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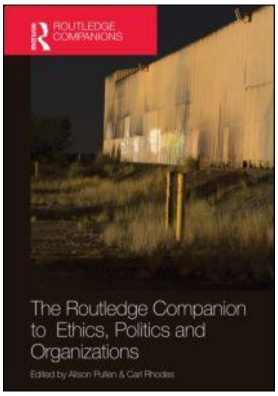

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A critical analysis of ethics management practices

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A critical analysis of ethics management practices

Mollie Painter-Morland

In this chapter, we will be critically evaluating certain best practice elements of what is referred to as 'ethics management' in corporate environments. It will become clear that, paradoxically, 'ethics management' is often pursued without much consideration for its ethico-political effects. Part of the reason for this may be that 'ethics management', as a subsection of 'business ethics', is focused on meso-level (organizational) and micro-level (individual) ethical interventions. As such, much of the 'ethics management' literature shirks engagement with broader macro-economic concerns, and often avoids addressing the political dimensions of organizational life in any kind of depth. The absence of an engagement with the broader political economy has led many critical management scholars to view the entire pursuit of 'business ethics' with suspicion (Jones et al., 2005). Those political aspects that create the legal risks for the organization, such as equal opportunity and diversity policies, labour relations and whistleblowing, are often managed by means of policies and procedures within a broader compliance framework. As such, issues of power and identity are 'managed' in order to establish organizational control over the behaviours and perceptions of employees and other stakeholders. When this is done for the purposes of safeguarding the interests of the corporation, rather than as a result of a concern for safeguarding certain values or protecting certain rights, critical questions must be asked. The 'means to an end' orientation implicit in these practices could in fact make well-intentioned practitioners blind to the limitations of ethics management programmes in terms of making a real difference in terms of responsible and sustainable business practices.

In what follows, it will become clear that the implementation of corporate ethics management practices can be strangely a-political in nature, at least in its avoidance of addressing the issues of power, identity and agency that are inherent (Alvesson and Willmott, 2002) yet hidden within much of organizational life (McMurray et al., 2011). There also seems to be a serious disconnect between the proclaimed values articulated in many corporate Codes of Conduct, and the lack of concern for moral dilemmas emerging from the negative effects of the neoliberal forms of capitalism that has taken root globally (Edward and Willmott, 2008). Though much has been published on the effect of management control of individual identity within corporations and the abuse of power inherent within it, these insights typically emerge from the 'critical management' literature and rarely penetrate the 'business ethics' discipline. More recently, there have been more systematic attempts to create a conversation between scholars working in the

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organization studies/critical management literature and those who publish in the 'business ethics' areas (Jones et al., 2005; Painter-Morland and ten Bos, 2011). More critical articles about business ethics practices have also started to appear in mainstream business ethics journals (see, for example, Ibarra-Colado et al., 2006), but it has not really spurred any real change in how corporate ethics programmes are pursued.

In what follows, we will plot the way in which 'business ethics' has been approached from a managerial point of view and comment on its ethico-political implications. Much of the roots of 'best practice' in this area are American in origin (Weaver et al., 1999), but since multinational corporations face litigation risks globally, some elements of these best practice models, such as board supervision of ethics, compliance and sustainability, and the adoption of codes of conduct, have now also become common in Europe and in Japan (Kolk, 2008). It will become clear that in an attempt to 'manage' workplace ethics in a consistent manner globally, many practices have emerged that may be questioned from an ethico-political perspective. This paradoxical reality is one that is likely to persist, as the prevalence of compliance programmes is likely to increase. As such, it may be necessary to accept the ambiguities that exist within this reality, and explore the creative moments and the latent opportunities for resistance that lie within it. It is therefore important to put the ethical and political implications of standard ethics management programmes into relief.

Ethics as compliance[1]

'Best practice' within ethics management has a distinct history, informed by certain legislative developments in the USA and elsewhere. We will therefore focus on the dimensions of ethics management practices as they have emerged from the various iterations of the Federal Sentencing Guidelines (FSG) for Corporations in the USA.[2] From a business ethics perspective, the fact that the US Sentencing Commission provided parameters for federal judges to follow in their sentencing of business organizations is not its most significant contribution. More important is the Federal Sentencing Commission's introduction of guidelines that incentivize business organizations to proactively fight corporate misconduct by implementing structured ethics and compliance programmes. According to the FSG, a business organization that has certain programme elements in place when it is charged with corporate misconduct and that cooperates fully with investigating authorities, might be given a reduced fine, or even avoid prosecution altogether. The problem, of course, is that when ethics programmes are motivated by this kind of logic, they could end up being no more than relatively cheap insurance policies against costly lawsuits. It will become clear that, paradoxically, this legal intervention has led to a check-the-box mentality that essentially avoids any real engagement with the ethico-political realities within organizations. There are unfortunately many such corporate ethics programmes that look good only on paper.

