norms to it. A feature of conventional ethical norms is that they are informal and unwritten or, if they are written, they are expressed in general terms and not as detailed prescriptions.
- Ethical puzzle: it is a conundrum to which there is a technically correct or best answer. Arriving at the correct solution may be no easy matter. A decision to see an issue as a puzzle requires the puzzle solver to place the issue within a coherent moral framework and to ignore the demands of contrary values and perspectives. This often enables a puzzle solver to construct detailed mechanisms and steps for resolving an issue.
- Ethical problems: is a conundrum to which there is no optimum solution. An issue is likely to be categorized as a problem because it involves many different values, and principles which, when taken in isolation, make perfect sense, but which, when taken together, fall into conflict. There has to be a debate between the differing conceptions of value, and part of the difficulty, for people who see issues as ethical problems, is to ensure that the arguments in the debate are conducted rigorously and fairly.
- Ethical dilemma: a dilemma is a perplexing state involving difficult or unpleasant choices. The options presented by a dilemma are often unpleasant because they demand a choice between conventions. If the person decides to act according to one set of conventional norms or rules then they will break another set of expectations.

- Ethical cynicism and caprice: cynicism emerges when ethical duty turns bitter. The cynic believes that all ethical issues will be resolved in ways which primarily meet the personal and private interests of those involved.

- Ethical negotiation: is the process followed when someone is seeking to protect their self-interest by remaining ethically neutral, but find themselves caught between powerful groups with different views and values. Ethical negotiation therefore is a search for consensus or compromise between differing positions. This category is not concerned with the rightness of a decision but with the correctness of the process used to arrive at it. The morality of an action is ignored.

In practice people may change their categorization of an ethical issues, they may hold conflicting views in their minds at the same time.

The theory of cognitive dissonance claims that people try to make all their perspectives fit neatly together in their own minds.

### **Conscience**

Aspects of an issue might cause some pain or difficulty because they are thought to be wrong. This feeling may be termed conscience, defined as an anxiety caused by the belief that a thought or act is wrong. It is the starting point for the analysis of people's response to ethical incidents. It is the function that keeps bad impulses in check.

### **Ethical reasoning**

Ethical reasoning is a person's rational, or rationalized, analysis of what they think should be done in relation to an incident or issue.

The demands and expectations of others

From the perspective of the demands and expectations of others a person undertakes a mini 'stakeholder analysis'. It is focused on what the person thinks the other involved in the story are thinking and why.

Analysis of an ethical issue:

- What does R think is wrong about the issue?
- What R thinks should be said and done in the given circumstances
- What are the expectations of other stakeholders?

- Options for action

#### Conflicts between perspectives

When people experience conflict because they adopt contradictory stances at some or all of the four perspective points they may experience a number of states. Six types of conflict have been identified:

- Type 1: Conflict occurs when conscience and ethical reasoning are at odds and this produces feelings of anxiety.
- Type 2: The respondent took a position of neutrality on an issue her conscience told her was wrong and this might be expected to produce feelings of guilt, shame or remorse.
- Type 3: There is a disagreement between what the respondent thought should be done and the position of those conducting the selection process. Conflict, disagreement and lack of trust.
- Type 4: Disdain or disapprobation
- Type 5: The respondent blamed the others for behaving wrongly.
- Type 6: A person acts contrary to their ethical reasoning, and will damage people's sense of integrity because they cannot consider their thoughts and actions to be of a piece.

Festinger's theory of cognitive dissonance: the consequences of holding conflicting ideas in our heads were so unpleasant that we jerk our attitudes and actions into line so that they all fit comfortably together. It only becomes an issue if an external opponent makes a public criticism of them.

Melancholic acceptance: the conscience had sympathy for the views expressed by the members of staff but the ethical reasoning did not. So the actions (in sympathy with the reasoning rather than with the conscience) contradicted what she thought the staff was telling her.

#### **Categorization and particularization and the eight stances**

The results from Downsizing suggest that some people pigeon-hole an issue under one category, and do not change their minds; other people change their views as the issue unfolds. This phenomenon can be explained by using the concepts of categorization and particularization.

- Categorization: is the process of placing an object within a general category or schema. Psychologists have claimed it is the fundamental process of thinking. It allows us to structure and give coherence to our general knowledge about people and the social world, providing expectations. It can lead to bureaucratic and prejudiced forms of thinking.

- Particularization: is the process of recognizing the specific and unique features of a situation, which mean that it cannot be categorized.

Particularization and categorization need to be operated in combination because particularization is the trigger for challenges to habitual categorization.

### **Influences on choice of stance**

There are many factors that have a claim to influence ethical categorization and decision making.

1.Cultural factors: there is a link between an organization's culture and the ethical position adopted by the organizational members that they called vicarious reward and punishment.

They hypothesized that people's actions would be influenced by whether they saw the wrongdoing of others being punished and whether other's ethical factors were praised. The conclusion was that vicarious reward and punishment influenced ethical decisions if they were greater than expected.

2.Situational factors: the specifics of a situation can also affect someone's response to an ethical issue. The degree of closeness to an ethical problem, or their formal responsibility for resolving it, is an important factor. The closer one is the greater the obligation to act (Kew Gardens Principle). This principle proposed an obligation to take action against an ethical wrong where:

- a.There was a clear case of need
- b.The agent was close to the situation in terms of 'notice' if not space
- c.The agent had the capability to help the one in need
- d.No one else was likely to help

3.Psychological factors: people with high ego strength are less likely to be swayed by circumstances or impulses into changing their mind. A person with high field dependence (the degree to which someone depends on information given by others when faced with an ambiguous situation), if asked by their superior to take a possibly unethical action, would be influenced by the superior's assurances that they will not be blamed and that the action is not really improper. A person with a low field dependency would wish to make up their own mind independently of the advice of others.

Internal-external locus of control is another psychological construct that may affect ethical choices. It measures an individual's perception of how much control he or she exerts over events in their lives. Some people believe that most things in life are within their control.

#### 4.Cognitive factors: there were levels of cognitive development

##### a.Pre-conventional stages

- i.Stage zero: a person has no capacity for moral reasoning
- ii.Stage one: people at this stage, and certainly all young children, have no innate sense of morality but they have learned that certain actions bring praise and others bring punishment.
- iii.Stage two: people evaluate options according to the benefits that they might gain. This is a selfish stage.

##### b.Conventional stages

- i.Stage three: a person responds to their social by thinking about morality in terms of being a 'nice boy/good girl'. People accept as legitimate the social norms and expectations of the groups they belong to. People abide by the social norms not because they have analyzed them and concluded they are correct but because they wish to be socially accepted.
- ii.Stage four: the conventions that frame a person's morality are not social but organizational and institutional. Morality is framed within the rules and regulations of a specific organization, or to the wider institutional rules of society.

##### c.Post-conventional stages

- i.Stage five: people are capable of questioning and reflecting upon the systems and principles or morality that they follow. People challenge the prevailing morality and seek to change it in accordance with their own reflections.
- ii.Stage six: there is an acceptance of the existence of universal principles of justice welfare. A person takes risks to bring justice wherever they find injustice.
- iii.Stage seven: the idea of morality at this highest level is linked with the idea of becoming at one with the whole of creation.

In this section of their guide to research ethics Mark Israel and Iain Hay (Flinders University, Australia) offer some practical tips on resolving an ethical dilemma and dealing with the ethics committee.

How can researchers decide what to do when presented with an ethical dilemma? Most ethical difficulties might be resolved by reference to one of the three Belmont principles – justice,



beneficence, and respect for others – that form the basis for most codes of research ethics. However, more serious dilemmas may arise if it becomes necessary to violate a basic principle in order to meet the needs of another.

In such situations decision making can be grounded in an appreciation of both normative approaches to behaviour. The teleological or consequentialist approach focuses on the practical consequences of actions, whereas deontological approaches reject the emphasis on consequences, suggesting instead that certain acts are good in themselves. These two positions underpin a strategy for coping with ethical dilemmas.

#### Steps to resolving an ethical dilemma

1. **Identify the issues, identify the parties** – ethical dilemmas rarely categorise themselves, so the first step is to identify the nature of the problem. It is also important to recognise the different stakeholders involved – who will be affected and how? We might think of stakeholders in progressively larger groupings, starting first with those immediately affected by a situation or decision, moving through the relevant institutions (for example university, employer, sponsor) to the communities of social science researchers, and finally to society more broadly.
2. **Identify options** – researchers may be able to respond to ethical problems in a range of ways, and it is important that possibilities are not discarded prematurely.
3. **Consider consequences** – researchers should consider the range of positive and negative consequences associated with each option:
  - who or what will be helped?
  - who or what will be hurt?
  - what kinds of benefits and harms are involved and what are their relative values?
  - what are the short and long term implications of any decision?
  - which option produces the best combination of benefit maximisation and harm minimisation?
4. **Analyse options in terms of moral principles** – investigators need to examine options against moral principles, such as honesty, trust, individual autonomy, fairness, equality and recognition of social and environmental vulnerability. In some instances, some principles may be regarded as more important than others.

5. **Make your own decision and act with commitment** – it is important to integrate consequences and principles to reach an independent, informed, thoroughly considered and justifiable decision. However, it is possible that all options will yield adverse consequences or violated principles. Ultimately, we may find ourselves choosing the lesser of several ‘evils’. It may be helpful to use casuistry to clarify the nature of the value conflict through analogies – are there any precedents – how have other similar cases been handled and what were the outcomes, is the issue similar to or different from the analogy, what if certain elements or individuals in the scenario were changed or if the ‘stakes’ were higher or lower? Several prompts can be used to reflect on the action that is about to be adopted – will I feel comfortable telling a close family member such as my mother or father what I have done, how would I feel if my actions were to attract media attention, how would I feel if my children followed my example, is mine the behaviour of a wise and virtuous person?
6. **Evaluate the system and yourself** – we owe it to our discipline, our colleagues and all those who are affected by research in our field to reflect on how the dilemma that we faced arose.

#### Dealing with ethics committees

The vast majority of committee members do not seek to obstruct research. For little reward, they invest considerable time to provide ethical oversight, and, in many cases, are able to offer constructive and practical suggestions to improve the quality of research proposals. However, in many institutions and in a great number of countries, academics have felt that the processes adopted by research ethics committees have been excessively bureaucratic and arbitrary. Social scientists have complained that committees have been found to be slow to respond or, even, entirely unresponsive to problems raised by researchers. In addition, researchers have discovered that some committees lack the expertise necessary to judge their work (Lewis et al, 2003).

Problematic ethical encounters can be minimised by good procedural regimes, and for many researchers committee review presents a useful opportunity to reflect critically on research practices. Unfortunately, some have found that in the review process ethical questions may be swamped by the need to meet bureaucratic demands or assuage the fears of those responsible for risk management.

How researchers prepare applications can depend – among other things – on the nature of the research, the composition, policies and practices of the relevant ethics review committee, and the local, national and professional regulations and codes that govern the research. Often, the nature of the review process will differ between institutions, countries and disciplines.

Some writers give straightforward advice to researchers preparing ethics applications (see, for example, Oakes, 2002; Israel & Hersh, 2006). Generally aimed at postgraduate students or early career researchers, they recommend that applicants think strategically in completing the application form, drawing on skills in research, networking and negotiation.

How to deal with the ethics committees:

- **Consider the ethical aspects of your study from the very beginning** – researchers need to be sensitive to the review requirements for their particular project in all relevant jurisdictions – both where they are employed and where they will be conducting research, and should be careful not to carry one community or jurisdiction's formal and informal approaches to ethics into another.
- **Identify the regulations that govern your work** – a research project may also be subject to a wide range of review bodies that need to be dealt with in a particular order. For instance, some institutions require researchers to apply to a university research ethics committee, some to a departmental one, others to both. It may also be necessary to apply to the ethics committee of the institution where researchers are collecting their data.
- **Find out how your local research ethics committee works** – some committees have different levels of review – perhaps allowing an expedited review for research with minimal risks. Where this is the case researchers should ensure they apply for the right level of review: – too high and time is wasted preparing unnecessary documentation, too low and applicants may be asked to approach the right committee, answer more questions and supply further documentation, by which time they may have missed a meeting of the appropriate committee. Completing the documentary requirements for research ethics committee consideration can be a significant burden. Not only are applications typically lengthy and detailed, but some researchers bristle at questions that reflect a singular and inappropriate approach to their inquiry.

- **Answer the committee's questions in a simple and straightforward manner** – members of research ethics committees have reported that some applications by social scientists are underprepared. In particular, legal researchers need to improve their ability to justify their methodologies and articulate the benefits of their research in terms that fit forms that may not be designed for the purpose, and research ethics committees that have little experience in such methodologies. Legal researchers may groan each time they are asked questions about their 'human subjects', 'interview schedule' or 'experimental hypotheses', but it is still generally worthwhile for us to answer such questions fully and courteously. It is often useful to seek advice from colleagues and read examples of successful applications. Law schools could maintain files of successful research ethics applications.
- **Be prepared to educate your committee** – find out what kinds of expertise your committee has – are you writing for social scientists or for medical researchers, or both? Are there legal researchers on the committee? In your application, explain why the research is necessary, justify your choice of methodology and explain how other researchers have used it without causing harm. The committee may know very little about the methodology that you propose to use, the topic or the population that you are studying, or the location for your research. Locate your research within past practice – who has used this methodology before – and explain to the committee why your proposal makes sense given the context within which you will operate.
- **Talk to your local committee** – if you have questions, telephone and talk to your research ethics committee administrator or chair. Find out how often the committee meets and when applications are due. In some cases, you may be allowed to or asked to appear before the committee and answer questions. If you disagree with a research ethics committee decision, read their regulations and then ask for a meeting.
- **Be prepared for delays** – some committees take a very long time to reach decisions. Australian social scientists and British health researchers reported waiting for almost two years for approval (Israel, 2004b; Nicholl, 2004). This can be because committees meet infrequently or proposal submission dates do not coincide with committee meeting dates, because committees raise objections to unaltered parts of submissions that had already been modified to meet an earlier set of objections, or because researchers have to shuttle between different committees. If you need approval from outside agencies, be prepared to wait. Some government agencies use delays in

the processing of applications as a way of maintaining control over work in their institutions by external researchers. All this can be very distressing for students who are trying to complete their degrees.

- **Be prepared to adapt your work** – our experience in Australia, where researchers have greater familiarity dealing with university research ethics committees, suggests that few research proposals are rejected outright by committees. However, some projects would have been abandoned in the face of conditions that researchers felt could not be accommodated. The more usual outcome is a process of negotiation between committee and researcher – sometimes protracted, and at times fraught – after which approval is given, conditional upon modifications to the scope and/or methodology of the research. Clearly, it is to researchers' advantage – as individuals and collectively – to be well prepared for any such negotiations.
- **Contribute to reform** – individual social scientists would do well to follow the advice of Bosk & De Vries (2004) to expand their knowledge of, and participation in, the review process, undertake empirical investigations of the ethics review boards, and educate board members. Collectively, social scientists could play an important role in advocating changes to the policies, procedures and systems adopted by particular committees. This might happen at the national level through the ESRC, or at a local level where, for example, researchers could put pressure on institutions to adopt helpful, consistent, transparent and appropriate practices. Professional associations also have a responsibility to encourage theoretically informed, self critical and perceptive approaches to moral matters. Our associations share responsibility with higher education institutions to ensure that material on ethics and ethical governance is integrated into undergraduate and postgraduate courses as well as into professional development programmes.

Professional bodies might also:

- monitor problems members have with research ethics committees
- lobby funding, host and regulatory agencies to support more appropriate governance
- engage with the processes of law reform so that legislators consider the impact of their activities on social research

- broker the development of ethics training materials, some of which could be used to help educate ethics committee members about discipline specific matters
- exchange information and resources with other professional associations across disciplinary and national boundaries

### **Teleconferencing**

Clearly, the use of teleconferencing is not limited to situations involving cross-cultural team working, and the skills required by participants for a successful teleconference are very similar, irrespective of whether a range of cultures is represented. However, it is worth highlighting some of the issues that are likely to be particularly important to consider if the teleconference is taking place internationally and/or with people from different cultural backgrounds.

### **Preparation for the call**

**Time differences:** If you are responsible for arranging the call, take time to consider the impact of time differences and, if possible, consult with individuals regarding their preference for the time of day the call takes place. This is particularly important if the call has to take place outside of office hours for some people. If the teleconference is one that is to happen on a regular basis, try to rotate the meeting time so that it is not the same people who are inconvenienced every time.

**Technology:** If you are organizing a teleconference it is important to take responsibility for ensuring that you have made the necessary arrangements regarding technology well ahead of schedule, and that you are clear on how to use any equipment or teleconferencing facility. Also take time to consider where you are going to take the call. Make sure you are in a quiet room where you will not be disturbed; audibility on international telephone lines can be poor, or there may be a delay on the lines. It is important to take all the steps you can to ensure that everyone can hear and be heard clearly throughout the call.

**Agenda:** Having a clear agenda that is easy to follow is even more important in a teleconference than in a face-to-face meeting. It is important to circulate the agenda ahead of the call, and to give people the opportunity to comment and give feedback in advance on issues for discussion, as this can save time during the teleconference.

## **The role of the Chairperson**

The Chairperson plays a critical role in a teleconference and should pay particular attention to the following:

- Keeping to the agenda and making sure that everyone is following the format of the meeting.
- Ensuring everyone has an adequate opportunity to contribute. This can be difficult when you are unable to use visual cues to bring people into a discussion or to let people know that you need to move on. Setting up ground rules at the start of the meeting regarding how people put forward their views and how much time is to be dedicated to discussion of particular agenda items may help to manage individual contributions. Throughout the call the Chairperson will need to pay particular attention to who has contributed and who has not, and make sure that individuals are invited into the discussion.
- Keeping to time: Teleconferences should be clear, focused and conducted within a timeframe agreed in advance. It can be very difficult to concentrate on a conference call for a long period of time, particularly if you have less than perfect audibility or are taking part before or after your working day. To maximize the benefit of a teleconference, keep it relatively short and make sure you finish on time so that people do not start to lose concentration.

## **Participating in a teleconference**

**Socializing:** At any face-to-face meeting at least a couple of minutes would be spent in social chat as people arrive and settle themselves down for the meeting. This chat can play an important role in helping the group to bond and get to know each other. For this reason it can be very useful to allow a couple of minutes at the start of a teleconference for social chat, so that the group does not miss out. This time can also be beneficial for individuals to check that they can hear all participants clearly and that the technology is working effectively.

**Taking responsibility:** It is important for all teleconference participants to take responsibility for contributing and putting forward their views succinctly and clearly during the call. Everyone needs to stay alert to the fact that some participants may not have a clear line or may be experiencing delays on the line that make listening to and participating in the call more difficult. It is important for individuals to say early on in the call if they are experiencing any

technological problems or having difficulties hearing, so that these issues can be taken into consideration and if possible resolved.

**Keeping to time:** Although the Chairperson may have overall responsibility for keeping to the agenda and finishing the meeting on time, all teleconference participants should take responsibility for making sure that their own contributions are focused and relevant to the discussion. Individuals should also take responsibility for ensuring that they do not dominate the call or interrupt others whilst they are making their contributions.

In addition to the points raised above, many of the issues in the 'Face-to-face/oral communication' and 'Running and taking part in meetings' sections are relevant to teleconferencing situations and are worth taking into consideration.

### **Building relationships**

When starting work within a new international team, take time to talk about everyone's preferred working style. It may feel like a waste of time initially but it could save a lot of misunderstandings later on. You will not be able to accommodate everyone's preferences all of the time, but having the discussion will help team members to understand each other and each others' situations a little better. Types of things to discuss include:

- Individuals' preferred methods of communication (e.g. e-mail, phone)
- Individuals' preferred times for meetings/communications
- By what name individuals like to be called
- Individuals' working styles (e.g. do individuals like to work independently on a specific piece of a project? Do individuals like to consult with others before making decisions?)
- Learning points individuals have gathered from other team working experiences
- Anything else that team members feel is relevant to the discussion

Make sure you know how individuals like to be referred to. If you are unsure, ask. Take time to get the pronunciation and spelling of names correct.

Let your team members know the name that you like to be known by; if you use one name for informal correspondence (e.g. e-mail) and a different name for publications/formal correspondence, make that clear from the outset.

Check when people are prepared to receive telephone calls and/or to have meetings. Some people are more than happy to receive calls at the weekend or during the evening – other people are not. Although there are occasions when we all have to be flexible, it is important to respect



individuals' work-life balance choices – these vary hugely by culture and also from one individual to the next.

If you are going to visit a country with which you are unfamiliar, spend some time gaining an understanding of that country and its customs. You don't have to do very much: just read the key points in a tourist guide, talk to others who have visited, or to people who live there. Find out how to say "please" and "thank you" in that language.

## **CHAPTER 6**

### **Corporate Responsibility, Corporate Citizenship and Corporate Governance**

Corporate responsibility is a term that is supplanting the term corporate social responsibility. The 'social' is increasingly being omitted in order to emphasize the broader responsibilities of business corporations. The development of the argument from one of requiring corporations to act in socially responsible ways, to more recent calls for corporations to be seen as corporate citizens.

An image emerges of business interests playing an active, although not always transparent, role in political and social, as well as economic matters. The question is thus raised, 'To what extent is ethical egoism, with its appeal to emotive and fundamental concepts such as freedom and individuality, merely a convenient facade behind which privileged and powerful self-interests hide?

Frustration with the myopia and impotence displayed by governments to correct what are seen as the inadequate responses to profound corporate governance issues such as child labor, forced labor, inhuman working conditions, despoliation of the environment, and the connivance and corrupt practices of governments with corporations has led to a series of other initiatives:

- 1999: UN Global Compact
- 2001: CSR Europe & FTSE4Good
- 2002: King Report
- 2003-2004: BITC Index
- 2004: Gearing Up

The King Report relates to corporate governance in South Africa. This is a much more expansive and inclusive view of corporate governance than any UK or US financial corporate governance reports since. It offers a very different perspective on corporate governance, arguing that business is a part of society rather than apart from society.

The UN Global Compact was, and remains, a voluntary code that is intended to influence corporate practices by:

1. Gaining the support and membership of leading organizations, and then

2. Increasing the acceptance and take-up of corporate responsibility by disseminating examples of good practice that hopefully other organizations will adopt.

The Compact focuses upon nine key principles of corporate activity, which are grouped into three categories: human rights, labor, and environment

The UN Global Compact was initially a reaction to multi-government failure in adequately addressing critical global issues. It was an attempt to by-pass governments and to seek social intervention by large corporations. More recently, in 2004, the Gearing Up report has recognized this approach as unrealistic and set itself the task of trying to facilitate greater corporate and government bi-partisanship in tackling the world's great challenges.

Milton Friedman was a Nobel prize-winning economist. It is worth reading Friedman's oft-cited 1970 article on why the only social responsibility of business is to increase its profits, and not to indulge in social interventions such as sponsorship of community activities, the funding of charities, or other 'good deeds'. Friedman criticized the arguments for corporate social responsibility in three fronts. The first criticism was an economic one, with ethical undertones. If corporations are required to engage in corporate philanthropy, these acts will distort allocative efficiency. Thus, the only form of corporate philanthropy that Friedman's argument would accept is where it could be shown that a donation, or good deed, would improve a company's profitability in ways superior to alternative investment opportunities. We can view this as 'prudential altruism'. Porter and Kramer (2002) makes a similar point but refers to such acts as 'strategic philanthropy'.

The second criticism draws upon both ethics and political philosophy. It is undemocratic for corporations to use shareholders' funds to support charities or other 'good causes'.

Tegenargument: the argument to leave business alone ignores the profound influence of corporate decisions and their impact upon, potentially, millions of lives.

The third criticism was a philosophical one. It was that corporations cannot possess responsibilities (because they are not real people). In Friedman's terms only individuals can have responsibilities, not corporations.

Certainly the most efficient and economic form of corporate governance is a relationship built upon trust, buttressed by the requisite levels of accountability and transparency. If an organization wishes to develop a culture based upon virtues such as integrity, honesty,

objectivity, justice and fairness, partly to reduce the costs of monitoring and control processes, then consistency in practices and the avoidance of double standards are essential.

A framework needs to have at its core some universally held principles relating to human dignity and rights, but also a flexibility to allow certain, 'acceptable' local variations to apply. An attempt has been made to develop such a framework. What we are about to discuss is not a prescriptive approach to developing specific ethical principles in complex, multicultural contexts, but rather an over-arching framework that at least provides a general structure upon which organizations can begin to shape their respective approaches to managing in ethically complex contexts.

A more recent articulation of the social contract is found in the argument that corporations have to earn and maintain a 'license to operate'. The license to operate reflects a commitment to more than economic imperatives, although the approach does not ignore economic issues. Donaldson and Dunfee have taken the social contract idea and developed a distinctive approach that they call Integrative Social Contract Theory (ISCT). At the core of the theory are four norms, or categories of values

- Hypernorms: these are argued to be fundamental human rights or basis prescriptions common to most religions. The values they represent are by definition acceptable to all cultures and all organizations (universal norms).
- Consistent norms: these values are more culturally specific than hyper norms, but they will be consistent with hyper norms and other legitimate norms. Donaldson and Dunfee cite corporate mission statements as examples of consistent norms.
- Moral free space: interesting concept and allows Donaldson and Dunfee to contain norms that might be in tension with any of the hyper norms within ISCT. An example of such a tension could be the use of child labor.
- Illegitimate norms: these norms are irreconcilable with hyper norms (e.g. treatment of women and children in some societies).

The concluding major topic in this chapter continues the theme of attempts to hold corporations to account for their roles in, or impacts upon, society. To do this, there is a need to consider both the legal position and the philosophical position of corporations with regard to this issue. Until April 2008 the prosecution of corporations in the UK, as distinct from individual employees, for claimed acts of willful neglect of a duty of care, has been difficult. However, in April 2008 the

Corporate Manslaughter and Corporate Homicide Act (CMCHA) (2007) became law. Although actions through the civil courts against corporations had been possible prior to the Act, the expense and the many years involved in prosecuting such cases made the civil law option one that was rarely taken up by members of the public and that continues to be the case today. The CMCHA does appear to make organizations which are guilty of gross negligence both culpable and accountable in law.

The term citizen normally relates to the relationship between an individual and the political state in which the individual lives. It carries with it notions of rights and responsibilities on the part of the individual of the state.

The agency effect is derived from agency theory, which assumes that people are, at heart, untrustworthy. As a result of the privileged position that executive directors enjoy over shareholders with regard to the control of information, executive directors are deemed likely to exploit this power situation to their own advantage.

#### Summary

In this chapter the following key points have been made:

- The changes in terminology, as reflected in the initial use of corporate social responsibility, which is beginning to mutate into corporate responsibility, while along the way the notion of corporate citizenship has also been employed, reflect an ongoing search for a concept that can encapsulate a business-society set of relationships that satisfies all aspects of the debate, but, particularly, that extends corporate executives' responsibilities beyond those to the providers of equity capital.
- Corporate governance reforms in the UK and USA have retained an exclusive focus upon the interests of shareholders, unlike the King Report on corporate governance in South Africa.
- The King Report also raised the issue of values and beliefs as an explicit consideration of corporate governance, which in a South African context emphasized kinships, community and 'an inherent trust and belief in fairness of all human beings'. The issue of values within Anglo-American approaches towards corporate governance is not explicit, but implied. They are underpinned by ethical individualism and (from agency theory) a belief that individuals are self-serving and inherently untrustworthy.

- The 1999 UN Global Compact reflected a frustration with governments to address corporate governance reforms which focuses upon basic human rights, such as humane living conditions; freedom of association at work; respectful working conditions, including hours of work; child labour; forced labor; and extreme poverty.
- However, the 2004 Gearing Up report reflects a recognition that the initial Global Compact placed too much of the responsibility for making a difference on these issues on the business corporations. The Gearing Up report acknowledges that there has to be a genuine bipartisan approach between governments and business if any significant outcome is to be achieved on profound global and national structural problems.
- Integrated Social Contract Theory (ISCT) offers a framework to allow us to begin to identify core organizational values that can stand the test of universalisation, but that retain the flexibility for local variations in customs and values.
- Corporate manslaughter is now a recognized crime. The consequences of its enactment will be observed with interest
- We may be entering, or have already entered, a period when the business society relationship becomes far more openly debated. As a result we might find that in, say, 10 or 15 years' time the evolution of the limited liability company may have moved on apace from where it was at the turn of the century.

Corporate citizenship — a commitment to ethical behavior in business strategy, operations and culture — has been on the periphery of corporate governance and board leadership, linked mainly to corporate reputation. However, in today's globalized and interconnected world, investors, creditors and other stakeholders have come to recognize that environmental, social, and governance responsibilities of a company are integral to its performance and long-term sustainability. Today, these concerns help determine profits. For companies to operate successfully and sustain growth, boards must incorporate these new dimensions into their core decisionmaking processes.

The global financial crisis has heightened the need for corporate boards of directors to provide well-informed strategic direction and engaged oversight that stretches beyond short-term financial performance. Doing so prepares companies to more comprehensively address risks, by anticipating potentially adverse impacts on people and the environment and managing tangible and reputational risks. It can also generate wealth by creating shareholder value through an

increase in business opportunities and broader access to markets. A new vision of business is emerging — one where a set of core values, encompassing human rights, environmental protection and anti-corruption measures, guide the board's oversight, relationship with management, and accountability to shareowners.

Boards, collectively and directors individually, are central in accomplishing these objectives, for, as Sir Adrian Cadbury said, “corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals.” The impetus for this new understanding of board responsibilities can be found in a growing number of global and industry-specific initiatives. Chief among these are the OECD Principles of Corporate Governance and the United Nations Global Compact. These benchmarks inform the work of the Global Corporate Governance Forum in its efforts to promote good corporate governance practices in emerging markets and low income countries.

#### Board responsibilities

Today's corporate citizenship — defined by a clear call to environmental, social and governance responsibility — links directly to three fundamental functions of boards and their directors' duties to the companies and shareowners they serve: Protecting stakeholder rights and interests

#### Managing risk

Creating long-term business value The following sections explain how these aspects link through the OECD Principles and UN Global Compact. The examples of strategies illustrate the business benefits of proactive leadership.

#### protecting stakeholder rights and interests

The OECD Principles call on businesses to recognize and safeguard stakeholders' rights, including legitimate interests and information needs. These Principles call on boards to be truly accountable to shareowners and to take ultimate responsibility for their firm's adherence to a high standard of corporate behavior and ethics. Effective corporate governance requires due diligence in rallying the support and commitment of the broad network of business stakeholders, including shareowners, employees, customers and communities. If stakeholders are adversely affected by a company's actions, shareowner value will suffer. With the growth in pension and insurance funds and other institutional investors, shareowners are increasingly also company stakeholders, such as employees or customers. Therefore, these groups' needs are increasingly interconnected. The UN Global Compact's ten principles similarly call on boards to address

critical dimensions of concern to stakeholders. Boards that recognize the value of a holistic approach to stakeholder engagement, particularly in the environmental, social and governance realms, find that shareholders are similarly committed to such issues. This includes ongoing communication with “Good corporate governance is the glue that holds together responsible business practices, which ensures positive workplace management, marketplace responsibility, environmental stewardship, community engagement, and sustained financial performance. This is even more true now as we work worldwide to restore confidence and promote economic growth. Stakeholders about material concerns, as well as regular disclosure about company performance, directly linked to periodic financial reporting. Responding to stakeholder concerns can have other direct business benefits: Widespread consensus is that the long-term costs of corruption are high for both society and business. Anti-corruption measures can strengthen relationships with stakeholders by building a culture of trust and collaboration. When companies enact anti-corruption initiatives that include empowering employees, this in turn can cultivate good reflexes on the part of individuals to address workplace dilemmas. Employees who work where their rights and needs are respected tend to be more productive, delivering higher quality work than those who are routinely mistreated. High standards of integrity, transparency and disclosure can be influential in restoring public and investor trust in the private sector. They are also a starting point for ongoing, constructive dialogue with stakeholders, such as communities, who are affected by and can, in turn, help determine a business’s performance.

### **Managing risk**

New understandings of business risk show that boards have a legal and fiduciary responsibility to manage environmental, social and governance risks. Directors need to be informed and prepared to manage these long-term concerns alongside typical corporate directives. By addressing and managing these risks effectively, boards can position their businesses to perform well financially and secure a long-term license to operate. By failing to do so, boards can undermine their company’s reputation. More and more companies are extending their internal controls to encompass a range of ethics and integrity issues. Many investment managers examine the rigor and quality of these controls as evidence that companies are undertaking good business practices and are well managed: Proactively identifying possible human rights concerns allows a business to more effectively address potential risks. Initiatives such as the IFC-led Equator Principles — a



financial industry benchmark used by more than 60 financial institutions worldwide to determine, assess and manage social and environmental risk in project financing — and the Dow Jones and FTSE4Good Sustainability Indexes have made it increasingly apparent that socially responsible practices can improve access to financial markets and reduce capital costs. The competitive advantage of risk management gained through anti-corruption includes ensuring alignment with customer expectations, safeguarding reputation, and meeting demands of ethical investment funds, pensions, and other investors.

### **Creating business Value**

Core to the role of any board is guiding corporate strategy and creating wealth for shareholders. Many new business opportunities are emerging to address corporate citizenship priorities. Forward-thinking businesses are best placed to benefit. Immediate benefits cited by leading companies include improved reputation, higher employee retention rates, greater productivity, and cost benefits through operational improvements and innovation in products and services. The most effective corporate citizenship and sustainability strategies are led from the top, incorporate a wide range of stakeholder views and are aligned with the company's business priorities. This ensures a more efficient and strategic allocation of resources to these initiatives, which may generate new business opportunities: Improved labor practices in supplier operations can translate into improved productivity and reduced reputational risks. Better working conditions improve the efficiency of the supply chain. Human rights strategies, such as preventing discrimination in the workplace and promoting gender and ethnic equality in business processes, have been shown to secure diversity and increase innovation in products and services. A diverse workforce and wider customer base guide development within new markets and previously untapped customer demographics. Environmental programs can provide financial benefits, such as reducing operating costs, leading to new markets and technologies, improving employee morale and increasing employee health. Good management of environmental, social and governance performance has been shown to strengthen reputation and brand value, important business assets.

### **CORPORATE GOVERNANCE**

Fasset, as a public entity, is governed by the Public Finance Management Act and is also committed to ensuring that the recommendations of the King Reports are adhered to. In this

regard a comprehensive set of policies have been designed and implemented in accordance with the Fasset Constitution and in support of Fasset's Sector Skills Plan and Business Plan. These policies contribute towards the effectiveness of corporate governance strategies and are in accordance with the Public Finance Management Act and King Reports.

Fasset has also undertaken to assist employers in its sector by developing guidelines on corporate governance and advice on how the strategies relating to corporate governance can be implemented. These guidelines have been published as a part of Fasset's commitment to promoting the highest standards of corporate governance in South Africa.

This guideline document not only embraces the King recommendations, but goes beyond these principles in setting out the most important duties and responsibilities for all directors, trustees, sole proprietors, members and partners.

Fasset believes that these guidelines will assist employers in the sector in performing their duties and fulfilling their responsibilities. In addition to acting as a source of reference to newly appointed directors, members or trustees a review of the guidelines may identify new methods and ideas.

The guidelines have been prepared for Fasset, by our attorneys, Webber Wentzel Bowens. Should you have any suggestions and or questions with regard to corporate governance, please contact the corporate department at Webber Wentzel Bowens, the author of this document.

Corporate governance is the system or process by which companies, partnerships, close corporations and trusts are directed and controlled. Directors of the board, members of a close corporation and trustees of a trust are all responsible for the governance of their enterprise.

The concept of corporate governance has grown in prominence in recent times. In the wake of Enron, WorldCom, Adelphia Communications and an ever-lengthening litany of corporate malpractice scandals, finding new ways to protect average investors has become an international priority. It is, therefore, not surprising that corporate governance reform is gaining importance as a crucial mechanism for addressing the erosion of investor confidence. It goes without saying that there is no single, universally appropriate, model of corporate governance. This principle is

recognised in the King Report on Corporate Governance for South Africa 2002 ("King II"), which reiterates that:

"companies are governed within the framework of the laws and regulations of the country in which they operate. Communities and countries differ in their culture, regulation, law and generally the way business is done. In consequence, as the World Bank has pointed out, there can be no single generally applicable corporate governance model. Yet there are international standards that no country can escape in the era of the global investor. Thus, international guidelines have been developed by the Organisation for Economic Development Principles of Corporate Governance (OECD), the International Corporate Governance Network and the Commonwealth Association for Corporate Governance. The four primary pillars of fairness, accountability, responsibility and transparency are fundamental to all the international guidelines of corporate governance." (Our emphasis)

It follows that corporate governance can not be reduced to a set of pro-forma rules capable of mechanical application. It is, and should be, a flexible, tailor-made, multidimensional process to which a company, and many and varied individuals, submit themselves.

Many companies in the corporate arena today have a distinctive split between control and ownership. The need for corporate governance becomes ever increasing as directors are becoming more accountable to their shareholders and stakeholders.

Other enterprises such as trusts, close corporations, partnerships and sole proprietors do not necessarily have to ensure that they comply with the requirements of corporate governance due to their nature and composition. However, as will be discussed in a later part of this publication, it is suggested that these enterprises follow the broad, underlying principles of corporate governance recommended in King II.