The Federal Sentencing Guidelines for Corporations, which have undergone several iterations that we will discuss below, includes a description of seven steps that should be taken in the establishment of an ethics and compliance programme.[3] The FSG include elements of best practice ethics management techniques, such as the development of a code, the implementation of ethics training, setting up reporting channels, ensuring proper communication of ethical standards and raising ethical awareness, as well as the enforcement of discipline (Driscoll and Hoffman, 1999). These elements are now typical of most ethics programmes and can, for the purposes of our discussion here, be meaningfully divided into three basic elements or phases, namely: *motivation*, *formulation* and *integration*. The first of these has to do with the process of establishing a rationale for an ethics programme within an organization. Ethical risk assessments are often employed to

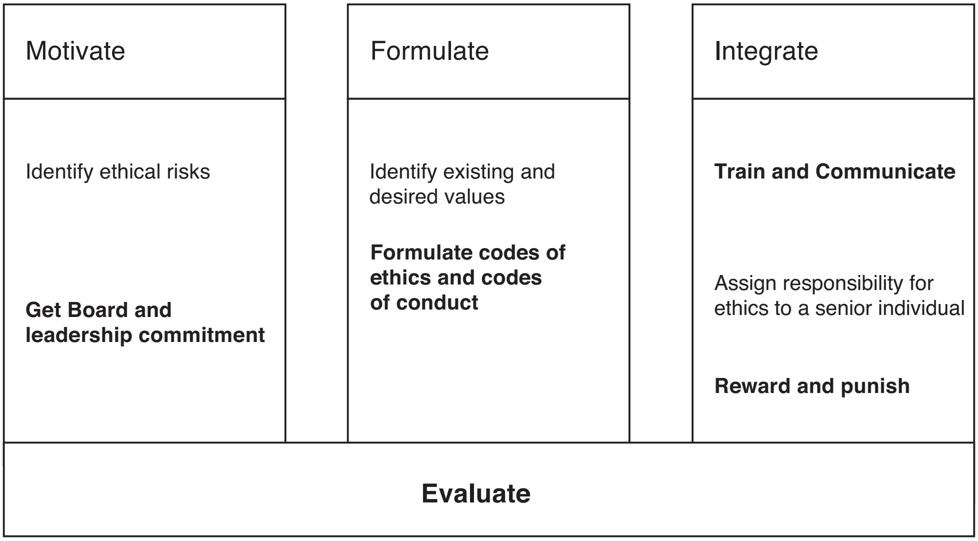

Figure 21.1 Phases and elements of a typical 'ethics management' programme

this end. The *formulation* phase of an ethics programme typically includes the establishment of some source of normative orientation. This is mostly done by means of an organizational code of conduct. In most cases, the *integration* phase of an ethics programme is a multifaceted process that includes the appointment of an ethics officer, the roll-out of a training and communication programme, the establishment of reporting channels, the enforcement of rules and regulations through the implementation of disciplinary procedures against offenders, and doing regular audits. Ethics programmes typically also include a fourth element, namely 'evaluation'. However, various forms of evaluation are typically included as part of the motivation, formulation and integration of such programmes in organizations. As such, they are more meaningfully discussed within the context of each of these three aspects of a typical ethics programme. The motivation phase of an ethics programme, for instance, typically includes an assessment of the ethical risks that are present within an organizational environment. To formulate meaningful points of normative orientation for the members of an organization, some sort of evaluation is usually done to find out what they value and believe. As part of the process of integrating ethics into the life of an organization, it is usually necessary to establish how values are reflected in formal and informal systems and how they are integrated across organizational functions and silos. Evaluation is also part of how an organization reports on its activities. In Figure 21.1, the main elements of best practice in ethics management are indicated. In this chapter, we will only focus on the elements highlighted in bold, in order to allow for a certain depth of analysis.

Motivation: fear of penalty and ethical risk

One of the main challenges for practitioners in the ethics and compliance field is to motivate the leadership of organizations to invest money, time and effort in ethics programmes. The reason for this resides in the fact that corporations are basically seen as a nexus of contracts, and are as such faced with a number of conflicting duties. In a corporate context some believe that meeting shareholders' legitimate expectation of profit *and* attending to ethical concerns do not

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necessarily sit well together. These perceived conflicting duties are also referred to in the literature as the 'separation thesis', i.e. business activities and discussions about ethics and social issues are not supposed to mix. Though Freeman et al. (2010) have convincingly argued against the separation thesis, it persists in much of business practice. Business leaders are always vulnerable to the charge that they misallocate shareholders' resources when they address social, environmental or other ethical concerns (Margolis and Walsh, 2003). Making the argument for attending to ethical issues has led to a preoccupation with establishing the 'business case for ethics', which has dominated a large part of the business ethics literature since the turn of the century (Paine, 2000). As mentioned above, the need for compliance with the Federal Sentencing Guidelines, the protection of an organization against lawsuits and liability or the requirements under the Sarbanes–Oxley Act, the SOX requirements (Joseph, 2002), did assist in making the argument for addressing ethical considerations slightly easier, even if it just argues that compliance programmes can prevent expensive fines (Desio, 2005).