The primary sources of law and regulation relating to corporate governance and director's duties comprise:

- statute, particularly the Companies Act, the JSE Listings Requirements of the JSE and the Securities Regulation Code on Take-overs and Mergers. In addition, there is special-purpose legislation such as the Banks Act, 1990, the Long-term Insurance Act, 1998, the Short-term Insurance Act, 1998, the Financial Markets Control Act, 1989, the Stock Exchanges Control Act, 1985, the Unit Trusts Control Act, 1981 and the Public Finance Management Act, 1999;
- the common law ;

- the company's articles of association; and
- King II.

The first part of this publication will detail the common law and statutory duties and responsibilities of directors, sole proprietors, partners, members of close corporations and trustees whilst the second part of the publication will detail the recommendations laid down in the King Reports on corporate governance. It is our aim that this section will explain the principles of corporate governance in the South African context and provide practical guidance to the people who are responsible for ensuring good corporate governance in their enterprises.

## PART II

### 2.Different types of enterprises

There are a variety of investment vehicles available to people interested in setting up commercial enterprises in South Africa. The forms of enterprises include:

- sole proprietorships;
- partnerships;
- close corporations;
- limited companies, public and private; and
- business trusts.

In the paragraphs that follow, we will briefly explain the way in which each of these enterprises operate and more importantly, we will outline the duties and responsibilities of the people who control the specific enterprises.

### 3.Sole proprietorships

The sole proprietorship is usually a relatively small enterprise in which the capital of only one person, the proprietor, is invested.

As sole proprietors are single owner businesses, the business is operated with full personal risk. The sole proprietor's estate is ultimately liable for all the commitments of the business.

Due to the fact that sole proprietors run their own affairs and are not accountable to shareholders, the principles of corporate governance applicable to the manager/ owner relationship are generally not applicable to the sole proprietor. In a later part of this report, we do however highlight the manner in which these entities can apply certain corporate governance principles to the conduct of their business.

### 4.Partnerships

A partnership is a legal relationship arising from an agreement between at least two, but usually not more than twenty persons, in terms of which each contributes towards a business which is carried on in common with the object of obtaining mutual material benefit.

A partnership does not have legal personality as it is simply a contractual association of persons and has no existence in law independent of its partners. Since a partnership does not exist as a separate legal persona, the partners are personally liable for its debts and they own the partnership estate.

Various rights and obligations in respect of partners arise from the partnership agreement. There are further rights and obligations which arise as consequences of a partnership. These include:

- a duty of good faith between partners;
- the duty to promote the interests of the partnership unselfishly;
- a duty to disclose all information which affects the partnership;
- a duty to make a contribution to the partnership; and
- the duty to exercise reasonable care and expertise in the management of the business of the partnership.

Unlike a company, the partners owe duties to one another whereas directors owe duties to the company and its shareholders. In light of the absence of a partnership's independent legal personality and the relationship that partners have with one another, corporate governance principles applicable to the internal management of an organisation may serve only as guidelines for good practice. In certain circumstances they will be neither applicable nor sufficiently extensive. However, those principles outlined in paragraphs 14 and 15 below, may be implemented.

## 5. Close Corporations

The introduction of the close corporation into our law in 1984 created a new form of business for small businessmen. The close corporation is a juristic person distinct from its members. The close corporation enjoys succession and its members have limited liability in respect of the corporation's debts. The main source of law and regulation with regard to close corporations, is in terms of the Close Corporations Act, 1984.

Members of a close corporation stand in close relationships to one another but they owe fiduciary duties to the corporation as a separate legal persona. The Close Corporations Act sets out some of the fiduciary duties of members.

Each member of the close corporation must act honestly and in good faith and must exercise powers he or she has to manage or represent the corporation in its interests and for its benefit. A member should not exceed his or her powers. A member must further avoid a conflict between his or her interest and that of the corporation and may not derive any personal economic benefit from the corporation or anyone else, nor compete with its business activities.

## 6.Trusts

A trust is defined in the Trust Property Control Act as the arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed:

- to another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement or for the achievement of the object stated in the trust instrument; or
- to the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement or for the achievement of the object stated in the trust instrument,

but does not include the case where the property of another is to be administered by any person as executor, tutor or curator in terms of the Administration of Deceased Estates Act.

A trust is not a legal person. The assets, liabilities, rights and duties of the trust vest in the trustee. The primary source of law and regulation relating to a trust and the trustees duties, are in terms of the trust deed and the Trust Property Control Act.

The trustee is the person to whom the property is entrusted as administrator to manage it in accordance with the objects of the trust.

A trustee must comply, inter alia, with the following general duties:

- he or she must comply with the duties as outlined in the trust document;
- he or she must fulfil his or her duties impartially and in good faith;
- in the performance of his or her duties and in the exercise of his or her powers, the trustee must act with care, diligence and skill which can reasonably be expected of a person who manages the affairs of another;

- he or she must take control of the trust assets and keep these clearly separate from his or her personal property;
- the trustee must preserve the trust property and keep it free from burdens such as liens;
- he or she must manage the trust assets which are capable of producing an income in such a way that a reasonable return is obtained;
- the trustee must maintain a proper account of trust funds and trust business, retain documents relating to the administration of the trust and render account of his or her administration of the trust when the Master of the High Court requests him to do so;

## 7.Companies

Two types of limited liability companies are capable of being formed: public companies (whose shares may, but are not obliged to, be listed on the JSE Securities Exchange South Africa ("the JSE")) and private companies. Both are created in terms of, and are governed by, the provisions of the Companies Act.

In the paragraphs that follow, we discuss in detail the duties and responsibilities of directors in terms of the common law and the Companies Act, 1973.

## 8.Director's duties and responsibilities

### General

The duties of directors are regulated by their contracts with the company, statute, the memorandum and articles of association of the company and the common law.

### Duties at common law

The duties that directors have, at common law can be summarised as follows:

- Directors are required to act both lawfully and honestly in their official as well as personal capacities. Failure by a director to act lawfully will result in him being held criminally liable and also to being disqualified to act as a director either automatically or in terms of a court order.
- Directors are also expected to act with care, skill and diligence when conducting the business of the company. Where a director fails to exercise the necessary skill, care and diligence required and as a result, he or she breaches the duty of care owed to a third party and the director may incur personal liability for any loss suffered as a result of the breach. Liability in this instance will be based either on delict, where a duty of care is owed to a third party, or on breach of contract, if there is a contract between the director and the company.

- A director, from the time appointed or at the time he or she commences to act as such, stands in a fiduciary relationship to the company. A director may, amongst others, be held personally liable to the company for breach of his or her fiduciary duties.
- A director's fiduciary duty comprises two separate and distinct duties, which in turn each comprise a number of further duties. These duties include:
  - the duty to exercise powers in good faith:
    - a director must exercise his or her powers in an independent and objective manner. He or she has a duty to do what he or she considers best serve the company's interests.
    - a director must further exercise his or her powers for the purpose for which they were given.
    - a director must act within the limits of authority. A director may not act outside the limits placed in his or her powers by the Companies Act, the common law and the company's memorandum and articles of association.
    - a director must observe any limitation of powers imposed on the company of which he or she is a director. When a director acts on behalf of a company he or she must do so within the scope of the company's objects and powers.
  - duty to avoid a conflict between personal interests and the interests of the company:
    - in general, a director must exercise judgment in an honest manner as to what is in the company's interests and must act for the benefit of all shareholders and disclose on request to all shareholders, certain information connected with the company;
    - a director must account to the company for profits made by reason of his or her directorship. This includes any gain or advantage made by a director while carrying out his or her duties as a director;
    - a director may not misappropriate or usurp a business opportunity which the company is pursuing or which the director is obliged to acquire for the company;
    - a director has a common law duty to disclose to the company any interest he or she has in a contract with the company. The rule at common law is that, unless the company's articles provide otherwise, a director may not, whether directly or indirectly, have an interest in a contract with the company, unless a general meeting of the company approves the contract, following full disclosure.

## 9. Director's duties in terms of the Companies Act



In addition to the common law duties and any other duties or restrictions which may be imposed on directors in terms of statute or their contracts with the company, the Companies Act imposes obligations on directors of companies. The obligations imposed on directors in terms of the Companies Act, include:

#### Number of directors

- Public companies must have at least two directors, whilst private companies are only required to have one director.
- Until directors are appointed, every subscriber to the memorandum of a company, is deemed to be a director of the company.

#### Appointment of directors

- The first directors of the company may be appointed by a majority of the subscribers to the memorandum.
- Any person who, before the issue of a certificate to commence business, is appointed as a director of the company, shall:
  - sign and lodge with the company, his or her consent to act as a director, on a form CM27;
  - subscribe for the minimum number of qualification shares or lodge with the Registrar of Companies, a written agreement to acquire the shares.
- Persons who are appointed as directors, after a company has been issued with a certificate to commence business must, within 28 days of appointment, sign and lodge with the company, their consent to act as a director of the company. This must be done on the prescribed form.

#### Disqualification from appointment

The following categories of persons are disqualified in terms of the Companies Act, from being appointed or acting as directors:

- a body corporate;
- a minor or any other person under legal disability;
- any person who is the subject of any order under the Companies Act, which disqualifies them from being a director;
- except with the authority of the Court:
- an unrehabilitated insolvent;
- any person removed from an office of trust on account of misconduct;

- any person who has at any time been convicted of theft, fraud, forgery or uttering a forged document or any offence involving dishonesty or in connection with the promotion, formation or management of a company and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100;
- any person who is disqualified in terms of the company's articles of association.

#### Removal from office

- A company may, notwithstanding anything in its articles or memorandum or in any agreement between it and a director, remove a director from office before the expiration of their period of office. Removal from office can be done by passing an ordinary resolution. Special notice must be lodged with the company of any proposed resolution to remove a director from office.
- A director who is affected by a proposed removal has the right to make representations with regard to his or her removal from office. The director is entitled to have his or her representations heard at the meeting which is convened for the purposes of proposing a resolution for the director's removal.

## **CHAPTER 7**

### **Sustainability and the Responsible Corporation**

One of the earliest statement from sustainability:

‘Development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.

#### **Significant political initiatives**

The changes required to address the environmental problems facing the world at the early stages of the twenty-first century are not all as startling or lifestyle-changing as these examples and questions infer, but it is probable that many required changes do represent changes of a stepped and profound nature.

#### **‘The Stern Review’**

This report was notable for a number of reasons, not least of all because it was primarily an economic review of climate change, rather than one undertaken from a purely environmental perspective. The key findings were:

- Ignoring climate change effects will damage economic growth.
- Climate change is happening and measures are required to help people adapt.
- Failure to act appropriately now will cause disruption to social and economic activity later in the twenty-first century similar in scale to the Great Wars and the economic depression of first half of the twentieth century.
- The scientific evidence points to increasing risks of serious, irreversible impacts from climate change associated with a business-as-usual (BAU) approach.
- Because the economic analysis of climate change requires intertemporal analyses (i.e. analysis across generations rather than the more common single generational analysis), issues of morals and ethics are fundamental to overcome the limitations of a marketbased model of consumer preferences.
- At the basic level, the global environment and ecological system, which provides us with life support functions such as stable and tolerable climatic conditions cannot be substituted.
- The benefits of strong, early action considerably outweigh the costs.

### Intertemporal equity

Stern makes considerable reference to the phenomenon of intertemporal equity. By this is meant the need to try and bring into the economic analysis the views, preferences and interests of future generations. In order to assess future benefits and costs in present day values, it is common practice to discount these future benefits and costs by applying a discount rate that reflects the time value of money and the risk of a project, in all risk's various norms.

Market failure: can be viewed as a situation in which individual's pursuit of self-interest leads to a negative result/s for society as a whole.

In terms of intertemporal equity/welfare, something or somebody must represent the interest of future generations in the decision-making process because self-interest denies the relevance of the interests of others.

Because of the scale, the problems and challenges that China faces are also the world's problems and challenges, because if China cannot resolve these issues without destabilizing world food, mineral and energy markets, political turmoil could be the consequence. China is not ignoring the environmental impact of its rapid economic development. Some of the leading examples of environmentally sensitive architecture, building materials, indeed new cities, are to be found in China.

Whose problem is it? □ deontological question: 'Do we have a general responsibility to future generations to leave the planet in a sustainable condition?'

The scale of expansion of the economies of a number of countries, but notably China, India and Brazil, between 2008 and 2020 is huge. However, the environmental and the economic consequences of these expansions pose problems that will be felt by everyone.

What do senior executives think of climate change?

- Senior executives are not confident that their organization is adequately prepared for the changes that climate change and industrial pollution are likely to bring, but
- They do not regard the likely implications of climate change and industrial pollution as posing a significant threat to their organization.

Broadening the concept of sustainability

For many people the concept of sustainability still refers to the effects of human, particularly corporate, activity on the environment. However, for others the concept needs broadening. The

important point is that recognition needs to be given to the engagement of large corporations. It is not enough to highlight that corporate activity (often with governmental support or acquiescence) is the principal cause of many environmental and social problems. The active collaboration of the corporate world has to be an important element in any successful set of initiatives that are implemented to address the world's environmental and social problems.

Part of this argument is that for corporations to remain sustainable (the notion of business sustainability is the interesting twist to current debates), they have to operate within socially acceptable parameters, which include how corporations use and treat the environment and people.

Individuals have apart, some would say, a responsibility to express their views. It is too easy to pass all the responsibility onto corporate executives, but then for consumers to base their purchasing decisions simply on the basis of price.

### **Environmental sustainability**

Question 1:

‘Are we over-reacting and over-estimating the extent of environmental degradation and despoliation and their effects?’

From an ethical perspective, a response to these issues can be justified using both principled (deontological) and consequentialist (utilitarian) arguments.

- The principled argument:

Natural justice would be the basis for opposition to what many would argue to be unsustainable environmental depletion and pollution linked to the double-standards of critical decision makes. An important factor in this debate is the issue of property rights. We (societies) have created the construct of property rights as a way of managing important parts of our lives this development has been a significant force in economic development, but it has not been a universal approach.

To be a principled-based argument, the case has to be that the decisions and/or the processes by which such decisions are made are inadequate and unjust at the general, societal level.

Resource: a value-laden concept, carrying with it connotations of something to be used. Even the notion of usage is usually considered in terms of economic usage. This is a particular way of ‘seeing’ nature – as a resource, as something to be exploited.

- The consequentialist argument: Opposition to and criticism of current decision-making processes that impact upon sustainability issues that stem from a consequentialist perspective will be as a

result of weighing all the ramifications of the decisions in terms of their effects upon various groups. As a result of this calculative approach the consequentialist perspective is a stance that can be employed to both support and condemn environmental exploitation.

These are often far from easy decisions and decision processes, although utilitarian considerations will often lie at the heart of political and planning decisions.

Question 2:

‘What are the implications of relying exclusively upon enlightened/rational self-interest to drive sustainable corporate behavior and practices?’

A decision based exclusively upon rational self-interest, fails to address the wider significance of individual choices and decisions. Whilst our actions and behaviors affect others, they have ethical import.

Ethical egoism (sometimes referred to as possessive egoism), with its reliance upon market signals to reflect social preferences would, at best, appear to require an ambivalent stance towards environmental issues.

Ethical egoism and sustainability

From an ethical egoist perspective, market-based forms of coordination of economic and social activity are argued to be at the bedrock of basic freedoms. The more that all facets of human interaction can be coordinated by market dynamics, the more the resulting outcomes will reflect the independent, ‘free’ choices of all participants.

The voice of the yet to be born is a complex one to include in such debates, but it is almost impossible to envisage how the price mechanism would incorporate the views of future generations, other than maybe taxed levied by governments on behalf of future generations (pay for ‘clean-ups’ etc.). However, if the voice of future generations was truly able to be heard, it could be that they would be at one in rejecting the decision in its entirety, thus obviating the need for compensation payments, or other such contingency plans.

In the context of environmental protection it would seem that market signals have limited application, an example of what can be called ‘market failure’, making the intervention of governments essential, as the representatives of the people and their adjudicators. However, governments’ interventions in economic and social affairs are anathema to market fundamentalists, with any exceptions to this principle seen as the start of a very slippery slope.

## **A different perspective on environmental issues**

The question is: ‘How do we view nature, and equally importantly, how do we view ourselves with respect to nature?’ □ Martin Heidegger is the person who is most identified with the perspective we are about to discuss. It is known as Phenomenology.

Phenomenology: the belief that the world around us can only be understood through our lived experiences. The world does not exist outside of those experiences. We impose understandings and interpretations on that world, or worlds, based upon the values, perspectives and beliefs we hold. The relationship between ourselves and nature is a symbiotic one (i.e. mutually dependent) and not one of independence.

Heidegger’s principal argument was that we cannot understand nature other than how we experience it. Whilst the argument that different people will have different views about the importance of places and objects is reasonably uncontentious, you might ask, ‘are we moving towards a position that simply admits that all we are likely to agree upon is that we are likely to disagree upon the values we are prepared to place upon various objects?’ If so, how is this going to help individuals and corporations make choices over the use of natural resources? Heidegger does not offer a magic formula, but he does offer a way of thinking, a way of seeing that could prove helpful.

Heidegger’s concern was with what he described as the ‘enframing of technology’, or what we might call a technology mentality, i.e. the seeing of nature as purely instrumental, as simply a means to an end.

If an object is viewed in purely instrumental terms then it possesses no worth beyond its functional use, that is, what might be obtained for it by either selling it as it is, or converting it into another form of tradable object. It is purely a means to an end.

## **Thinking about the Self and Others**

Central to any debate concerning objects and subjects is the notion of the Self.

‘I would do the same in their shoes!’ □ Why this apparent acceptance of such behavior and the belittling of one’s own ethics? It might have something to do with the promulgation of the Self as a self-serving, myopic, selfish individual as exemplified in agency theory and ethical egoism.

Agency theory, as used here, refers to the division of ownership and control of corporations, with shareholders the principals and management their agents. With human behavior assumed to be essentially self-seeking and self-focused and management ‘enjoying’ a privileged control of

information over shareholders, this control is assumed to manifest itself in sub-optimum decision making (from the shareholders' perspective).

Sustainable communities: places where people want to live and work, now and in the future. They meet the diverse needs of existing and future residents, are sensitive to their environment, and contribute to a high quality of life. They are safe and inclusive, well planned, build and run, and offer equality of opportunity and good services for all.

Self-control was recognized in respect of freedoms, but not just those of the Self. In sympathy with Aristotelian arguments, the perception of Others was also important.

The Self is seen as a fully autonomous unit that should be responsible to no authority in the forming of its relationships beyond the exercise of its own volition – what it voluntarily wills and wishes to do. The proper mode of living is to be oneself – to find out who one is and to let no one and nothing interfere with one's self-realization. This is ethical egoism in its raw form.

The mission statement of The Sustainability Institute has three elements:

- To shift mindsets – values, attitudes and beliefs – when they are out of step with the realities of a finite planet and a globally dominant human race.
- To restructure systems when the rewards and incentives of the system are inconsistent with long term social, environmental and economic goals.
- To build the capability to manage and learn in complex, environmental, social and economic systems.