In the first few years of the twenty-first century, however, it soon proved to be counter-productive to focus merely on minimalist compliance, instead of attending to broader ethical concerns. But again, the response was a legalistic one. The spate of corporate scandals that followed the initial introduction of the Federal Sentencing Guidelines in 1991 compelled the Federal Sentencing Commission to reassess the compliance-driven approach that it had initially adopted. In the process, the members of the commission became convinced that an important element was missing from business organizations' compliance programmes. In 2004, the commission decided to literally replace every reference to "compliance", in the 1991 guidelines, with "ethics and compliance". In the new FSG, the criteria for effective compliance and ethics programmes are discussed separately (in guideline s.8B2.1.), underlining the importance that the commission attaches to such programmes. The commission also elaborated on these criteria, generally introducing greater rigour and assigning significantly more responsibility to the governing authority (e.g. board of directors) and executive leadership of an organization. To meet the new standards, an organization must demonstrate that it had exercised due diligence in fulfilling the FSG requirements. In addition, it has to show that it has promoted "an organizational culture that encourages ethical conduct and a commitment to compliance with the law". As a well-known ethics consultant, Ed Petry points out, other agencies, like the US Securities and Exchange Commission (SEC), the New York Stock Exchange, Congress, the Department of Justice and various rating agencies, have all joined the Sentencing Commission in weighing in on the issue of corporate culture (Petry, 2005).

As a result of these developments, the interest in measuring various dimensions of organizational culture has grown. In fact, it could be argued that in the USA today, managing organizational culture is 'a modern business imperative'.[4] Organizational culture is supposed to articulate 'the way we do things around here', in a way that avoids behaviours that could lead to litigation against the corporation. It is less interested on the dynamics of power and influence that are exercised through cultural interventions. In fact, Parker (2000) criticized the main texts focusing on organizational culture, such as Peters and Waterman's *In Search of Excellence* (1982), Ouchi's *Theory Z* (1981) and Deal and Kennedy's *Corporate Cultures* (1988), for their "self-help tone". The management of organizational culture is largely pursued because it promises to deliver efficiency, job satisfaction and a number of other benefits (Parker, 2000: 15). The roots of this kind of optimistic belief in corporations' ability to manage organizational culture may lie in how it is defined. For Trevino et al. (2001), organizational culture is both the medium and the outcome of social interaction. From this perspective, ethical culture is viewed as a subset of organizational culture, which reflects the multidimensional interplay between formal and informal behavioural control within organizations. Culture signals the boundaries between what

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is legitimate and unacceptable within a particular social setting. In this definition, "organizational culture" is a characteristic of an organization and therefore something that can be assessed, described and managed (Kaptein, 2009: 262). However, others are less confident that culture is a 'manageable' aspect of organizational life. Willmott (2011) has for instance rejected the typical assumption of homogeneity that corporate cultural interventions seem to rely on. According to Hofstede et al. (1990), there is no commonly accepted definition of organizational culture. They argue, however, that there are a number of characteristics that are common to most authors' conception of organizational/corporate culture. They describe organizational/corporate culture as holistic, socially constructed, historically determined and difficult to change. It is a "soft" construct, related to anthropological concepts.

More importantly, one should question whether culture management is in fact desirable from an ethical and political perspective. Critical management scholars have critiqued the way in which corporate culture is employed as a management tool that blunts individual moral responsibility. Some of the objections include the effect of employees in terms of the control they attempt to exercise (Stansbury and Barry, 2007), the identity formation that takes place (Kornberger and Brown, 2007) and the fact that corporate culture intrudes on personal values, feelings and identifications on which management have no legitimate claim. It is therefore clear that these ethical interventions have all kinds of political implications in terms of the power dynamics within organizations. When ethics programmes are primarily focused on building cultures of control and conformance, their functioning is paradoxically in fact not too far removed from the kind of managerial control mechanisms operating in corporate cultures such as that of Enron, which also dictated certain behavioural patterns and conformity to particular identity constructs. One has to question whether the ethical failures associated with behavioural conformity to unethical corporate cultures can be fixed by behavioural conformity to 'ethical cultures'. Instead, we may want to consider the possibility that simplistic behavioural conformity in and of itself leads to ethical failure.

Codes of conduct as principled statements

The objection that ethics management programmes have a negative effect on individual moral responsibility is also raised in the context of the implementation of Corporate Codes of Conduct (Painter-Morland, 2010). Codes of conduct are typical organizational expressions of value priorities, which are intended to inform the normative sensibilities of those who participate in an organizational system. Those normative notions that represent moral truths or ideals within an organizational system are often referred to as 'core values'. These values are usually organized and discussed in "Values Statements", "Codes of Ethics" or "Codes of Conduct". Typically, a "Values Statement" consists of a brief aspirational enumeration of the normative commitments that an organization makes to its stakeholders. One of the best examples of a values statement is Johnson & Johnson's Credo.[5] A code of ethics is normally slightly longer, but still aspirational rather than directive in tone. Codes of conduct, however, tend to be directive in form and intent. Their purpose is to provide employees with behavioural guidelines. In many cases, these codes are supported by a whole hierarchy of policy documents and organizational procedures (Rossouw, 2002). This array of documents has long been seen as one of the most important elements of a successful ethics management programme.

However, codes are often regarded with scepticism by both internal and external stakeholders. They are perceived as window dressing, as public relations exercises that have no real effect on "business as usual". Doubts about the effectiveness of codes are regularly expressed in business ethics literature. Studies have yielded mixed results. Loe et al. (2000), for instance, found

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that in most of the 17 empirical studies that they consulted, a positive relationship could be established between ethical codes and ethical behaviour. Schwartz (2000), on the other hand, analysed 19 such studies, and could find such a positive relationship in only 9 of these. There seems therefore to be no definitive evidence that codes have a significant effect on ethical behaviour in organizations (Pater and van Gils, 2003: 764).