The commitment to the notion of markets being the primary, if not exclusive, driver of sustainable development is contestable, for such an approach requires that:

- a)all the salient facts can be expressed in numerical form
- b)all the salient information (including that relating to the preferences of future generations) can be articulated in the final 'market' price
- c)all decisions are simply the art, or science, of obtaining the 'right balance' of resource usage and that placing the resource in the hands of those who are able to pay the highest price is the most appropriate 'solution'.

The first two points are concerned with the feasibility of developing inclusive and articulate prices. The third and final point is one that raises profound philosophical issues, both political and ethical.



The national and global sustainability agendas to be adequately addressed, there is an unavoidable need for the active and sincere engagement of large corporations and governments.

### **The triple bottom line**

‘Bottom line’ simply meaning profit. The triple bottom line encompasses economic, social and environmental concerns, but its articulation and operationalisation has remained problematic.

Explanations of what is meant by ‘triple bottom line’ do not suggest an equal weighting being given to the three elements.

The triple bottom line is part of the Global Reporting Initiative (GRI). The current requirements of the GRI require organizations to report on corporate environmental, social and economic performance information, in essence a corporation’s sustainability performance. There are five framework documents to the GRI, which are:

- Sustainability reporting guidelines (these are core requirements for all organizations).
- Sector supplements (which indicate additional information for different sectors, if such information is available).
- Technical protocols (these provide details of individual indicators, their definition, formulae and cross-referencing to minimize problems in comparability).
- Issue guidance documents (which are non-sector specific issues affecting a range of organizations, such as ‘diversity’ and ‘productivity’); which all lead to
- The Sustainability Report.

### **I. Defining sustainability within the context of corporate responsibility**

- The nine principles of sustainability share three attributes:
  1. They make the definition of sustainability more precise.
  2. They can be integrated into day-to-day management decision processes and into operational and capital investment decisions.
  3. They can be quantified and monetized.
- The nine principles of sustainability are as follows:
  1. *Ethics*: The company establishes, promotes, monitors, and maintains ethical standards and practices in dealings with all company stakeholders.

2. *Governance*: The company manages all of its resources conscientiously and effectively, recognizing the fiduciary duty of corporate boards and managers to focus on the interests of all company stakeholders.
3. *Transparency*: The company provides timely disclosure of information about its products, services, and activities, thus permitting stakeholders to make informed decisions.
4. *Business relationships*: The company engages in fair-trading practices with suppliers, distributors, and partners.
5. *Financial returns*: The company compensates providers of capital with a competitive return on investment and the protection of company assets.
6. *Community involvement and economic development*: The company fosters a mutually beneficial relationship between the corporation and the community in which it is sensitive to the culture, context, and needs of the community.
7. *Value of products and services*: The company respects the needs, desires, and rights of its customers and strives to provide the highest levels of product and service values.
8. *Employment practices*: The company engages in human-resource management practices that promote personal and professional employee development, diversity, and empowerment.
9. *Protection of the environment*: The company strives to protect and restore the environment and promote sustainable development with products, processes, services, and other activities.

## **II. Identifying stakeholders**

- How an organization chooses to define its stakeholders is an important determinant of how stakeholder relations are considered in sustainability decision making and how stakeholder reactions are managed.

- Some definitions cover those individuals who can either be affected by or affect the organization, while others require that a stakeholder be in a position to both influence and be influenced by organizational activities.
- There are core stakeholders and fringe stakeholders:
  - Core stakeholders are visible and are able to impact corporate decisions due to their power or legitimacy.
  - Fringe stakeholders are disconnected from the company because they are remote, weak, or currently disinterested.
- Typical stakeholders include shareholders, customers, suppliers, employees, regulators, and the community.
- Stakeholder relationships go through a four-stage evolution:
  1. *Awareness*: At this stage, stakeholders know that the company exists. The company will want to communicate with these stakeholders by providing them with more information about it so that they can begin to appreciate the company's mission and values.
  2. *Knowledge*: Stakeholders have begun to understand what the company does, its values, strategy, and mission. During this stage, the company will want to provide stakeholders with information to make decisions. Customers want to know how the organization's products meet their needs, employees need to understand organization structure and systems, and suppliers want to understand what the company needs from them.
  3. *Admiration*: Once stakeholders have gained knowledge about the company, trust needs to be developed. This is the stage where stakeholders will develop commitment toward the company.
  4. *Action*: The company is now taking action to collaborate further with stakeholders. Customers refer business, investors recommend the stock, and employees are willing to take on greater responsibility.
- To move toward a more complete understanding of sustainability and a further integration of social and environmental issues into core business strategy and

operational decisions, sustainability values and organizational stakeholders must be identified and specified.

### **III. Accountability**

To better integrate a broader set of stakeholder concerns into management decisions, consideration of impacts and recognition of the importance of accountability is necessary. Four approaches to becoming an accountable organization are as follows:

1. Improve corporate governance.
2. Improve measures of operational and social performance.
3. Improve reporting.
4. Improve management systems.

### **IV. The Corporate Sustainability Model**

- The Corporate Sustainability Model uses the social, environmental, and financial dimensions of sustainability as its foundation.
- The model describes the drivers of corporate sustainability performance, the actions that managers can take to affect that performance, and the consequences of those actions on corporate environmental, social, and financial performance.
- It describes the inputs, processes, outputs, and outcomes necessary to implement a successful sustainability strategy.
- The *inputs* include
  - The external context
  - The internal context
  - The business context
  - Human and financial resources
- The *processes* include
  - Leadership
  - Sustainability strategy
  - Sustainability structure

- Sustainability systems, programs, and actions
  - The *outputs* include
- Sustainability performance (the effect of corporate activity on the social, environmental, and economic fabric of society)
- Stakeholder reactions
  - The *outcomes* include
- Long-term corporate financial performance
- Sustainability performance

## **V. Sustainability Actions**

Four sustainability actions lead to financial and sustainability success:

1. Leadership
2. Strategy
3. Structure
4. Systems

### **I. The importance of leadership in communicating corporate commitment to sustainability**

- The commitment of the board and management to the enforcement of sustainability principles and development of organizational systems can encourage all employees to comply with the company strategy.
- A high-performance board should achieve three core objectives:
  1. Provide superior strategic guidance to ensure the company's growth and prosperity.
  2. Ensure accountability of the company to its stakeholders, including shareholders, employees, customers, suppliers, regulators, and the community.
  3. Ensure that a highly qualified executive team is managing the company.

- Six core principles can help boards to formulate strategies in general and to improve sustainability in particular:
  1. *Leadership*: Provide a framework for checks and balances; identify and build skills to address sustainability issues.
  2. *Engagement*: Support engagement as a corporate value through dialog and consultation with stakeholders.
  3. *Alignment*: Establish operational practices and incentives that align with sustainability policies and performance goals.
  4. *Diversity*: Include a diversity of races, skills, experiences, genders, and ages in executive and director positions.
  5. *Evaluation*: Evaluate the performance of the board and the company in progressing toward a higher level of accountability and sustainability performance.
  6. *Responsibility*: Ensure that the board responds to company stakeholders and maintains their trust.

## **II. The critical role of leadership in developing and implementing sustainability**

- Research has clearly shown that sustainability strategies are typically top-down and that the most effective implementation occurs when top management is clearly committed to the strategy.
- To deliver positive sustainability outputs and outcomes, corporate leaders should
  - Know their company's current sustainability activities and impacts.
  - Set the organization's sustainability strategy and goals and gather information on sustainability indexes through benchmarking with peers and competitors.
  - Understand and engage with stakeholders.
  - Implement sustainability policies that support the overall business and sustainability.

- A primary goal of leadership for sustainability is setting principles and practices that will help institutionalize the concept of sustainability in the organization.
- The CEO and board of directors are responsible for initiating, communicating, and implementing sustainability values and strategy throughout the organization. To do this, they should
  - Integrate awareness of social and environmental issues into corporate decisions at all levels, and ensure such concerns have representation on the board.
  - Develop measures to identify, measure, report, and manage the social and environmental impacts of corporate activities.
  - Modify the corporate structure as needed to integrate sustainability throughout the organization.
  - Create incentives promoting socially and environmentally responsible behavior and integrate them into the performance evaluation system and corporate culture.

### **III. Developing a corporate sustainability strategy**

- A sustainability strategy requires the commitment of senior management and the board, who provide leadership and guidance. They drive the sustainability message through the organization and lend it credibility and weight.
- Developing a sustainability strategy involves identifying and prioritizing social and environmental issues that the company can have the greatest impact on.
- Social and environmental issues facing companies fall into three categories:
  1. General social issues
  2. Value-chain social impacts
  3. Social dimensions of competitive context
- Sustainability strategies pass through three stages:
  1. Managing regulatory compliance
  2. Achieving competitive advantage
  3. Completing social, economic, and environmental integration

#### **IV. The challenges multinational corporations face when operating globally**

- Challenges include global climate change, nongovernmental organization (NGO) pressure, worker rights, political upheaval, human rights, and labor/supply-chain issues.
- When determining a corporate sustainability strategy, companies must take into account

##### ➤ Internal factors:

- Corporate culture
- Competitive positioning
- Sustainability performance

##### ➤ External factors:

- Regulations
- Market factors
- Geographic factors

#### **V. Corporate mission statements**

A useful mission statement has three important characteristics. It is

1. Short and simple
2. Widely available
3. Renewed regularly

#### **VI. Important industry standards that should be considered**

- *ISO 1400 and EMAS*: These standards help provide a structured approach to environmental management systems.
- *SA8000*: This standard focuses on workplace values and is based on International Labor Organization (ILO) conventions, the Universal Declaration of Human Rights, and the UN Convention on the Rights of the Child.



- *United Nations Global Compact*: This agreement encourages and promotes good corporate practices in the areas of human rights, labor, the environment, and anticorruption.
- *Millennium Development Goals*: These are UN-led global goals and a timetable for combating poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women.
- *Voluntary codes of conduct*: Many industries establish voluntary codes that companies can subscribe to in order to address stakeholder concerns. These are an alternative to government regulation.

## **VII. How government regulations can affect sustainability decisions**

- A useful framework for thinking about the role of government in social and environmental regulation is “government policy contributes to competitiveness if it encourages innovation . . . and undermines competitiveness if it retards innovation or undermines the intensity of competition.”
- Companies can innovate in anticipation of government regulation to avoid the heavy costs of regulation.
- Companies can take a proactive stance to work with government and be part of the public-policy-making process.

## **VIII. How socially responsible investment and rating systems can influence sustainability strategies**

More and more investors are considering social and environmental impacts when making investment decisions. Social investors include individuals, investment funds, businesses, nonprofit organizations, and others who want to invest in companies that achieve positive social, environmental, and financial impacts. Two primary decision methods are practiced by social investors:

- *Negative screening*: Eliminates companies that have practices or products that do not fit with the investors’ requirements

- *Positive screening*: Selects companies that have products or operations that fits the investors' criteria

## CHAPTER 8

### Ethics and Law - Dilemmas

This compilation<sup>1</sup> is intended for use during “Ethics Week.” The Law Department is firmly committed to exposing its students to ethical considerations when making legal and business decisions. As a result ethics is a component of all its course offerings. To the extent that students acquire acumen in ethical decision-making in one substantive context, that skill is readily transferable. For this reason, these materials, after providing introductory background to the discipline of ethics, approach the subject in a wide context. Cases and dilemmas present challenges ranging from the professional to the personal to the political. Instructors should take great license in using these materials as they see fit. I would suggest, however, that depending upon prior exposure, you might read the introductory material and choose a few of the case studies or dilemmas for classroom discussion.

Instructors should not feel overwhelmed or intimidated by the volume of this compilation. It is anticipated that you will actually use only a small portion of the materials. The intent is to provide an array of materials for consideration. A brief description is provided of the cases and dilemmas to aid selection.

Though the material can be approached in an infinite variety of ways, it is strongly suggested that students at least be introduced to the ethical decision making framework. The following will be placed on blackboard for student access: a summary of ethics in the general sense, a brief discussion of the inter-relationship of law and ethics, and the ethical problem- solving paradigm.

Section One –Introduction To Ethics and the Classical Approaches To Ethical Decision Making

#### ***What is Ethics?***

A few years ago, sociologist Raymond Baumhart asked business people, “What does ethics mean to you?” Among the replies were the following:

“Ethics has to do with what my feelings tell me is right or wrong.”

“Ethics has to do with my religious beliefs.”

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“Being ethical is doing what the law requires.”

“Ethics consists of the standards of behavior our society accepts.”

These replies might be typical of your own. The meaning of “ethics” is hard to pin down and views of many rest on shaky ground.

Many people tend to equate ethics with their feelings. But being ethical is clearly not a matter of following one’s feelings. A person following his or her feelings may not do what is right. In fact, feelings frequently deviate from what is ethical.

Nor should one identify ethics with religion. Most religions, of, course, advocate high ethical standards. Yet if ethics were confined to religion, then ethics would apply only to religious people. But ethics applies as much to the behavior of the atheist as to that of the saint. Religion can set high ethical standards and can provide intense motivations for ethical behavior. Ethics, however, cannot be confined to religion nor is it the same as religion.

Being ethical is not the same as following the law. The law often incorporates ethical standards to which most citizens subscribe. But laws, like feelings, can deviate from what is ethical. Our own pre-Civil War slavery laws and the apartheid laws of South Africa are examples that deviate from what is ethical.

Finally, being ethical is not the same as doing “whatever society accepts.” In any society, most people accept standards that are ethical. But standards of behavior in society can deviate from what is ethical. An entire society can become ethically corrupt. Nazi Germany is good example of a morally corrupt society.

Moreover, if being ethical were to do “whatever society accepts” then to find out what is ethical, one would have to find out what society accepts. To decide what I should think about abortion, for example, I would have to take a survey of the American society and then conform my beliefs to whatever society accepts. But no one ever tries to decide an ethical issue by doing a survey. Further, the lack of a consensus on many issues makes it impossible to equate ethics with whatever society accepts. Some people accept abortion but many others do not. If being ethical is to do whatever society accepts, one would have to find an agreement on issues, which does not, in fact, exist.

What then, is ethics? Ethics is two things. First, ethics refers to well based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues. Put another way anytime you ask yourself “what you should do,” the question involves an ethical decision. Ethics, for, example, refers to those standards that impose the reasonable obligations to refrain from rape, stealing, murder, assault, slander, and fraud. Ethical standards also include those that enjoin the virtues of honesty, compassion, and loyalty. And ethical standards include standards relating to rights, such as the right to life, the right to freedom from injury, and the right to privacy. Such standards are adequate standards of thinking because they are supported by consistent and well-founded reasons.

Secondly, ethics refers to the study and development of one’s ethical standards. In other words, ethics are standards or rules you set for yourself that you use to guide your efforts do what is right and wrong, or what you should do. For example, if a friend asks you to copy your homework, you must choose whether or not you will tell the teacher. Whenever you have to make a decision where your actions will impact someone else, you face an ethical dilemma. The decision is ethical because you must decide what your obligation is (especially when another person is involved), and it’s a dilemma because there is more than one option to choose from. A decision you make is ethical when you choose to do the right thing.

Everyone has ethics that they live by. You get your ethics from values and principles. Virtues are the things that you consider to be important, or have worth. You probably value your family and friends because they’re important to you. You also may value your free time, or a possession that you have. In addition to things that you value, you also have some ideas about the way you’d like to live your life, and what you want to become. This is especially true when you think about how you want to treat the things you value and the way you want to be treated with them. For, example, if you value friends, you probably want to be a friend. That might mean that you want to be trustworthy and faithful to your friends. Trustworthiness and faithfulness are principles – they are ideas about the kind of person you want to be.

As mentioned above, feelings, laws, and social norms can deviate from what is ethical. So it is necessary to consistently examine one’s standards to ensure that they are reasonable and well founded. Ethics also means, then, the continuous effort of studying our own moral beliefs and

our moral conduct, and striving to ensure that we, and the institutions we help shape, live up to standards that are reasonable and solidly based.

### ***Thinking Ethically: A framework for Moral Decision Making***

We make decisions on daily basis. Moral issues greet us each morning in the newspapers; confront us in our work or at school. We are bombarded daily with questions about the justice of our foreign policy, the morality of medical technologies that prolong our lives, the rights of the homeless, and the fairness of teachers.

Dealing with these moral issues is often perplexing. How exactly, should we think through an ethical issue/ what questions should we ask? What factors should we consider?

The first step in analyzing moral issues is obvious but not always easy: Get the facts. Some moral issues create controversies simply because we do not bother to check the facts. This first step, although obvious is also among the most important and the most frequently overlooked.

But having the facts is not enough. Facts by themselves only tell us what is; they do not tell us what ought to be. In addition to getting the facts, resolving an ethical issue also requires an appeal to values.

Although ethics deals with right and wrong, it is not a discipline that always leads everyone to the same conclusions. Deciding an ethical issue can be equally difficult for conservatives and liberals. Of course, there are situations that are wrong by any standard.

But there are other issues where right and wrong is less clear. To guide our reflection on such difficult questions, philosophers, religious teachers and other thinkers have shaped various approaches to ethical decision-making. The five different approaches to values to deal with moral issues are: ***The Utilitarian, the Rights, Fairness and Justice, the Goodness, and the Virtues.***

### ***The Utilitarian Approach***

Utilitarianism was conceived in the 19<sup>th</sup> century by Jeremy Bentham and John Stuart Mill to help legislators determine which laws were morally best. Both men suggested that ethical actions are those that provide the greatest balance of good over evil.

To analyze an issue using the utilitarian approach, we first identify the various courses of actions available to us. Second we ask who will be affected by each action and what benefits of harms will be derived from each. And third, we choose the action that will produce the greatest benefits and the least harm. The ethical action is the one that provides the greatest good for the greatest number.

### ***The Utilitarian Approach***

Focuses on the consequences that actions or policies have on the well being (“utility”) of all persons directly or indirectly affected by the action or policy.

The principle states: “Of any two actions, the most ethical one will produce the greatest balance of benefits over harm.”

Or another way viewing this approach is asking: Which option will do the most good and the least harm for the most people? You can see this analysis at work in discussions of smallpox vaccinations for health care workers or for all Americans. Is the risk of a terrorist attack with small pox serious enough to justify the risk of adverse reactions to the vaccination itself?

### ***The Rights Approach***

The second important approach to ethics has its roots in the philosophy of the 18<sup>th</sup> century thinker Immanuel Kant and others like him who focused on the individual’s right to choose for her or himself. According to these philosophers, what makes human beings different from mere things is that people have dignity based on their ability to choose freely what they will do with their lives, and they have a fundamental moral right to have these choices respected. People are not objects to be manipulated; it is a violation of human dignity to use people in ways they do not freely choose.

Many different but related rights exist besides this basic one. These other rights can be thought of as different aspects of the basic right to be treated as we choose. Among these rights are:

- The Right To The Truth: We have a right to be told the truth and to be informed about matters that significantly affect choices.

- The Right of Privacy: We have the right to do, believe, and say whatever we choose in our personal lives so long as we do not violate the rights of others.
- The Right Not Be Injured: We have the right not to be harmed or injured unless we freely and knowingly do something to deserve punishment or we freely and knowingly choose to risk such injuries.
- The Right To What Is Agreed: We have the right to what has been promised those with whom we have freely entered into a contract or agreement.

In deciding whether an action is moral or immoral using this approach, we must ask, does the action respect the moral rights of everyone? Actions are wrong to the extent they violate the rights of individuals; the more serious the violation, the more wrongful the action.

### *The Rights Approach:*

Identifies certain interests tests or activities that our behavior must respect, especially those areas of our lives that are of such value to us that they merit protection from others.

Each person has a fundamental right to be respected and treated as free and equal rational person capable of making his or her own decisions.

This implies other rights (e.g. privacy free consent, freedom of conscience, etc.) that must be protected if a person is to have the freedom to direct his or her own life.

The rights approach focuses on the legitimate claims we make on each other, such as life and liberty. One current rights question is, Can cyber criminals be prevented from using the Internet once they have served their sentences? Courts in different areas of the country have disagreed about whether the Internet has become so integral to daily life that restricting access is too great an infringement on the ex-convicts liberty.

The principle states: “An action or policy is morally right only if those persons affected by the decision are not used merely as instruments for advancing some goal, but are fully informed and treated only as they freely and knowingly consented to be treated.

### *The Fairness or Justice Approach (Social Justice Approach)*



The fairness or justice approach to ethics has its roots in the teachings of the ancient Greek philosopher Aristotle who said that “equals should be treated equally and unequals unequally”. The basic moral question in this approach is: How fair is an action? Does it treat everyone in the same way, or does it show favoritism and discrimination?

Favoritism gives benefits to some people without a justifiable reason for singling them out; discrimination imposes burdens on people who are no different from those on whom the burdens are not imposed. Both favoritism and discrimination are unjust and wrong.

This question is always at the heart of discussions about affirmative action, a debate that resurfaced with the Supreme Court’s decision to hear a case challenging race- conscious admissions policies at the University of Michigan.

President Bush weighed in against the program, which he likened to a quota system that unfairly rewards or penalizes prospective students based solely on their race,” But proponents of affirmative action argued it’s also unfair if “the use of narrow academic criteria results in wholesale exclusion by race or socioeconomic class.”

### **The Fairness Approach**

Focuses on how fairly or unfairly our actions distribute benefits and burdens among the members of a group. This approach asks what is fair for all stakeholders, or people who have an interest in the outcome.”

Fairness requires consistency in the way people are treated.

The principle states: “Treat people the same unless there are morally relevant differences between them.”

### *The Common Good Approach*

This approach to ethics assumes a society compromising individuals whose own good is inextricably linked to the good of the community. Community members are bound by the pursuit of common values and goals. The common good is a notion that originated more than 2000 years ago in the writings of Plato, Aristotle, and Cicero. More recently, contemporary ethicist John Rawls defined the common good as “certain general conditions that are.... equally to everyone’s advantage.”

In this approach, we focus on ensuring that the social policies, social customs, institutions, and environments on which we depend are beneficial to all. Examples of “goods” common to all include affordable health care, effective public safety, peace among nations, a just legal system, and an unpolluted environment.

Appeals to the common good urge us to view ourselves as members of the same community, reflecting on broad questions concerning the kind of society we want to become and how we are to achieve that society. While respecting and valuing the freedom of individuals to pursue their own goals, the common good approach challenges us also to recognize and further those goals, we share in common.

### **The Common Good Approach**

**Presents a vision of society as a community whose members are joined in a shared pursuit of values and goals they hold in common.**

The community is comprised of individuals whose own good is inextricably bound to the good of the whole.

The principle states, “What is ethical is what advances the common good.”

### **The Virtue Approach**

The virtue approach to ethics assumes that there are certain ideals toward which we should strive, which provide for the development of our humanity. These ideals are discovered through thoughtful reflection on what kind of people we have potential to become.

Virtues are attitudes or character traits that enable us to be and to act in ways that develop our highest potential. They enable us to pursue the ideals we have adopted. Honesty, courage, compassion, generosity, fidelity, integrity, fairness, self- control, and prudence are all examples of virtues.

Virtues are like habits that once acquired they become the characteristic of a person. Moreover, a person who has developed virtues will be naturally disposed to act in ways consistent with moral principles. The virtuous person is the ethical person.

In dealing with an ethical problem using the virtue approach, we must ask, what kind of person should I be? What will promote the development of character within my community and me?

### *The Virtue Approach:*

Focuses on attitudes, dispositions, or character traits that enable us to be and to act in ways that develop our human potential. It asks whether any given action demonstrates human behavior at its best.

Examples: honesty, courage, faithfulness, trustworthiness, integrity, etc.

The principle states: “What is ethical is what develops moral virtues in us and our communities.”

The five approaches mentioned above suggest that once we have ascertained the facts, we should ask ourselves five questions when trying to resolve a moral issue.

- What benefits and what harms will each course of action produce, and which alternative will lead to the best overall consequences? (Utilitarian)
- What moral rights do the affected parties have, and which course of action best respects those rights? (Rights)
- Which course of action treats everyone the same, except where there is a morally justifiable reason not to, and does not show favoritism or discrimination? (Fairness/Social Justice)
- Which course of action advances the common good? (Common Good)
- Which course of action develops moral virtues? (Virtues)

### *Ethical Problem Solving Paradigm*

**Each person may weigh the ethical arguments differently. But a systematic approach can clarify complex situations and help us to come to an answer that represents people striving to be their best.**

This method, of course, does not provide an automatic solution to moral problems. It is not meant to. The method is merely meant to help identify most of the important ethical considerations. In the end, we must deliberate on moral issues for ourselves, keeping a careful

eye on both the facts and on the ethical considerations. Below you are given a more detailed outlined for analyzing ethical dilemmas.

## ***Section Two- Ethical Case Studies***

### **The Case of the Sikh Temple**

The families who live in the Evergreen district of San Jose love their neighborhood: orchards, deer, and oak trees-a reminder of what the rest of San Jose used to look like before the encroachment of development. The same serenity attracted Bob Singh Dillon when he first saw the sprawling apricot orchards of the district; he was certain he had found the ideal site for his congregation's Sikh temple. Rural and detached from the busyness of the nearby city-much like the original temples in India, where Sikhism was founded 500 years ago-the district seemed the perfect host to a temple of immense architectural and religious grandeur. He arranged for the purchase of 40 acres.

Plans for the temple were developed, calling for numerous interconnected buildings-a total of 94,000 square feet, including at least one façade over 316 feet long; in some places the temple will rise to more than 60 feet. Even from a distance, marble balconies, tiled arches, and water fountains will be visible on the temple campus, which, in addition to being a center for worship, is intended to provide a residence for many priests. The proposed building will cost from \$6 million to \$8 million. Opponents and proponents agree, the structure should prove to be extraordinarily beautiful.

Ironically, the beauty of the site is a chief concern for the Evergreen residents, many of whom believe the temple may become a tourist attraction, causing traffic problems and the degradation of the tranquil lifestyle of their neighborhood. At least, thousands of Sikhs are expected to visit the temple regularly. There are more than 45,000 Sikhs living in the Bay Area.

Maybe Evergreen residents think their neighborhood is not suitable for a facility this size, nor for the people it is expected to accommodate. The congregation plans to have gatherings of up to 1,500 people, though only one two-lane road approaches the site. The traffic, opponents argue, will cause commuting problems and introduce hazards on roads frequented by children and bicyclists. Increased traffic could also have an adverse impact on the environment.

But many temple proponents see a more insidious reason behind the opposition: prejudice. For example, an appeal to the city to stop construction cited problems at a Sikh temple in nearby Fremont, calling Sikhs “undesirable neighbors.” Some wonder if those who object to the temple are not, at bottom, motivated by racial and religious biases.

But members of the Evergreen Citizens Coalition, which oppose the construction, insist that racism has nothing to do with it. “I want to make it clear to everybody that the Evergreen Citizens Coalition is opposed to any type of development that would allow traffic to congregate in one area,” Coalition Chairman Walter Neal told the San Jose Mercury News. “It could be a Safeway, a 7-Eleven, a Catholic Church. It has nothing to do with any type of religious or cultural differences at all. It’s an issue with size and location. A church of this size is a regional facility.”

In answer to the opposition, city planners have assured Evergreen residents that the Sikhs have followed all of the city’s guidelines and zoning regulations relevant to the foothills. They see no reason to stop the construction.

In addition, the city has gone to great lengths to see that the temple does not become an overbearing venue. All meetings in the temple are restricted to no more than 1,500 people; if there are consequent traffic congestion problems, the temple officials are required to provide traffic controls for the nearby area; and to ensure harmony, temple officials are required to meet with residents twice a year to iron out any problems.

In December 1997, the opponents of the Sikh temple filed a lawsuit against the city of San Jose to stop construction. Their suit alleged that the city failed to prepare an adequate environmental impact report and, more importantly, did not properly notify residents of the proposed structure while it was still in its nascent, flexible stages of planning. The city is required to mail letters to residents within a 300-foot radius of any building project, but, due to the rural nature of the neighborhood, only 34 homes fell within that range and received a letter.

Imagine you are a member of the San Jose City Council, meeting to decide whether the project should go forward despite the suit. There are at least three potential courses of action:

1. The council can ignore the virulent opposition from Evergreen residents and allow the temple to be built in accordance with existing regulations.
2. The council can prohibit the construction, pleasing the residents while causing distress among the thousands of Sikhs counting on a new temple.
3. As a compromise, the city can place additional building regulations on the temple or insist on modifications to the design. But there's one important caveat to this option: The size and shape of the proposed temple has religious significance. Any modifications would alter the Sikh symbol of the divine represented by the architecture.

Are the Sikh's rights violated by such modifications?

Have the Evergreen district residents raised legitimate concerns, or does their opposition to the Sikh temple show religious intolerance or cultural bias?

Were the city's laws pertaining to the notification of residents ethical?

Should the Sikhs be forced to compromise the structure of their temple in favor of the tranquil lifestyle enjoyed by a small collection of neighbors?

### **An Issue of School Funding: A Business Case Study**

Fizzell Corporation, with its Southwest headquarters in Peyton, has been in business since 1951. Its hottest-selling product is a soft drink, Fizzie, which has pushed it up to the top five beverage companies in the world. In addition to soft drinks, Fizzell produces candies and snack foods.

Yolanda Gomez has worked for Fizzell since 1982 and has been its Executive Vice President for the past five years. She has lived in Peyton most of her life. Fizzell held a senior management meeting to discuss advertising and selling its products in the Peyton school district with its 30,000 students.

The school district hasn't passed a bond issue in 15 years and depends on funds from the state government for its increasing revenue needs. During this time, it added instructional programs for an increasing number of students who come to school with learning problems. In addition, the district's school buildings are aging and need substantial repairs.

In order to keep up with the times, the district purchased computers and software for all its schools' classrooms along with up-to-date- technology for the central office. This expense has been controversial in the community. The district is strapped for cash and in danger of having to reduce popular programs and even close a few schools.

The Peyton City School District enrollment has gradually declined during the past decade. Its locale has little room for further development; new businesses tend to locate outside the district. Likewise, many people have been leaving to find newer, more affordable, suburban homes. All this has reduced tax revenues to support the schools.

Fizzell's senior management team has prepared a proposal that would give the school district much-needed funds in exchange for exclusive rights to sell their beverages and snacks in school vending machines. This deal also includes the opportunity to advertise products on the district school buses and athletic scoreboards.

Yolanda's colleagues on the senior management team all favor the proposal. For a modest investment in the school district, the potential profit on the advertising and sale of their products could be substantial. But Yolanda had doubts about the integrity of this deal.

Yolanda has a keen interest in education and knows how important more funds are to the school district. However, she is troubled with the ethical consequences of selling to students who are a captive audience. Likewise, she heard from a parent group who argued persuasively that schools compromise their educational mission when they encourage students to be consumers.

The conflict between Yolanda's job as an officer of Fizzell and her responsibility as a citizen of the community leaves her in a quandary.

### **1. Define the Problem.**

- a. Are commercial sales a justifiable way for schools to gain revenue?
- b. Should schools be involved in the merchandising of products to students?
- c. Is the Fizzell Corporation taking advantage of the situation, or is it helping the school district to solve a difficult financial problem?

d. What message does a school district send to its constituents or voters when it raises revenue through commercial arrangements?

## **2. Gather the Necessary Data**

a. What is the size of the Peyton School District, and how would you describe its demographics?

b. What are Yolanda's responsibilities to the Fizzell Corporation? Her relationship to the school district?

c. What are the major reasons for the school district's financial problems?

d. What kind of partnership does Fizzell Corporation want to create with the school district?

**3. List Possible Alternative Solutions.** List as many as possible.

**4. Analyze the Consequences of Each Alternative.** Does Yolanda's responsibility to Fizzell override her concern as a Peyton citizen? Should Fizzell worry about the negative backlash the school district may receive from the community?

**5. Recommend a Plan of Action.** What would you do if you were Yolanda?

### ***The Case of the Cyber City Network***

The City Council of Cyber City, USA, is debating a new program: the Cyber City Network, a service that would allow residents to access a wide variety of municipal and school services from their home computers. If the program is approved, residents will be able to scan the city's job listings, apply for building permits, ask questions of the police department, or get their children's homework using the Internet.

City Council agendas would be posted, and citizens could testify at council meetings from offsite computers. Recreation Department schedules would be available on the network, and parents could sign their children up for sports teams online. Parents could also communicate with teachers. Businesspeople who require city permits and licenses could apply for them via the Cyber City Network.



About a third of Cyber City's 45,000 residents own a computer equipped with modems, which would allow them to log on to the network from their homes. The city has promised to provide 10 additional computers at elementary schools, senior centers, and libraries for those who don't have ready access at home.

## **CHAPTER 9**

### **Ethics and It**

Scientific advances allow businesses to use technology to reach goals more easily and more completely than ever before. In some areas, however, such applications of technology start infringing on the rights of individuals and may be unethical. Governments and ethically operated companies are aware of these limitations. Governments have passed privacy laws and regulated communication companies. Some companies self-censor and apply internal policies to limit unethical behavior. Businesses that wish to be considered ethical must look at whether applying certain technologies may harm some individuals and constrain such applications to what is absolutely necessary.

#### **Privacy**

Individual privacy is one area that has been identified clearly as a base for unethical business behavior through the application of technologies. Companies can track Internet usage, buying habits and individual movement as well as collect personal information about millions of customers or even potential clients. While governments have passed legislation restricting the collection of personal data and allowing individuals some control over what companies can collect and store, ethical businesses must decide -- independently of legislation -- what is appropriate behavior.

#### **Security**

Companies monitor employees and visitors and collect much additional information in the name of security. Ethical issues arise from the continuous monitoring of employee activity and the recording of security camera images. An unjustified level of employee surveillance is ethically questionable; the ethical company must try to establish a level of monitoring it can justify. The surveillance of non-employees, such as visitors or suppliers' representatives, must be constrained to an even lower level to be ethically acceptable.

#### **Communication**

Where it used to be difficult to monitor telephone conversations due to the nature of the analog signal, companies and governments can easily monitor digital, text-based communication, such

as email. Computers can scan the text of millions of messages for words that are of interest to investigators and identify the sender. Companies that employ such technologies must ask themselves about the ethical implications of such surveillance, especially if it is carried out without the knowledge or explicit agreement of employees.

## **Content**

With new technologies allowing the easy creation and distribution of images and videos, both individual employees and companies need guidelines as to what is acceptable. Without such guidelines, some of this content will be offensive to some of the company staff and to some members of the public. When developing such guidelines, companies may be quite restrictive in terms of what is permissible within the business. Such restrictions only become ethical issues when the company tries to extend them into the employees' private lives. The interaction of such restrictions with legal limits on hate speech and pornography, as well as with community standards, make this a particularly delicate area for business ethics.

*The Ethics of Information Technology and Business* is an examination of a wide range of ethical questions that arise from the use of information technology in business and the business of information technology itself. Among the many issues discussed, privacy has a central place. Two chapters are devoted to the topic (chapter two: Marketing, Privacy, and the Protection of Personal Information; and chapter three: Employees and Communication Privacy). Privacy comes up repeatedly in other chapters of the book as well, such as chapter five, Ethical Issues in Information Technology and E-Business, where Web tracking and data mining are discussed, and chapter six, Ethical Issues on the Internet, in which the issues of anonymity and security are raised.

Another central issue is that of intellectual property, in particular, digital assets such as software programs. Chapter four: New, Intellectual, and Other Property focuses exclusively on this issue, though again, as in the case of privacy, it comes up in other chapters as well. The last chapter is a broader reflection on the impact of information technology on society (chapter seven: Information Technology and Society: Business, the Digital Divide, and the Changing Nature of Work).

While privacy and intellectual property are central issues that are worked out in detail in the earlier chapters of the book and applied to different cases in later chapters, there are a number of other topics as well, too numerous to list. They include taxation of e-commerce, assigning

domain names, the changing nature of work, liability for system failures, and censorship, just to name a few.

Four themes pervade the book and provide the closest thing to an overarching structure to its many arguments. They are the Myth of Amoral Computing And Information Technology (MACIT), the Lure of the Technological Imperative (TI), the Danger of the Hidden Substructure, and the Acceptance of Technological Inertia.

MACIT is described in various ways throughout the book. In the preface it is described as a tendency to ignore the ethical dimensions of computing. However, for the most part it is treated as a propensity to mistakenly believe or reason that one cannot assign moral responsibility to agents' for failures of various sorts where computer technologies play a causal role. The reasoning implicit in this mistake is that computers are amoral entities and as such cannot be responsible for the harm they cause. Human agents may be involved in the causal nexus of the harm, but since they are not the direct or central cause, they are not responsible or if so to a minimal degree.

TI is described in various places in various ways. Putting a few of the descriptions together, we might say it is a tendency to develop an information technology because it is possible to do so and meets some objective, irregardless of its ethical consequences (pages 175, 194, 260 et al.). Since the book is an extended argument against TI and MACIT, TI must also be manifested as a form of belief as well. On a descriptive interpretation it says that for any given technology, it will be developed if there is a reason to do so, regardless of its ethical consequences. The prescriptive interpretation is that for any technology, it should be developed if it is possible to do so.

The other themes, i.e., the hidden substructure and technological inertia complement the first two themes and receive much less attention. When they are mentioned it is usually in support of the other two themes. The hidden substructure topic helps explain MACIT, because much of the causal nexus is unknown to most people. Technological inertia is the flip side to TI, that is, accepting the status quo once it has been established. Also, De George is not always careful to distinguish the themes. MACIT and TI seem to blend together from time to time (page 7). This may be because belief that a technology is inevitable might lead to belief that its developers are not morally responsible for its development.