The objections that are raised against codes in business ethics discourses range from a critique of their intent and the implications of their promulgation, to realistic assessments of their use. Researchers point out that since many codes are promulgated to comply with regulatory demands, or to reduce companies' legal risks, they induce only routinized compliance (Fisher, 2001: 148). Codes that are primarily drawn up to limit a company's legal liabilities, therefore, tend to reflect little of what is really valued by, or expected of, those who participate in an organizational system. Schwartz (2000) concurs that codes are mostly inward-looking, i.e. aimed at behavioural conformity. It does not typically reflect on the ethico-political broader issues that pertain to a company's functioning. Though some mention may be made of a corporation's responsibility towards its stakeholders, the environment and society as a whole, the behavioural guidelines it offers are typically focused in the micro (individual) behavioural dimension. This is unfortunately true across the board. In fact, when comparing the various codes of corporations, they all basically read the same (Willmott, 2011). As such, they are standardized attempts at dealing with a relatively fixed list of 'stakeholders'.

The way in which codes name certain 'stakeholders' and attempt to define duties towards them is based on the assumption that employees are independent, rational subjects who can act on certain stated duties. It also assumes that all stakeholder demands can be rationally determined. This view of human agency, and its concomitant understanding of our needs and motivations, has been challenged, yet codes still seem to implicitly rely on it. From a Levinasian perspective, codes translate the Other in terms of the self, making them palatable, safe (Painter-Morland, 2010). In naming the Other in terms of the "stake" or the "role" that they have or play in furthering corporate (self-)interest, the unique moral appeal of the other person cannot be fully appreciated. An over-reliance on codified statements can mask the face-to-face relationship, which is central to moral responsiveness, instead of facilitating it. To the extent that there is merit in these charges, the apathy generated by codes may actually contribute to the a-political and amoral nature of much of business practice.

It has been argued that codes do little to stimulate moral discretion. In fact, the kind of behavioural conformity that they advocate discourages moral responsiveness by undermining individual autonomy. Kjonstad and Willmott (1995) make a distinction between restrictive ethics and empowering ethics. The former is concerned with formulating and operationalizing codes of conduct, the latter with moral learning and development. They argue that moral reasoning should be less routinized and include intuitive sensemaking. Codes offer instructions but are less capable of what Kjonstad and Willmott call, "reflective practical understanding of the normative organization of human interaction". This kind of understanding requires an integration of intuition and compassion and an awareness of the relational aspects of our human reality. Most codes draw on certain abstract moral principles, which are claimed to have gained universal acceptance, as is reflected in the term 'hypernorms' (Donaldson and Dunfee, 1999), which are supposed to trump differences in values that may emerge as a result of cultural and gender diversity. The problem in the process of its application, the particular is effaced by the claim to universality. Also, the assumed 'universal truth' typically represents those opinions held by custodians of the status quo, thus repressing dissident voices.

Codes may also have unintended negative effects on employees' commitment to ethical standards. Fisher interviewed 45 financial and human resource managers in order to engage

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them in a dialogue on how they perceived the meaning of ethical codes within their organizations (Fisher, 2001: 146–147). Respondents indicated that they paid little attention to codes because they considered them banal and unnecessary. They felt that codes undervalued their experience, stated the obvious and insulted their moral intelligence. Some commented that they felt as though their honesty and integrity were being called into question when they were required to sign certificates to confirm their willingness to abide by a code. Schwartz goes so far as to argue that codes alienate employees from their innate morality (Schwartz, 2000: 176). A study by Pater and van Gils (2003) seems to lend support to this idea. They found that the presence of an ethical code had a negative effect on individual ethical decision making. Their explanation for this counter-intuitive finding is that the existence of control mechanisms and rules do not affect the ethical attitudes that actually inform behaviour. Providing more detail in codes of conduct can be counterproductive, as it leaves no room for individual discretion. In fact, a heavy reliance on rules and policies may bring individuals to the conclusion that if something is not strictly forbidden, it is permissible. There are various other authors who attribute the indifferent attitudes of employees to codes to the fact that people believe themselves capable of distinguishing right from wrong without the guidance of a code. Many also believe that an individual's moral sensibilities are shaped early on in life and that it is therefore not something that can be taught or acquired at work.

A further problem regarding codes relates to the way in which they are disseminated. Research has shown that though a very large percentage of organizations have a code, a much smaller percentage of employees are aware of its existence and an even smaller number are versed in its content. This study also found that the existence of a code was unlikely to have an effect on an employee's decision to report observed unethical behaviour (Somers, 2001). In a sense, codes exemplify the basic philosophical challenge of bridging the gap between theory and practice. Codes are often perceived as theoretical exercises, which are embarked upon for instrumental reasons. Many authors argue that codes are only effective insofar as they are enforced and communicated via effective ethics training programmes (Wotruba et al., 2001). These authors believe that the relevance of codes may be demonstrated through the practical case study discussions that are part of many ethics training programmes. Whether this strategy really succeeds in bridging the gap between theory and practice remains questionable, however. Nevertheless, training programmes on company codes of conduct remain central to most companies' ethics and compliance efforts and it is to a careful consideration of the way in which they are used that we turn next.

Ethics training focused on rational, principled problem-solving

The first, and most basic, question to be asked about ethics training is, of course, whether 'ethics' can be taught. This question has preoccupied many ethicists, since it concerns the very essence of many teaching and consulting careers. Michael Hoffman, one of the fathers of the business ethics movement in the USA, has argued that ethics training enhances people's ethical awareness by informing them of their organizations' values and sensitizing them towards the moral dilemmas that they may be confronted with as a result of their commitment to these values (Driscoll and Hoffman, 1999). He insists that exposure to some of the philosophical approaches that may be employed in ethical reasoning helps people to think through moral dilemmas. Hoffman believes that case study discussions assist people in the practical application of philosophical reasoning skills. Through this developmental process, participants progress through the phases of basic moral awareness, to employing philosophical reasoning skills to the ability to apply principles to

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practice. Hoffman contends that moral development culminates in ethical leadership. Hoffman's approach, like that of many other business ethicists, relies on a linear model of moral development. Lawrence Kohlberg's (1981) theory is emblematic of these ideas about moral development. Kohlberg's research led him to conclude that an individual's moral sensibilities develop progressively, through stages, as he/she learns to think about moral issues, first in a "pre-conventional", then in a "conventional" and finally in a "post-conventional" way. In the post-conventional phase, the individual finally masters principled thinking. This, Kohlberg insists, allows the individual to think through moral dilemmas independently and thus make objective, rational decisions based on moral principles. Kohlberg's theory has been criticized for a number of reasons. Feminists scholars, like Carol Gilligan (1982), for instance, have criticized what they see as gender biases in Kohlberg's research. Kohlberg's theory creates the impression that principled reasoning is the epitome of moral maturity. In the process, other forms of moral responsiveness, such as the ability to assume responsibility and to take care of others, is made to seem inferior. Gilligan points out that the ability to take care and a concern for sustaining relationships is primarily associated with the moral sensibilities of women. She argues, therefore, that to portray principled reasoning as the height of moral maturity, as Kohlberg seems to do, is sexist and discriminatory.

Objections such as Gilligan's seem not to have dissuaded the majority of business ethicists from making principled reasoning the focus, and ultimate goal, of all their training initiatives in corporate ethics programmes. Interestingly, it is possible to detect what seems to be an implicit recognition of the limitations of principled reasoning in the proposals of some scholars. These limitations are, however, interpreted as something that can be compensated for by increasing the scope of principled considerations that are brought to bear on ethical problems. Petrick and Quinn's (2000) integrity capacity construct includes a combination of four ethics theories (deontological, teleological, rights and systems development) with four legal theories (natural law, positive law, civic responsibility and social reform). They argue that individuals with high integrity capacity are capable of cognitively balancing the guiding principles of these theories when faced with a moral dilemma. Kulik (2005) has carefully considered Petrick and Quinn's proposals in relation to the collapse of Enron to try and ascertain whether this form of integrity capacity could have helped to prevent the ethical failures of those involved. His conclusion was that it probably wouldn't have made a difference. Individuals may actually use the notion of "balancing" considerations to justify actions that may otherwise seem patently wrong. To this end they may have invoked a (mistaken) utilitarian understanding of the "greatest good" to justify their reporting practices as a measure that gave their shareholders the best possible advantage. They may also have thought it reasonable to "balance" the requirements of legal theories with the ability to go beyond "mere compliance" in considering their "creative" accounting practices. After all, those involved often argued that they were breaking new ground and that it was impossible to predict what would be legal in future. It seems then that ethical theories can be made to serve self-deceiving justifications of corporate wrongdoing. They may be especially vulnerable to this kind of cynical exploitation if they are only briefly explained in the most general of terms.

In large companies, information technology is increasingly being used in ethics training. This makes it possible to record the number of staff members who completed an ethics training programme, which is important in proving compliance with the FSG. Further advantages include cost-effectiveness, timeliness and expediency. However, these features of computer-based ethics training may also limit its value as far as having a real effect on people's beliefs, perceptions and behaviour is concerned. In online ethics training, ethics is treated as though it comprises a fixed body of knowledge, which can be digitized and "downloaded" for easy consumption. Often these ethics training programmes measure a candidates' learning by means of a multiple-choice

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test at the end of the programme. This method is often met with cynicism and casually completed for compliance sake. As such, it is unlikely to have any meaningful effect on people's everyday behaviour. Since the 'ethics training' that takes place online is distinctly disembodied, it is unable to stimulate the kind of practical engagement that could change habits or foster critical discussion. One of the challenges that ethics training programmes face, is the fact that they compete with other job-related skills programmes for time, attention and funding. Time-consuming and costly face-to-face ethics training is therefore likely to be limited to annual or one-off events. As such, ethics training remains low on the priority list of both supervisors and staff.