In the first chapter, Ethics and the Information Revolution, De George describes his approach to the ethical questions he will discuss. He locates the issues within a common and universal

framework of ethical norms. Murder, stealing and other such acts are generally inconsistent with societal norms across societies despite their cultural differences. Within a society, norms exist for many practices that bear certain similarities to new and emerging practices made possible by information technologies. This suggests a two-step method. First, when evaluating a new practice such as monitoring e-mail, one can use analogical reasoning from similar practices and norms; for example, opening and reading private correspondence. If the dissimilarities are significant or if societies differ in the compared practices, one can move to the second step, which is to appeal to “pertinent considerations of a variety of kinds” (page 26). De George does not attempt to characterize these considerations, but it is fair to say from the way he argues that they can be described as consequentialist or deontic and that they must cohere with the general framework of fundamental ethical norms.

De George then draws a distinction between an empirical approach and an analytical or conceptual approach. The empirical approach is reactive, waiting for harms to be done before a response is formulated. The conceptual approach is proactive. It consists of identifying the logical presuppositions of a practice, institution or system, identifying its structure and the possible ethical weak points of that structure, and considering ways in which values might be built into those structures that would eliminate or mitigate its weak points. This conceptual approach is the one he endorses.

De George does not say how these two methods are meant to fit together, although I think it can be inferred that the place of the kind of conceptual analysis he describes lies in the second step, which moves beyond analogy and takes into account a wide range of “pertinent considerations.” If this is the case, then De George’s method can be summarized as a two-step process that first attempts to apply existing norms to new practices via analogical arguments and then, if that fails, attempts an analysis of the practice or system along the lines described above.

One of the most interesting parts of the book is in chapter one, where De George applies his method of analysis to the general system of IT taken as the basis for the information society. Here he argues that core values of an information-centric society are truthfulness, accuracy, information sharing, and trust. While important in other types of society (agricultural, industrial), these values take on greater role in an information economy, in contrast to punctuality, for example, which is critical in an assembly-line industrial economy. Appeal to these values plays a role in a number of arguments throughout the book.

De George's discussion of privacy in chapter two also illustrates his method. He distinguishes between four kinds of privacy: Space privacy, body/mental privacy, personal information privacy, communication privacy, personal privacy and cyberspace privacy. Space privacy has to do with control of one's space against intrusion or observation by others. Body/mental privacy concerns one's ability to control access to one's thoughts and body. Personal information privacy concerns control over information about oneself. Personal privacy has to do with one's ability to reveal or not to reveal certain aspects of oneself to certain people. Finally, cyber privacy is similar to some of the others such as space privacy and body privacy and might be thought of as the virtual equivalent of these.

After making these distinctions, De George addresses the problem of tracking people in public. Surveillance technologies are often employed in public places to reduce crime or traffic congestion. An argument can be made that there is nothing wrong with such surveillance. One can observe someone in public and can take a picture, and one can even video someone. If one were to use computer technology to coordinate video images in order to track people's movements, this would just be an extension of permitted activities. De George identifies the fallacy in such reasoning by describing the argument as claiming that public + public = public.

The argument fails, De George claims, because private and public are not necessarily opposed concepts. One expects a certain amount of anonymity in public, and it is precisely this anonymity that is undermined by aggressive tracking. While De George does not explicitly use the distinctions above, it is clear that they play an explanatory role. The public-public argument assumes that all privacy rights are waived when one enters a public area. Hence it presupposes the frictionless extension of greater and greater observation. It seems plausible because we may be thinking of space privacy, which is certainly waived when we enter most public places. However, body/mental privacy, personal information privacy, communication privacy and personal privacy are not necessarily given up by leaving one's private spaces. Also, De George's treatment of privacy shows that it is a degree concept. He does not use this description, but his argumentation in a number of places implies it. If privacy can be held in different degrees, it can be valued in different degrees, and hence can be violated in different degrees. The public-public argument fails because it uses the same justificatory coin to buy more and more of one's privacy without offering further reasons proportionate to the loss the individual suffers.

De George's treatment of intellectual property provides another example of his methodology. He challenges the appropriateness of copyright to software programs by showing that the analogy between computer programs, on the one hand, and literary and artistic works, on the other, is not strong enough to support the full extension of copyright protection (mainly its duration) to programs. Computers are more like lists of instructions than literary expressions. Defenders of copyright protection argue the value of the particular expression within a program, but, De George argues, people do not buy programs for their literary value. They normally buy object code, not source code, and hence cannot read the programs. Moreover, I think anyone familiar with programming would agree that one could change the names of all objects in their source code without diminishing the program's value as an intellectual work or product.

De George also argues against patent protection on the grounds that software innovations are so rapid that the twenty-year duration of patent protection should be unnecessary. Also, deciding what aspect of the program can be patented is a problem. Is it the look and feel of the interface, the architecture of the program, or the specific instructions of any and every subroutine? De George calls for a form of protection especially crafted for software instead of stretching protections designed for different sorts of intellectual property. He does not tell us what shape such protection should take, but his analysis shows that the grounds for such protection should be reasonable compensation for those who work to develop and market software products and fairness to them for investing time, money and effort in such development. What we need to do, therefore, is look at the special circumstances of software development to determine what is needed to afford such protection.

Like producers of books, developers are threatened by the unauthorized copying of their software, especially since it is so easy to do. But De George is right in thinking that protection against such copying should not span decades. Software changes quickly and versions older than a few years are usually obsolete. Reverse engineering is also a threat, especially in the form of decompiling code and adopting it into a competing product for sale. However, it should be sufficient to ban particular forms of reverse engineering without using the strong protection afforded by patents, which prevents anyone but the first recognized inventor of the innovation from using it without a license. If someone writes a similar program with similar functions to an existing program, but does not steal code from a competitor, it seems unreasonable to deprive him or her of the benefit of his or her work. De George is correct in thinking that this would

stifle competition. Also, it is hard to see how society would be benefited. Software developers do not face the same kinds of cost barriers that producers of pharmaceuticals or manufacturers of computer hardware do, so they do not need the incentive of barring competition to recoup massive investments. They just need to have reasonable assurance that no one can compete with them by stealing their code instead of developing their own.

De George puts a lot of weight on MACIT and TI as characterizations of kinds of errors in thinking that can be corrected through argumentation. However, it is not clear that each is a single kind of error or that it occurs on a single level. In fact, it is not clear that they always describe errors in thinking. For example, in the case of TI, it is not always clear where an error is committed when considering the beliefs of agents. In the practical context, TI is less like a kind of error than a decision-theoretic dilemma in which individually rational choices lead to an “irrational” outcome. Individual developers of a technology are often in the position of seeing an opportunity to create something with clear benefits that also carries with it a hard to define risk of being considered unethical at a later time. There may be no clear norms in place against the technology, the implementation they envision may be unproblematic in itself, and coordination with other groups or individuals for the sake of clarifying the issues may not be feasible. The only answer is for society to establish clear norms in advance. Hence, if there is an error here, it may be in found in the reflective belief that this cannot be done, not in the context-dependent, individual decision making.

Here the connection between De George’s argument against TI and his methodology is evident. If TI, as a general claim about technological development, is false, then moral norms can be established in advance of the emergence and deployment of information technologies. For moral norms to be identified, the sort of conceptual analysis De George describes will have to succeed in identifying problems and providing answers. It is probably a bit optimistic to think that this can be done without relying on the reactive, empirical approach of assessing the extent of moral damage done. Nonetheless, De George provides a good example of how to do such conceptual work in the service of identifying and clarifying such issues.

#### Performance

- In the early 21st century, the role of IT has become more customer-centric due to emphasis on customer relationship management (CRM), a company-wide business marketing process with a goal of enhancing the total customer experience. IT professionals have an ethical duty to use



their expertise to support employees in serving customers, and to maintain and use solutions that are important to managing business and marketing processes.

#### **Sensitive Information**

- IT professionals often have access to sensitive company data and employee information not readily available to other company employees. Company-wide business systems like CRM and enterprise resource planning (ERP) rely on the collection of customer data. IT helps with data extraction. IT also sets up employee network access, email accounts and other technology access. IT professionals must adhere to strict confidentiality guidelines because of their access to these types of data.

#### **No Vengeance**

- Dissolution of working relationships creates additional ethical dilemmas for IT. IT professionals manage and use company hardware and software and maintain intellectual properties. Committing to leave company property intact and promising not to use technical knowledge for punitive action upon termination are common inclusions in IT codes of conduct, according to the SANS Institute's "IT Code of Ethics."

Organisations are continuing to invest heavily in computer systems designed to improve efficiency and effectiveness. These new systems are often complex replacing manual processes that previously defied automation, or are second or third generation systems, introducing new functions into already automated processes. Usually new systems are not simply a matter of giving staff a better tool to do the same work but involve changes to the nature of the work itself. This in turn changes the very fabric of the society in which we live. Careful planning and consultation are needed to implement new systems successfully. All those affected by the change must be involved in good time in an appropriate way. They may include customers, suppliers, regulators, business partners and members of the public as well as employees.

The impact of new systems will usually be judged in terms of whether the gains in efficiency and effectiveness are realised as planned, but that is not all. The new systems may involve changes in the staffing levels, organisational structure and social groupings. These changes can affect staff morale inside an organisation and relationships outside, particularly with customers, to such an extent that they may cause disadvantages to the organisation which reduce, or even outweigh, the basic benefits achieved. There is a growing realisation within the UK that good ethics is good

business. The latest survey by the Institute of Business Ethics shows a dramatic increase in the number of organisations that have a corporate code of ethics.

Given the central and essential role of Information and Communication Technologies (ICT) in organisations it is paramount that this ethical sensitivity percolates decisions and activities related to ICT. In particular organisations need to consider:

- how to set up a strategic framework for ICT that recognises personal and corporate ethical issues;
- how the methods for systems development balance ethical, economic and technological considerations;
- the intellectual property issues surrounding software and data;
- the way information has become a key resource for organisations and how to safeguard the integrity of this information;
- the increasing organisational responsibility to ensure that privacy rights are not violated as more information about individuals is held electronically;
- the growing opportunity to misuse ICT given the increasing dependence of organisations on it and the organisational duty to minimise this opportunity whilst accepting individuals have a responsibility to resist it;
- the way advances in ICT can cause organisations to change their form - the full impact of such change needs to be considered and, if possible, in advance, and the way the advent of the global information society raises new issues for organisations in how they operate, compete, co-operate and obey legislation; and
- how to cope with the enormous and rapid change in ICT, and how to recognise and address the ethical issues that each advance brings.

Thus there is an ethical agenda associated with the use of ICT in organisations. This agenda combines issues common to many professions and issues that are specific to ICT. New advances in ICT and new applications may change the agenda. If organisations wish to secure benefits to their business in the long term and enhance their reputation they have to address a comprehensive agenda. The following steps provide a way in which organisations can establish such an agenda and address the ethical issues arising in the field of ICT.

1. Decide the organisation's policy, in broad terms, in relation to ICT. This should:

- take account of the overall objectives of the organisation, drawing from such existing sources as the organisational plan or mission statement;
  - use the organisation's established values, possibly set out in its code of practice, for guidance in determining how to resolve ethical issues;
  - set the scope of policy in terms of matters to be covered.
2. Form a statement of principles related to ICT that would probably include:
    - respect for privacy and confidentiality;
    - avoid ICT misuse;
    - avoid ambiguity regarding ICT status, use and capability;
    - be committed to transparency of actions and decisions related to ICT;
    - adhere to relevant laws and observe the spirit of such laws;
    - support and promote the definition of standards in, for example, development, documentation and training; and
    - abide by relevant professional codes.
  3. Identify the key areas where ethical issues may arise for the organisation, such as:
    - ownership of software and data;
    - integrity of data;
    - preservation of privacy;
    - prevention of fraud and computer misuse;
    - the creation and retention of documentation;
    - the effect of change on people both employees and others; and
    - global ICT.
  4. Consider the application of policy and determine in detail the approach to each area of sensitivity that has been identified.
  5. Communicate practical guidance to all employees, covering:
    - the clear definition and assignment of responsibilities;
    - awareness training on ethical sensitivities;
    - the legal position regarding intellectual property, data protection and privacy;
    - the explicit consideration of social cost and benefit of ICT application;
    - the testing of systems (including risk assessment where public health, safety and welfare, or environmental concerns arise);

- documentation standards; and
  - security and data protection
6. Whilst organisations have a responsibility to act ethically in the use of ICT so to do individual employees. Those involved in providing ICT facilities should support the ethical agenda of the organisation and in the course of their work should:
- consider broadly who is affected by their work;
  - examine if others are being treated with respect;
  - consider how the public would view their decisions and actions;
  - analyse how the least empowered will be affected by their decisions and actions;
  - and
  - consider if their decisions and acts are worthy of the model ICT professional.

Implementation of modern information technologies lead to new types of crime, which use calculation systems, novel means of telecommunication and communication, means of obtaining of information, etc. The quantity of so called cybercrimes using modern information technologies, stealing the cash and non-cash funds is increasing. The term “cyber crime” is young and is created by combination of the two words: cyberspace and crime. The term cyberspace space (terms “virtual space”, “virtual world” are used more often in domestic literature) and (according to the definition in “New hacker vocabulary” by Eric S. Raimond) defines the information space modeled through computer, in which defined types of objects or symbol images of information exist – the place where computer programs work and data is transferred.

The report on computer security and cyber crime problem has been produced according to the data of the American Computer Security Insitute on the basis of the research, conducted at the assignment of International Computer Crime Squads FBI USA, indicating the most common methods of attacks and offences:

- **brute-force** - 13,9%. Selection of passwords, keys to fit and other identification or authentication information;
- **IP-spoofing** - 12,4%. Method of attack when criminal changes IP-addresses of packages, transferred through Internet so, that they look like “internal” for the network where every

unit trusts the address information of the other;

- **denial of service** - 16,3%. Influence on network or its separate parts with the purpose of breach of usual functioning order
- **sniffer** - 11,2%. Looking through and decoding the transferred data with the purpose of collection of passwords, keys and other identification or authentication information;
- **scanner** - 15,9%. Method of attack using the software, which consequentially check possible points of entering the system (for instance, TCP-port numbers or telephone numbers) with the purpose of identifying ways and possibilities to intrude;
- **data diddling** - 15,6%.

The victims of criminals become banks, institutions, enterprises and organizations, which use automated systems for processing documents, making payments and other operations. Classic example for such crime could be one of the criminal cases, which investigation has been conducted by Russian law enforcement and FBI USA. Criminal case was opened for V. Levin and other citizens of the Russian Federation, which enter in collusion with each other with the purpose to thief great amounts of funds from "City Bank of America" (USA). They have created criminal group, used Internet and overcame several levels of protection from unauthorized access, through personal computer of standard configuration from the office, located in St-Petersburg (Russia), they entered untrue information into the cash flow management system the above bank. The criminals have accomplished not less than 40 transfers of funds of the total amount of 10 millions 700 thousands US Dollars.

Levin was at last arrested in Great Britain in September 1997 and extradited to USA. He admitted himself guilty and in February 1998 has been sentenced to 36 months in jail.

According to statistic data, obtained by FBI USA as a result of analysis of attempts to penetrate in 220 computer systems of American network "MILNET", 20% of the password used appeared vulnerable. In 98% of the cases administrators of attacked systems in order to clarify the circumstances of the suspicious activity did not even try to contact the organization, which network, after offender has illegally entered it, was used for attacks on other networks. 8% of the systems has disclosed to offender the information on its current status and users in response to simplest request of sysstat, who, etc. 1% of systems has given limited access to data bases and e-mail systems. In 2% of the cases a criminal managed to enter the system under the name of

authorized user. 2% of systems has given the offender the automated system administrator authorization.

On October 23, 1998 through unauthorized access to automated banking system from the accounts of Reserve Fund of Vinnitsa Department of the National Bank of Ukraine 80,4 millions of Hryvnias (equivalent of approx. 20 millions of US Dollars) were stolen.

As it is obvious, there are many ways of unauthorized access to the data and interference in the information processing and exchange processes in automated systems. The term *automated system* (ÀS) means organization-technical system, which realizes information technology and combines operation system, physical environment, personnel and information processed. Reliable information protection system is critical for AS safety, and in the event of offense allows law enforcement to conduct investigation.

As it is known, the subjects for applying means and measures in criminal judiciary are its participants, since they take part in the process of proving and collect, research, assess and use criminality information. However, due to different levels of their procedural status, forms and extent of use of the special means and knowledge are also different. Such means are instruments for work and law enforcement for investigators and detectives and they are authorized to use them directly (Art. 114 of the Criminal Code of Ukraine) or indirectly, involving special knowledge of expert (Art. 75 of the Criminal Code of Ukraine). Similar legal norms exist in many countries of the world. Therefore, legitimacy in application of accountability technology upon investigation of cyber crimes is characterized by legal side of acceptance and shows that application of these technologies for collection of criminality information is appropriate.

In order to solve these problems, one of the Ukrainian enterprises (<http://www.anna.zp.ua>), developed "Network Remote Monitor" security system, which is under the certification of the Department of Special Telecommunication Systems and Information Protection of the Security Service of Ukraine. In addition, the Department of operative-search activity of Zaporizhia Law Institute under US-Ukraine Research Partnership Program conducts research purported to develop recommendations on disclosing and investigation of the transnational computer crime (cyber crime) using the Internet.

"Network Remote Monitor" security system (hereinafter SS "NRM") is network hardware - software security system purported for automated accountability of computer (calculation) user automated systems, who work under Windows 95/98/NT, Microsoft (USA) in automated systems based on TCP/IP networks.

In SS "NRM" such security function as **accountability** is involved, it is *computer (calculation) system* feature, which allows to track the activity of users and processes, use of passive objects as well as identify indicators of users and processes, engaged in certain acts with the purpose of prevention of the *information security policy* violations and/or enforcement liability for certain acts. Security system makes **audit**, which allows to collect and analyse the information on using objects and functions under control of security means by users and processes and maintains **audit trail** as systemized set of registration records, each of which is made by complex of security means when the controlled event occurs.

Using the accountability technology in SS "NRM" is important for investigation of cyber crime, related to "**human factor**", which gives the possibility for law enforcement to resolve the following issues:

1. identification of separate facts information escape from local network;
2. restoring erased or modified by offender files, determination of precise time and date of these events;
3. detection of the unauthorized hardware and software installation;
4. decoding of files encoded by offender;
5. registration of unauthorized access attempts;
6. determination of author, location and time of creation of the files;

assessment of professional qualifications of individuals in the sphere of information technologies;

## **CHAPTER 10**

### **Code of Business Conduct and Ethics**

#### **I. Purpose**

This Code of Business Conduct and Ethics helps ensure compliance with legal requirements and our standards of business conduct. All employees of TIBCO Software are expected to read and understand this Code of Business Conduct and Ethics, uphold these standards in day to day activities, comply with all applicable policies and procedures, and ensure that all agents and contractors are aware of, understand and adhere to these standards.