Despite these practical problems, the assumptions that underpin these ethics training programmes may be their main downfall. The fact that so much emphasis is placed on deliberate, principled reasoning in ethics training programmes limits the ability to insert ethics into the normal, everyday concerns of business practice. This preoccupation with deliberate, principled reasoning may be attributed to a number of important, though often largely unexamined, assumptions. The first of these has to do with the nature of moral agency. Many business ethicists and practitioners uncritically assume that individuals are deliberating agents, who have the ability to objectively consider all the various contingencies that pertain to a particular situation before making a decision, or taking action. A second, related assumption is that ethical learning takes place in a deliberate fashion. The emphasis that is placed on deliberate, principled reasoning effectively enforces a separation between theory and practice. These assumptions have been challenged by recent scholarship. In the first place, it has to be acknowledged that human agency is much more complex in nature and that much of 'decision making' is the result of 'passive syntheses' that are only rationalized by means of principles after the fact (Painter-Morland, 2011). The problem is that many ethics training programmes create the impression that morality is something that is properly contemplated in a state of rational detachment. That is to say, they encourage people to consider their ethical responsibilities 'objectively', and not to allow their judgement to be 'contaminated' by personal or contextual biases. Ethics thus becomes a matter of principle, rather than practice. This contributes to the impression that ethical considerations are *checks* on business practice, rather than a normal *part* of everyday business practice.

Another serious limitation of many 'ethics training' programmes is that they focus on micro-level individual dilemmas such as whether one should accept a gift from a supplier, or how one can go about avoiding insider trading or conflicts of interest. Broader ethical dilemmas that acknowledge the political dimension of the organization are often avoided in order to steer clear of sensitive political issues that could elicit emotion or dissent. The focus on cerebral decision making, focus on 'rational' reasoning and factual evidence that is solution-driven, have also led to a distinctly disembodied experience of ethical 'decision-making'. The limitations of this approach have led management scholars to argue for an acknowledgement of embodiment as an important part of organizational life (Kupers, 2011) and for embodied intuition as an important asset in 'decision-making' (Painter-Morland, 2013).

Evaluating: the quest for control

Another side-product of the 'ethics management' approach to workplace ethics is the preoccupation with measurement, which is a result of the attempt of corporate managers to control their employees and their corporate reputations. All kinds of measurement and control systems exist within organizations. For instance, the emphasis on managing organizational cultures has resulted in a proliferation of new culture/climate survey instruments, and ethical risks are constantly monitored. In what follows, however, we focus our attention on other important

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'ethics management' practices, i.e. the existence of rewards to incentivize either ethical/unethical behaviours, and the attempt to show that ethical performance 'pays' in terms of organizations' financial bottom lines.

The 'can we pay for ethics?' question

In an attempt to create incentives for employees and managers to comply with ethical codes and procedures, the integration of ethics criteria into performance management systems has become a standard feature of most ethics management programmes. Many theoretical justifications have been offered for this practice. "Reinforcement theory", for instance, suggests that an organization can induce ethical behaviour among its employees by institutionalizing rewards and punishments for ethics. Empirical studies have attempted to illustrate that unethical behaviour increases if the perception exists that an organization rewards such behaviour. It has also been hypothesized that inconsistent rewards and discipline promote justifications or rationalizations of unethical behaviour. Trevino and Youngblood (1990) have specifically studied the impact of organizational reward systems on ethical behaviour. The aim of their research was to try to establish whether unethical behaviour is the result of "rotten apples", i.e. morally flawed individuals, or "rotten barrels", i.e. an immoral organizational ethos. Using what they call their "interactionalist" approach, they investigated the intricate relationships between individual moral development, locus of control, rewards, and ethical decision-making behaviour. Their conclusion was that individual managers' cognitive moral development and locus of control does affect their decision making (Trevino and Youngblood, 1990: 382). They argued that rewards play into this decision-making process by influencing individuals' outcome expectancies. However, Trevino and Youngblood were unable to establish a direct link between perceived reward system pressures and ethical decision making. Ashkanasy et al. (2006) also explored the relationship between rewards and ethical behaviour. Their study suggests that it is a combination of individual moral development, deeply held beliefs and organizational cues that informs ethical behaviour. Like Trevino and Youngblood, Ashkanasy et al. (2006: 465) did not find a significant relationship between perceptions of ethical reward and ethical behaviour. In this study, the only group of people influenced by perceptions of reward was pragmatic managers, whose cognitive moral development was rated low by the researchers. It could be argued, however, that this is the profile of most business managers. If this is the case, then the results of Ashkanasy et al.'s study may be used to justify the inclusion of ethical priorities in performance management systems. However, the individual and contextual factors that shape and inform an individual's perceptions and behaviour are by no means so clear-cut. What Ashkanasy et al.'s study points to is the complex, and often unarticulatable relationship that exists between ethical development, deeply rooted beliefs and perceptions of reward.

The internal dynamics of the Enron Corporation, prior to its catastrophic collapse, provide a cautionary tale with regards to the role that an organization's reward system can play in shaping the behaviour and priorities of those who participate in it (Tourish and Vatcha, 2005: 470). Though Enron's leaders claimed that they were committed to integrity and respect, these values played no role in the organization's performance review process (Spector, 2003: 218). Enron's human resource management system was designed to foster innovation and included both formal and informal behavioural triggers. Enron recruited candidates they considered suitably "bold, hungry and creative". Short-termism and the ruthless pursuit of profits characterized the reward structure at Enron (Fusaro and Miller, 2003: 52). It is argued that since Enron employees were incorporated into an organizational culture driven by the notion that any business manager is the agent of the shareholder, and should maximize his/her returns, personal moral responsibility

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disappeared (Kulik, 2005). Enron was equally notorious for its "rank and yank" system. This system made provision for the annual dismissal of 15 per cent of the organization's employees, based on their performance ranking. Systems such as these helped to create a pernicious, one-dimensional view of success within the organization. It was not that Enron's performance system, in and of itself, or explicitly, sanctioned immorality, or dismissed values. Rather, such were the unintended effects of a system that was designed to reward 'creativity and innovation'. These unforeseen consequences only become evident after the fact.

Some authors argue that the practice of encouraging ethical behaviour by means of performance management systems is based on questionable assumptions. Not only is there the assumption that there is a direct cause-and-effect relationship between rewards and behaviour, but it is also assumed that reward systems communicate an organization's value priorities clearly. However, organizational reward systems have been shown to be inherently ambiguous. According to Rosannas and Velilla (2005), Kerr's (1975) classical problem (i.e. "the folly of rewarding for A when hoping for B") is still very evident in organizational practices. In many cases, employees are implicitly rewarded for attitudes and behaviour that are at odds with the stated objectives of their organization's performance management system. In such cases, an organization's purposefully designed incentive system may only serve to perpetuate its management's illusions of control.

Another important perspective relates to the power dynamics that inform reward-based ethics systems. Nietzsche describes our interactions with one another and with the world that surround us as "a play of forces" (Nietzsche, 1968: s.1067). We develop conscious and unconscious strategies to deal with these forces. Morality is but one iteration of the various strategies, conventions and habits that we develop. Nietzsche (1886/1973: 45) also draws our attention to people's almost limitless capacity for self-deception and false consciousness. This leads us to what Nietzsche (1998: 11) depicted as the *herd instinct.* In the context of performance management and reward in organizations, 'herd instinct' could for instance refer to salient expectations around annual bonuses and incentive structures, such as those that dominate the financial industry. In the wake of the financial crisis, these incentives have been questioned, yet in practice they seem resistant to change. How do we get out of this kind of conventionalized thinking? (Painter-Morland, 2011). In Nietzschean terms, we need to develop the capacity for recoil and self-overcoming. This means that we must become self-conscious about our constructions of truth and develop practices that allow us to overcome the comforts of social convention. Hence, what is needed here, is the capacity for resistance. In this respect, scholars have drawn on Foucault to argue that workplace ethics needs to recover its capacity for freedom (Painter-Morland, 2011). Foucault makes it clear that there can be no ethics without freedom and recoil. In fact, he describes freedom as the ontological condition of ethics, and ethics as the considered form that this freedom takes (Foucault, 1994: 284). Ethics entails navigating, negotiating and manipulating power relationships and knowledge components within oneself and within one's environment. As such, a political engagement with questions of incentives and reward is long overdue within the business ethics literature.

The 'does ethics pay?' question

We saw that many organizations are primarily motivated to invest in ethics programmes for the sake of legal compliance and reputation management. It is not surprising, then, that they would use their public reports to give an account of the nature and extent of their compliance efforts. In recent years, more and more companies worldwide have begun to adopt the practice of preparing sustainability reports, also called "corporate social responsibility reports", "social

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environmental reports", "triple bottom-line reports" or "reports to society". Though many of these reports initially focused mainly on environmental concerns, this began to change in the first years of the twenty-first century. Since the 1990s, reporting on environmental, social, governance and ethical (ESGE) performance has grown exponentially (Hartman and Painter-Morland, 2007). And, as a result, companies have become preoccupied with determining whether this kind of 'ethics reporting' improves their financial bottom line as well. More than a decade ago, Paine (2000: 319) already pointed out that the relationship between ethics and economics has been highly variable, to say the least. Paine's argument still holds sway. In recent publications, the ambivalent relationship between ethical business and financial performance has been underscored (de Schutter, 2008; Bechetti and Ciciretti, 2009). Margolis and Walsh (2003) argued that although the overall impression of the majority of 127 studies over 30 years has been that there is a positive relationship between social (ethical) performance and financial performance, lingering questions remain about the validity and the diversity of measures that assess social performance. Their conclusion was that the relationship between corporate sustainability and corporate financial performance remains complex, ambiguous and nuanced. Yet there are some scholars who remain more optimistic: Carroll and Shabana (2010), Godfrey et al. (2009) argue that there is growing support for a positive relationship between ethical business practices and financial performance.