Because the principles described in this Code of Business Conduct and Ethics are general in nature, you should also review all applicable Company policies and procedures for more specific instruction and contact the Human Resources Department or Legal Department if you have any questions.

Nothing in this Code of Business Conduct and Ethics, in any company policies and procedures, or in other related communications (verbal or written) creates or implies an employment contract or term of employment. We are committed to continuously reviewing and updating our policies and procedures. Therefore, this Code of Business Conduct and Ethics is subject to modification. This Code of Business Conduct and Ethics supersedes all other such codes, policies, procedures, instructions, practices, rules or written or verbal representations to the extent they are inconsistent.

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#### **II. Compliance Is Everyone's Business**

Ethical business conduct is critical to our business. As an employee, your responsibility is to respect and adhere to these practices. Many of these practices reflect legal or regulatory requirements. Violations of these laws and regulations can create significant liability for you, the Company, its directors, officers and other employees.

Part of your job and ethical responsibility is to help enforce this Code of Business Conduct and Ethics. You should be alert to and report possible violations in accordance with our whistleblower policy which sets forth:

Any report may be made anonymously, at your option, and must be made in one of the following ways:



- By contacting your supervisor;
- By contacting our Vice President, Human Resources or General Counsel;
- By calling the EthicsPoint Hotline at 1-866-384-4277 or on-line at [www.ethicspoint.com](http://www.ethicspoint.com), which will process your report and forward it to appropriate TIBCO personnel for investigation; or
- By mail to the Audit Committee at: TIBCO Software Inc. Audit Committee of the Board of Directors c/o General Counsel 3303 Hillview Avenue Palo Alto, CA 94304

You must cooperate in any internal or external investigations of possible violations. Reprisal, threats, retribution or retaliation against any person who has in good faith reported a violation or a suspected violation of law, this Code of Business Conduct or other Company policies, or against any person who is assisting in any investigation or process with respect to such a violation, is prohibited. A more detailed set of guidelines with respect to reporting violations can be viewed in the "Policies" group on tibbr at the "TIBCO Whistleblower Policy" link . You are expected to review, understand and follow such policies and procedures.

Violations of law, this Code of Business Conduct and Ethics, or other Company policies or procedures may lead to disciplinary action up to and including termination.

In trying to determine whether any given action is appropriate, use the following test. Imagine that the words you are using or the action you are taking is going to be fully disclosed in the media with all the details, including your photo. If you are uncomfortable with the idea of this information being made public, perhaps you should think again about your words or your course of action. In all cases, if you are unsure about the appropriateness of an event or action, please seek assistance in interpreting the requirements of these practices by contacting the Legal Department.

### III. Your Responsibilities to the Company and its Stockholders

#### • *A. General Standards of Conduct*

The Company expects all employees, agents and contractors to exercise good judgment to ensure the safety and welfare of employees, agents and contractors and to maintain a cooperative, efficient, positive, harmonious and productive work environment and business organization. These standards apply while working on our premises, at offsite locations where our business is being conducted, at Company sponsored business and social events, or at any other place where

you are a representative of the Company. Employees, agents or contractors who engage in misconduct or whose performance is unsatisfactory may be subject to corrective action, up to and including termination.

- *B. Applicable Laws*

All Company employees, agents and contractors must comply with all applicable laws, regulations, rules and regulatory orders. These include: laws, regulations, rules and regulatory orders of the United States, including the Foreign Corrupt Practices Act and the U.S. Export Control Act; the United Kingdom's Bribery Act of 2010; and all applicable local laws. Because of the global nature of our business, the aforementioned United States and United Kingdom laws are deemed to apply to <sup>each</sup> Company employee, agent and contractor regardless of where in the world he or she may be based or working. Each employee, agent and contractor must acquire appropriate knowledge of the requirements relating to his or her duties sufficient to enable him or her to recognize potential dangers and to know when to seek advice from the Legal Department on specific Company policies and procedures. Violations of laws, regulations, rules and orders may subject the employee, agent or contractor to individual criminal or civil liability, as well as to discipline by the Company. Such individual violations may also subject the Company to the loss of business or civil and/or criminal liability.

- *C. Conflicts of Interest*

Each of us has a responsibility to the Company, our stockholders and each other. Although this duty does not prevent us from engaging in personal transactions and investments, it does demand that we avoid situations where a conflict of interest might occur or appear to occur. The Company is subject to scrutiny from many different individuals and organizations. We should always strive to avoid even the appearance of impropriety.

A conflict of interest exists where the interests or benefits of one person or entity conflict with the interests or benefits of the Company. Examples include:

(i) **Employment/Outside Employment.** In consideration of your employment with the Company, you are expected to devote your full attention to the business interests of the Company. You are prohibited from engaging in any activity that interferes with your performance or responsibilities to the Company or is otherwise in conflict with or prejudicial to the Company. Our policies prohibit any employee from accepting simultaneous employment with a Company supplier, customer, developer or competitor, or from taking part in any activity

that enhances or supports a competitor's position. Additionally, you must disclose to the Company any interest that you have that may conflict with the business of the Company. If you have any questions on this requirement, you should contact your supervisor or the Human Resources Department.

**(ii) Outside Directorships.** It is a conflict of interest to serve as a director of any company that competes with the Company. Although you may serve as a director of a Company supplier, customer, developer or other business partner, our policy requires that such position not conflict or otherwise interfere with your duties to the Company and that you first obtain written approval from the Company's General Counsel before accepting a directorship. Any compensation you receive should be commensurate with your responsibilities in your capacity as a director. Such approval may be conditioned upon the completion of specified actions.

**(iii) Business Interests.** If you are considering investing in a company customer, supplier, developer or competitor, you must first take great care to ensure that these investments do not compromise your responsibilities to the Company. Many factors should be considered in determining whether a conflict exists, including the size and nature of the investment; your ability to influence the Company's decisions; your access to confidential information of the Company or of the other company; and the nature of the relationship between the Company and the other company. You should generally try to avoid even the appearance of impropriety or conflict.

**(iv) Related Parties.** As a general rule, you should avoid conducting Company business with a relative or significant other, or with a business in which you, a relative or significant other is associated in any significant role. Relatives include spouse, sister, brother, daughter, son, mother, father, grandparents, step relationships, and in laws. Significant others include any person sharing the household with you (other than a tenant or employee).

If such a related party transaction is unavoidable, you must fully disclose the nature of the related party transaction to the Company's General Counsel prior to entering into the transaction. The General Counsel will determine whether the transaction constitutes a "Related Party Transaction" and whether approval of the transaction by the Company's Audit Committee is required under the terms of the Company's Related Party Transaction Policy and Procedure. The most significant related party transactions, particularly those involving the Company's directors or executive officers, must be reviewed and approved in writing in advance by the Company's

Audit Committee. The Company must report all such material related party transactions under applicable accounting rules, federal securities laws, SEC rules and regulations, and securities market rules. Any dealings with a related party must be conducted in such a way that no preferential treatment is given to this business. The Company's Related Party Transaction Policy and Procedure is posted in the "Policies" group on tibbr.

The Company discourages the employment of relatives and significant others in positions or assignments within the same department and prohibits the employment of such individuals in positions that have a financial dependence or influence (e.g., an auditing or control relationship, or a supervisor/subordinate relationship). The purpose of this policy is to prevent the organizational impairment and conflicts that are a likely outcome of the employment of relatives or significant others, especially in a supervisor/subordinate relationship. If a question arises about whether a relationship is covered by this policy, the Human Resources Department is responsible for determining whether an applicant's or transferee's acknowledged relationship is covered by this policy. The Human Resources Department shall advise all affected applicants and transferees of this policy. Willful withholding of information regarding a prohibited relationship/reporting arrangement may be subject to corrective action, up to and including termination. If a prohibited relationship exists or develops between two employees, the employee in the senior position must bring this to the attention of his/her supervisor. The Company retains the prerogative to separate the individuals at the earliest possible time, either by reassignment or by termination, if necessary.

**(v) Other Situations.** Because other conflicts of interest may arise, it would be impractical to attempt to list all possible situations. If a proposed transaction or situation raises any questions or doubts in your mind you should consult the Legal Department.

- *D. Corporate Opportunities*

Employees, officers and directors may not exploit for their own personal gain opportunities that are discovered through the use of corporate property, information or position unless the opportunity is disclosed fully in writing to the Company's Board of Directors, and the Board of Directors declines to pursue such opportunity.

- *E. Protecting the Company's Confidential Information*

The Company's confidential information is a valuable asset. The Company's confidential information includes product architectures; source code; product plans and road maps; names

and lists of customers, dealers, and employees; and financial information. This information is the property of the Company and may be protected by patent, trademark, copyright and trade secret laws. All confidential information must be used for Company business purposes only. Every employee, agent and contractor must safeguard it. **THIS RESPONSIBILITY INCLUDES NOT DISCLOSING THE COMPANY CONFIDENTIAL INFORMATION, SUCH AS SOURCE CODE OR INFORMATION REGARDING THE COMPANY'S PRODUCTS OR BUSINESS, OVER THE INTERNET, INCLUDING THROUGH SOCIAL MEDIA.** You are also responsible for properly labeling any and all documentation shared with or correspondence sent to the Company's Legal Department or outside counsel as "Attorney Client Privileged". This responsibility includes the safeguarding, securing and proper disposal of confidential information in accordance with the Company's Record Management Policy. This obligation extends to confidential information of third parties that the Company has rightfully received under Non Disclosure Agreements. See the Company's policy dealing with Handling Confidential Information of Others set forth in Section IV(D) of this Code of Business Conduct and Ethics.

**(i) Non-Disclosure/Assignment Agreement.** When you joined the Company, you signed an agreement to protect and hold confidential the Company's proprietary information. This agreement remains in effect for as long as you work for the Company and after you leave the Company. Under this agreement, you may not disclose the Company's confidential information to anyone or use it to benefit anyone other than the Company without the prior written consent of an authorized Company officer.

**(ii) Disclosure of Company Confidential Information.** To further the Company's business, from time to time our confidential information may be disclosed to potential business partners. However, such disclosure should never be done without carefully considering its potential benefits and risks. If you determine in consultation with your manager and other appropriate Company management that disclosure of confidential information is necessary, you must then contact the Legal Department to ensure that an appropriate written non-disclosure agreement is signed prior to the disclosure. The Company has standard non-disclosure agreements suitable for most disclosures. You must not sign a third party's non-disclosure agreement or accept changes to the Company's standard non-disclosure agreements without review and approval by the Company's Legal Department. Furthermore, any employee publication or publicly made

statement that might be perceived or construed as attributable to the Company, made outside the scope of his or her employment with the Company, must be reviewed and approved in writing in advance by the Company's Legal Department and must include the Company's standard disclaimer that the publication or statement represents the views of the specific author and not of the Company. This includes, but is not limited to, comments posted about the Company on social media websites. For more information on postings to social media sites, please see the Company's Social Media policy, which is posted on tibbr in the "Policies" group.

**(iii) Requests by Regulatory Authorities.** The Company and its employees, agents and contractors must cooperate with appropriate government inquiries and investigations. In this context, however, it is important to protect the legal rights of the Company with respect to its confidential information. All government requests for information, documents or investigative interviews must be referred to the Company's Legal Department. No financial information may be disclosed without the prior approval of the Chief Financial Officer.

**(iv) Company Spokespeople.** The Company has established an Analyst and Shareholder Communications Policy regarding who may communicate information to the financial analyst community. All inquiries or calls from financial analysts should be referred to the Chief Financial Officer or Investor Relations Department. The Company has designated its Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, EVP of Worldwide Marketing and VP of Investor Relations as official Company spokespeople for financial matters. The Company has designated its Public Relations Department as official Company spokespeople for the press, marketing, technical and other such information. These designees are the only people who may communicate with the press on behalf of the Company. Therefore, if you receive a call from any journalist or analyst, even a simple request to confirm information you think everyone knows, refer the call to an authorized spokesperson. Only the CEO, COO or CFO may authorize another employee to speak to an analyst.

- **Obligations under the U.S. securities laws apply to everyone. In the normal course of business, officers, directors, employees and agents (including consultants and contractors) of the Company may come into possession of significant, sensitive information. This information is the property of the Company—you have been entrusted with it. You may not profit from it by buying or selling securities or derivatives of securities yourself, or passing on the information to others to enable them to profit or for them to profit on your behalf –**

**this includes giving information to, among others, members of your immediate family and persons with whom you share a household. The purpose of this policy is both to inform you of your legal responsibilities and to make clear to you that the misuse of sensitive information is contrary to Company policy and U.S. securities laws.**

Insider trading is a crime, penalized by substantial criminal fines (up to \$5,000,000 no matter how small the profit) as well as imprisonment for individuals (up to twenty (20) years). Insider traders must also disgorge any profits made and are subject to civil fines up to three times the profit made, and are often subjected to an injunction against future violations. Finally, insider traders may be subjected to civil liability in private lawsuits.

Employers and other controlling persons (including supervisory personnel) are also at risk under U.S. securities laws. Controlling persons may, among other things, face even greater criminal and civil fines and penalties if they recklessly fail to take preventive steps to control insider trading.

Thus, it is important both to you and the Company that insider-trading violations not occur. You should be aware that stock market surveillance techniques are becoming increasingly sophisticated, and the chance that U.S. federal or other regulatory authorities will detect and prosecute even small level trading is significant. Insider trading rules are strictly enforced, even in instances when the financial transactions seem small. You should contact the General Counsel or the Vice President, Legal Affairs, if you are unsure as to whether or not you are free to trade.

The Company has imposed a trading blackout period on all members of the Board of Directors, officers and employees at or above the level of Director (Grade 12) and certain other employees. These directors, officers and employees generally may not trade in Company securities during the blackout period. The Company's blackout periods begin approximately fourteen (14) days before the end of each fiscal quarter and end at the close of business on the second full trading day following the date of public disclosure of the financial results for that fiscal quarter. The Company may impose other special blackout periods from time to time.

For more details, and to determine if you are restricted from trading during trading blackout periods, you should review the Company's Insider Trading Policy, which is posted in the "Policies" group on tibbr. You should take a few minutes to read the Insider Trading Policy carefully, paying particular attention to the specific policies and the potential criminal and civil liability and/or disciplinary action for insider trading violations. Employees, agents and

contractors of the Company who violate this Policy are also subject to disciplinary action by the Company, which may include termination of employment or of business relationship. All questions regarding the Company's Insider Trading Policy should be directed to the Company's General Counsel or Vice President, Legal Affairs.

- *G. Prohibition Against Short Selling of Company Stock and Engaging in Transactions in Derivative Securities or Hedging Transactions*

No Company director, officer, employee or agent (including any consultant or contractor) may, directly or indirectly, sell any equity security, including derivatives, of the Company if he or she (i) does not own the security sold so must borrow the security to make delivery (a "short-sale"), or (ii) if he or she owns the security but delays delivery of the security (a "short sale against the box"). While employees who are not executive officers or directors are not prohibited by law from engaging in short sales of Company's securities, the Company has adopted as policy that employees may not do so. Additionally, no Company director, officer, employee or agent (including any consultant or contractor) may engage in transactions in publicly-traded options, such as puts and calls, and other derivative securities with respect to the Company's securities. This prohibition extends to any hedging or similar transaction designed to decrease the risks associated with holding Company securities. You should also consult the Insider Trading Policy if you intend to (i) use Company securities as collateral for loans, (ii) hold Company securities in margin accounts or (iii) place open orders with brokers, as the policy contains limitations on the ability to engage in such transactions.

- *H. Use of Company's Assets*

**(i) General.** Protecting the Company's assets is a key fiduciary responsibility of every employee, agent and contractor. Care should be taken to ensure that assets are not misappropriated, loaned to others, or sold or donated, without appropriate authorization. All Company employees, agents and contractors are responsible for the proper use of Company assets, and must safeguard such assets against loss, damage, misuse or theft. Employees, agents or contractors who violate any aspect of this policy or who demonstrate poor judgment in the manner in which they use any Company asset may be subject to disciplinary action, up to and including termination of employment or business relationship at the Company's sole discretion. Company equipment and assets are to be used for Company business purposes only. Employees, agents and contractors may not use Company assets for personal use, nor may they allow any other person to use



Company assets. Employees who have any questions regarding this policy should bring them to the attention of the Company's Human Resources Department.

**(ii) Physical Access Control.** The Company has and will continue to develop procedures covering physical access control to ensure privacy of communications, maintenance of the security of the Company communication equipment, and safeguard Company assets from theft, misuse and destruction. You are personally responsible for complying with the level of access control that has been implemented in the facility where you work on a permanent or temporary basis. You must not defeat or cause to be defeated the purpose for which the access control was implemented.

**(iii) Company Funds.** Every Company employee is personally responsible for all Company funds over which he or she exercises control. Company agents and contractors should not be allowed to exercise control over Company funds. Company funds must be used only for Company business purposes. Every Company employee, agent and contractor must take reasonable steps to ensure that the Company receives good value for Company funds spent, and must maintain accurate and timely records of each and every expenditure. Expense reports must be accurate and submitted in a timely manner. Company employees, agents and contractors must not use Company funds for any personal purpose.

**(iv) Computers and Other Equipment.** The Company strives to furnish employees with the equipment necessary to efficiently and effectively do their jobs. You must care for that equipment and use it responsibly only for Company business purposes. If you use Company equipment at your home or off site, take precautions to protect it from theft or damage, just as if it were your own. If the Company no longer employs you, you must immediately return all Company equipment. While computers and other electronic devices are made accessible to employees to assist them to perform their jobs and to promote the Company's interests, all such computers and electronic devices, whether used entirely or partially on the Company's premises or with the aid of the Company's equipment or resources, must remain fully accessible to the Company and, to the maximum extent permitted by law, will remain the sole and exclusive property of the Company.

Employees, agents and contractors should not maintain any expectation of privacy with respect to information transmitted over, received by, or stored in any electronic communications device owned, leased, or operated in whole or in part by or on behalf of the Company. To the extent

permitted by applicable law, the Company retains the right to gain access to any information received by, transmitted by, or stored in any such electronic communications device, by and through its employees, agents, contractors, or representatives, at any time, either with or without an employee's or third party's knowledge, consent or approval.

**(v) Software.** All software used by employees to conduct Company business must be appropriately licensed. Never make or use illegal or unauthorized copies of any software, whether in the office, at home, or on the road, since doing so may constitute copyright infringement and may expose you and the Company to potential civil and criminal liability. In addition, use of illegal or unauthorized copies of software may subject the employee to disciplinary action, up to and including termination. The Company's Information Technology Department ("IT Department") will inspect Company computers periodically to verify that only approved and licensed software has been installed. Any non licensed/supported software will be removed.

**(vi) Electronic Usage.** The purpose of this policy is to make certain that employees utilize electronic communication devices in a legal, ethical, and appropriate manner. This policy addresses the Company's responsibilities and concerns regarding the fair and proper use of all electronic communications devices within the organization, including computers, e mail, connections to the Internet, intranet and extranet and any other public or private networks, voice mail, video conferencing, facsimiles, and telephones. Posting or discussing information concerning the Company's products, employees, or business on the Internet without the prior written consent of the Company's Chief Financial Officer is prohibited. Any other form of electronic communication used by employees currently or in the future is also intended to be encompassed under this policy. It is not possible to identify every standard and rule applicable to the use of electronic communications devices. Employees are therefore encouraged to use sound judgment whenever using any feature of our communications systems. The complete set of policies with respect to electronic usage of the Company's assets can be viewed in the "Policies" group on tibbr. You are expected to review, understand and follow such policies and procedures.

● *I. Maintaining and Managing Records*

The Company has implemented a Record Management Policy to set forth and convey the Company's business and legal requirements in managing records, including all recorded information regardless of medium or characteristics. Records include paper documents, CDs,

DVDs, computer hard disks, email, floppy disks, microfiche, microfilm or all other media. The Company is required by local, state, federal, foreign and other applicable laws, rules and regulations to retain certain records and to follow specific guidelines in managing its records. Civil and criminal penalties for failure to comply with such guidelines can be severe for employees, agents, contractors and the Company, and failure to comply with such guidelines may subject the employee, agent or contractor to disciplinary action, up to and including termination of employment or business relationship at the Company's sole discretion. The Record Management Policy is posted in the "Policies" group on tibbr. You are expected to review, understand and follow the Record Management Policy.

- *J. Records on Legal Hold*

A legal hold suspends all document destruction procedures in order to preserve appropriate records under special circumstances, such as litigation or government investigations. The Company's Legal Department determines and identifies what types of Company records or documents are required to be placed under a legal hold. Every Company employee, agent and contractor must comply with this policy. Failure to comply with this policy may subject the employee, agent or contractor to disciplinary action, up to and including termination of employment or business relationship at the Company's sole discretion.

The Company's Legal Department will notify you if a legal hold is placed on records for which you are responsible. You then must preserve and protect the necessary records in accordance with instructions from the Company's Legal Department. **RECORDS OR SUPPORTING DOCUMENTS THAT HAVE BEEN PLACED UNDER A LEGAL HOLD MUST NOT BE DESTROYED, ALTERED OR MODIFIED UNDER ANY CIRCUMSTANCES.** A legal hold remains effective until it is officially released in writing by the Company's Legal Department. If you are unsure whether a document has been placed under a legal hold, you should preserve and protect that document while you check with the Legal Department.

If you have any questions about this policy you should contact the Legal Department.

- *K. Payment Practices*

(i) **Accounting Practices.** The Company's responsibilities to its stockholders and the investing public require that all transactions be fully and accurately recorded in the Company's books and records in compliance with all applicable laws. False or misleading entries, unrecorded funds or assets, or payments without appropriate supporting documentation and approval are strictly

prohibited and violate Company policy and the law. Additionally, all documentation supporting a transaction should fully and accurately describe the nature of the transaction and be processed in a timely fashion.

**(ii) Political Contributions.** The Company reserves the right to communicate its position on important issues to elected representatives and other government officials. It is the Company's policy to comply fully with all local, state, federal, foreign and other applicable laws, rules and regulations regarding political contributions. The Company's funds or assets must not be used for, or be contributed to, political campaigns or political practices under any circumstances without the prior written approval of the Company's General Counsel and, if required, the Board of Directors.

**(iii) Prohibition of Inducements.** Under no circumstances may employees, agents or contractors offer to pay, make payment, promise to pay, or issue authorization to pay any money, gift, or anything of value to customers, vendors, consultants, etc. that is perceived as intended, directly or indirectly, to improperly influence any business decision, any act or failure to act, any commitment of fraud, or opportunity for the commission of any fraud. Inexpensive gifts, infrequent business meals, celebratory events and entertainment, provided that they are not excessive or create an appearance of impropriety, do not violate this policy. Questions regarding whether a particular payment or gift violates this policy should be directed to Human Resources or the Legal Department.

• *L. U.S. Foreign Corrupt Practices Act and UK Bribery Act*

The Company requires full compliance with the United States' Foreign Corrupt Practices Act ("FCPA") and the United Kingdom's Bribery Act of 2010 ("UK Act") by all of its employees, agents, and contractors worldwide.

The anti bribery and corrupt payment provisions of both the FCPA and the UK Act make illegal any corrupt offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to any foreign official, or any foreign political party, candidate or official, for the purpose of: influencing any act or failure to act, in the official capacity of that foreign official or party; or inducing the foreign official or party to use influence to affect a decision of a foreign government or agency, in order to obtain or retain business for anyone, or direct business to anyone. The UK Act, however, extends these prohibitions to commercial relationships that do not involve a government official and makes illegal not only the offering, promising or giving of

a bribe, but also the requesting, agreeing to receipt, or acceptance of anything of value as an improper condition of doing business. For purposes of example only, the UK Act would prohibit both the representatives of a vendor and of a customer from offering or soliciting a gift, or the promise of a gift, as a condition of transacting business.

All Company employees, agents and contractors whether located in the United States or abroad, are responsible for FCPA and UK Act compliance and the procedures to ensure compliance with both Acts. All managers and supervisory personnel are expected to monitor continued compliance with the FCPA and the UK Act to ensure compliance with the highest moral, ethical and professional standards of the Company. Additional information regarding the FCPA and the UK Act and your duties thereunder can be found in the Company's Worldwide Anti-bribery Policy which is posted in the "Policies" group on tibbr.

Laws in most countries outside of the United States also prohibit or restrict government officials or employees of government agencies from receiving payments, entertainment, or gifts for the purpose of winning or keeping business. No contract or agreement may be made with any business in which a government official or employee holds a significant interest, without the prior written approval of the Company's General Counsel.

- *M. Export Controls*

A number of countries maintain controls on the destinations to which products or software may be exported. Some of the strictest export controls are maintained by the United States against countries that the U.S. government considers unfriendly or as supporting international terrorism. The U.S. regulations are complex and apply both to exports from the U.S. and to exports of products from other countries, when those products contain components or technology of U.S. origin. Software created in the U.S. is subject to these regulations even if duplicated and packaged abroad. In some circumstances, an oral presentation containing technical data made to foreign nationals in the U.S. may constitute a controlled export. The Legal Department can provide you with guidance on which countries are prohibited destinations for Company products or whether a proposed technical presentation to foreign nationals may require a U.S. Government license.

- *N. Signature Authority*

It is against Company policy to sign any contract without having been granted the appropriate authority. Generally, only certain senior corporate executives have been granted signature

authority; any delegations of signature authority from these senior executives must be in writing and must specifically identify the person(s) to whom signature authority is being delegated and the scope of the delegation. Signing Company documents without authority, including, but not limited to, wrongfully signing the name of an authorized signatory to a document, is a violation of Company policy that is punishable by termination and may result in the Company referring the matter to law enforcement authorities for criminal prosecution. When in doubt regarding signature authority, you are required to contact the Legal Department for guidance.

#### *IV. Responsibilities To Our Customers And Suppliers*

- *A. Customer Relationships*

If your job puts you in contact with any Company customers or potential customers, it is critical for you to remember that you represent the Company to the people with whom you are dealing. Act in a manner that creates value for our customers and helps to build a relationship based upon trust. The Company and its employees have provided products and services for many years and have built up significant goodwill over that time. This goodwill is one of our most important assets, and the Company employees, agents and contractors must act to preserve and enhance our reputation.

- *B. Payments or Gifts*

Under no circumstances may employees, agents or contractors give or accept any offer, payment, promise to pay, or authorization to pay any money, gift, or anything of value to or from customers, vendors, consultants, etc. that is perceived as intended, directly or indirectly, to influence any business decision, any act or failure to act, any commitment of fraud, or opportunity for the commission of any fraud. Inexpensive gifts, infrequent business meals, celebratory events and entertainment, provided that they are not excessive or create an appearance of impropriety, do not violate this policy. Questions regarding whether a particular payment or gift violates this policy are to be directed to Human Resources or the Legal Department.

Gifts given by the Company to suppliers or customers or received from suppliers or customers should always be appropriate to the circumstances and should never be of a kind that could create an appearance of impropriety. The nature and cost must always be accurately recorded in the Company's books and records.

- *C. Publications of Others*

The Company subscribes to many publications that help employees do their jobs better. These include newsletters, reference works, online reference services, magazines, books, and other digital and printed works. Copyright law generally protects these works, and their unauthorized copying and distribution constitute copyright infringement. You must first obtain the consent of the publisher of a publication before copying publications or significant parts of them. When in doubt about whether you may copy a publication, consult the Legal Department.

- *D. Handling the Confidential Information of Others*

The Company has many kinds of business relationships with many companies and individuals. Sometimes, they will volunteer confidential information about their products or business plans to induce the Company to enter into a business relationship. At other times, we may request that a third party provide confidential information to permit the Company to evaluate a potential business relationship with that party. In other circumstances, a company may provide us with confidential, personally identifiable information, such as health or financial records, about individuals that are customers of that company so that we may provide that company with services that utilize those records. Whatever the situation, we must take special care to handle the confidential information of others responsibly. We handle such confidential information in accordance with our agreements with such third parties and with all applicable laws.

- **(i) Appropriate Non-Disclosure Agreements.** Confidential information may take many forms. An oral presentation about a company's product development plans may contain protected trade secrets. A customer list or employee list may be a protected trade secret. A demo of an alpha version of a company's new software may contain information protected by trade secret and copyright laws. An electronic health or financial account record may contain personally identifiable information that is protected by laws such as Health Insurance Portability and Accountability Act ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH").

You should never accept information offered by a third party that is represented as confidential, or which appears from the context or circumstances to be confidential, unless an appropriate non-disclosure agreement has been signed with the party offering the information. **THE LEGAL DEPARTMENT CAN PROVIDE NON-DISCLOSURE AGREEMENTS TO FIT ANY PARTICULAR SITUATION, AND WILL COORDINATE APPROPRIATE EXECUTION OF SUCH AGREEMENTS ON BEHALF OF THE COMPANY.** The

Company's standard form non-disclosure agreement applicable to most commercial transactions is posted on the internal web site. Even after a non-disclosure agreement is in place, you should accept only the minimum amount of information necessary to accomplish the purpose of receiving it, such as a decision on whether to proceed to negotiate a deal. If more detailed or extensive confidential information is offered and it is not necessary, for your immediate purposes, it should be refused.

- **(ii) Need-to-Know.** Once a third party's confidential information has been disclosed to the Company, we have an obligation to abide by the terms of the relevant non-disclosure agreement and applicable law, and limit its use to the specific purpose for which it was disclosed and to disseminate it only to other Company employees with a need to know the information. Every employee, agent and contractor involved in a potential business relationship with a third party must understand and strictly observe the restrictions on the use and handling of confidential information. When in doubt, consult the Legal Department.
- **(iii) Notes and Reports.** When reviewing the confidential information of a third party under a non-disclosure agreement, it is natural to take notes or prepare reports summarizing the results of the review and, based partly on those notes or reports, to draw conclusions about the suitability of a business relationship. Notes or reports, however, can include confidential information disclosed by the other party and so should be retained only long enough to complete the evaluation of the potential business relationship. Subsequently, they should be either destroyed or turned over to the Legal Department for safekeeping or destruction. They should be treated just as any other disclosure of confidential information is treated: marked as confidential and distributed only to those Company employees with a need to know.
- **(iv) Competitive Information.** You should never attempt to obtain a competitor's confidential information by improper means, and you should especially never contact a competitor regarding their confidential information. While the Company may, and does, employ former employees of competitors, we recognize and respect the obligations of those employees not to use or disclose the confidential information of their former employers.
- **(v) Personally Identifiable Information.** Special rules dictated by law apply when dealing with personally identifiable information (i.e. information about an individual that normally would be confidential and that contains data from which the identity of the individual could be determined; examples include, but are not limited to, health care records and financial records). Depending



upon the type of personally identifiable information at issue, laws may require that records be kept documenting: each person who viewed, accessed or obtained knowledge of the information; each copy made of the information; each use of the information; and evidence of the proper destruction of each copy of the information. Some laws, such as HITECH, grant the individual who is the subject of the record the right to demand an accounting of all storage, access and use of his or her information from any company that received it. Our Company policy, therefore, is not to accept such information from a third party unless absolutely necessary and not until after all controls have been put into place to isolate and protect such information while it is in our Company's hands. Before entering into a business transaction that will require the Company to accept such information, it is the responsibility of the business team, working with groups that include Legal, Operations, IT and Services to insure that all necessary controls are in place to allow the Company to perform its obligations under both the contract and the law. The Company's rules for accepting and handling personally identifiable information are described more fully in the Personally Identifiable Information Policy, which is available on tibbr in the "Policies" group. In the event you become aware of, or suspect that an unauthorized disclosure or loss of personally identifiable information has occurred, you are required to report this event. Reports may be made, without fear of reprisal, threats, retribution or retaliation, through any of the whistleblower channels described earlier, including the [www.ethicspoint.com](http://www.ethicspoint.com) site or EthicsPoint hotline.

- *E. Selecting Suppliers*

The Company's suppliers make significant contributions to our success. To create an environment where our suppliers have an incentive to work with the Company, they must be confident that they will be treated lawfully and in an ethical manner. The Company's policy is to purchase supplies based on need, quality, service, price and terms and conditions. The Company's policy is to select significant suppliers or enter into significant supplier agreements through a competitive bid process where possible. Under no circumstances should any Company employee, agent or contractor attempt to coerce suppliers in any way. The confidential information of a supplier is entitled to the same protection as that of any other third party and must not be received before an appropriate non-disclosure agreement has been signed. A supplier's performance should never be discussed with anyone outside the Company without the supplier's specific prior consent. A supplier to the Company is generally free to sell its products

or services to any other party, including competitors of the Company. In some cases where the products or services have been designed, fabricated, or developed to our specifications the agreement between the parties may contain restrictions on sales. Always consult the Legal Department in advance with respect to any such restrictions.

- *F. Government Relations*

It is the Company's policy to comply fully with all applicable laws and regulations governing contact and dealings with government employees and public officials, and to adhere to high ethical, moral and legal standards of business conduct. This policy includes strict compliance with all local, state, federal, foreign and other applicable laws, rules and regulations. All employees must comply with our Code of Government Business Ethics, which is posted in the "Policies" group on tibbr. If you have any questions concerning government relations you should contact the Company's Legal Department.

- *G. Lobbying*

Employees, agents or contractors whose work requires lobbying communication with any member or employee of a legislative body or with any government official or employee in the formulation of legislation must have prior written approval of such activity from the Company's General Counsel. Activity covered by this policy includes meetings with legislators or members of their staffs or with senior executive branch officials. Preparation, research, and other background activities that are done in support of lobbying communication are also covered by this policy even if the communication ultimately is not made.

- *H. Government Contracts*

It is the Company's policy to comply fully with all applicable laws and regulations that apply to government contracting. It is also necessary to strictly adhere to all terms and conditions of any contract with local, state, federal, foreign or other applicable governments. The Company's Legal Department must review and approve all contracts with any government entity.

- *I. Free and Fair Competition*

Most countries have well developed bodies of law designed to encourage and protect free and fair competition. The Company is committed to obeying both the letter and spirit of these laws. The consequences of not doing so can be severe.

These laws often regulate the Company's relationships with its distributors, resellers, dealers, and customers. Competition laws generally address the following areas: pricing practices (including

price discrimination), discounting, terms of sale, credit terms, promotional allowances, secret rebates, exclusive dealerships or distributorships, product bundling, restrictions on carrying competing products, termination, and many other practices.

Competition laws also govern, usually quite strictly, relationships between the Company and its competitors. As a general rule, contacts with competitors should be limited and should always avoid subjects such as prices or other terms and conditions of sale, customers, and suppliers. Employees, agents or contractors of the Company may not knowingly make false or misleading statements regarding its competitors or the products of its competitors, customers or suppliers. Participating with competitors in a trade association or in a standards creation body is acceptable when the association has been properly established, has a legitimate purpose, and has limited its activities to that purpose.

No employee, agent or contractor shall at any time or under any circumstances enter into an agreement or understanding, written or oral, express or implied, with any competitor concerning prices, discounts, other terms or conditions of sale, profits or profit margins, costs, allocation of product or geographic markets, allocation of customers, limitations on production, boycotts of customers or suppliers, or bids or the intent to bid or even discuss or exchange information on these subjects. In some cases, legitimate joint ventures with competitors may permit exceptions to these rules as may bona fide purchases from or sales to competitors on non competitive products, but the Company's Legal Department must review all such proposed ventures in advance. These prohibitions are absolute and strict observance is required. Collusion among competitors is illegal, and the consequences of a violation are severe.

Although the spirit of these laws, known as "antitrust," "competition," or "consumer protection" or unfair competition laws, is straightforward, their application to particular situations can be quite complex. To ensure that the Company complies fully with these laws, each of us should have a basic knowledge of them and should involve our Legal Department early on when questionable situations arise.

- *J. Industrial Espionage*

It is the Company's policy to lawfully compete in the marketplace. This commitment to fairness includes respecting the rights of our competitors and abiding by all applicable laws in the course of competing. The purpose of this policy is to maintain the Company's reputation as a lawful competitor and to help ensure the integrity of the competitive marketplace. The Company

expects its competitors to respect our rights to compete lawfully in the marketplace, and we must respect their rights equally. Company employees, agents and contractors may not steal or unlawfully use the information, material, products, intellectual property, or proprietary or confidential information of anyone including suppliers, customers, business partners or competitors.

#### *V. Waivers*

Any waiver of any provision of this Code of Business Conduct and Ethics for a member of the Company's Board of Directors or an executive officer must be approved in writing by the Company's Board of Directors and promptly disclosed. Any waiver of any provision of this Code of Business Conduct and Ethics with respect any other employee, agent or contractor must be approved in writing by the Company's General Counsel.

#### *VI. Disciplinary Actions*

The matters covered in this Code of Business Conduct and Ethics are of the utmost importance to the Company, its stockholders and its business partners, and are essential to the Company's ability to conduct its business in accordance with its stated values. We expect all of our employees, agents, contractors and consultants to adhere to these rules in carrying out their duties for the Company.

The Company will take appropriate action against any employee, agent, contractor or consultant whose actions are found to violate these policies or any other policies of the Company. Disciplinary actions may include immediate termination of employment or business relationship at the Company's sole discretion. Where the Company has suffered a loss, it may pursue its remedies against the individuals or entities responsible. Where laws have been violated, the Company will cooperate fully with the appropriate authorities. You should review all the Company's policies and procedures which are posted in the "Policies" group on tibbr.

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