The debate around the question of whether 'ethics pays' is likely to continue, and has led critical management scholars to question whether this preoccupation does not distract us from more pressing ethico-political concerns. Banerjee (2008) for instance draws attention to the way in which the discourse on 'sustainable development' has been hijacked by the more general term 'sustainability' (which incorporates all ESGE issues), and then by 'corporate sustainability' which places a distinct emphasis on the well-being of the corporation:

> It is interesting to observe how notions of sustainability are constructed, manipulated and represented in both the popular business press and academic literature. As evidence of the deleterious effects of development mounted, the discourse shifted from sustainable development to the more positive sounding sustainability and then shifted the focus to corporate sustainability. Corporate discourses on sustainability produce an elision that displaces the focus from global planetary sustainability to sustaining the corporation through 'growth opportunities'.
>
> (Banerjee, 2008: 66)

The underlying assumption of 'corporate sustainability' is that business organizations should balance their profit-making capacities with a concern for ESGE issues. It glosses over the incommensurability of values – clearly corporate profits cannot and should not be measured on the same scale and in the same terms as social goods and personal well-being. Furthermore, the 'business case' for ethics perpetuates an instrumentalist view that shirks any consideration for those aspects of human existence that do not conform to a strict 'means to end' logic. As such, instrumentalism becomes the dominant mode of thinking that objectifies human beings and other animate and inanimate entities.

Reconsidering 'ethics management'

From the above analysis some key ethico-political challenges emerge. In the first place, it has become clear that questions have to be posed around the preoccupation with 'control' that emerges from the literature on organizational culture. One can anticipate that it would be difficult

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to reverse the trend to assign responsibilities to organizational leadership to manage the cultures of their organizations. The emergence of certain patterns of behaviour over time is inevitable, and as such one can understand that lawmakers and other stakeholders have an interest in making sure that corporations do not perpetuate unethical behavioural patterns and orientations. Yet the question that should be asked is to what end interventions around organizational culture is directed, and how it is pursued. Could the pursuit of 'control' over organizational cultures do more harm than good? What could be the alternative? In some ways, we are back to the basic question regarding free will and determinism. Is there still a space for 'freedom', as the kind of moral responsiveness that is not determined through organizational controls, yet neither lapses into some kind of situational relativism? 'Freedom', just like notions of 'justice' depends on an interrogation of power relationships, institutional arrangements and the identity constructs that emerge in its wake. It seems that in answering this question, basic ethico-political questions around power and agency have to be asked.

A second important set of questions therefore emerges from the above analysis, which requires further investigation, i.e. our beliefs about human beings' motivations, rationalizations and decision-making capacities. If we agree that the conception of homo economicus as a rational self-interested and incentive-driven agent is most probably flawed, what do we replace it with? It seems as if a multidisciplinary investigation of this question, drawing on philosophy, sociology, anthropology, political theory and neuroscience, to name just a few fields of study, is required. We may come to see that large areas of consensus are emerging that challenge our standard ideas around 'accountability' and 'responsibility'. This may require some serious reconsideration of how accountability is implemented in legal structures and societal institutions. In recent years, a number of critical management scholars have started to address these issues in the broader context of organizational studies. They have moved the 'organizational ethics' debates forward in ways that the traditional business ethics literature has been incapable of, perhaps precisely because they question the assumptions upon which much of 'ethics management' practice has been built. Some progress has been made, but much remains to be done.

In the first place, assumptions around human agency, motivation and rational decision making have been questioned. Hassard et al. (2000) have argued for the importance of various aspects of embodiment, such as emotions, posture, voice, aesthetics, disease, etc. for understanding organizational life. This emphasis on the embodied nature of human agency has been echoed by leadership scholars (Ladkin, 2012; Painter-Morland, 2008). In fact, in the leadership literature there has been a move away from a focus on individual leaders, who are cast as the 'strong men' (*sic*) of the organization, engaged in hierarchical 'demand-and-control' management systems. Instead, theories around relational leadership have been emerging (Cooper, 2005; Cunliffe and Eriksen, 2011), with many concomitant questions around accountability following in its wake (Painter-Morland, 2012). An acknowledgement of the embodied and relational nature of leadership has allowed scholars to rethink important leadership constructs, such as strategy (Chia and Holt, 2009) and vision (Painter-Morland and Deslandes, 2013). More sophisticated theories of motivation have also challenged workplace ethics' focus on reward, efficiency and risk management. This has led to some scholars pursuing studies on 'meaningful work' or 'work–life balance'.

Another important shift that is taking place in the business ethics arena is a realization that a broader variety of workplaces need to be reflected within the discipline. It has been apparent for some time now that the focus of most workplace ethics studies on large multinational corporations is probably misplaced, given the importance of small and medium-sized enterprises (SMEs) and other entrepreneurial ventures for job creation and societal stability. Though some

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scholars have focused their attention on SMEs (Spence and Painter-Morland, 2010), they often faced the challenge that much of what is available in terms of best practice models for ethics management or corporate social responsibility emerged from large multinationals. Even the term ‘corporate social responsibility’ is a misnomer when it comes to SMEs, and nearly no SMEs have the capacity to implement full-scale ethics programmes on the model of the FSG. It also became apparent that many SMEs have been operating according to a more ‘relational’ model of accountability since their inception (Painter-Morland and Dobie, 2009), and that notions such as ‘stakeholder management’ and corporate social responsibility, which are central to business ethics discourses, are therefore largely superfluous in the SME environment. Management scholars have also been doing a lot of research on how entrepreneurial activity helps us rethink organizational forms and workplace dynamics (Holt and Mueller, 2011).

Scholars have always been criticizing the implicit forms of discrimination that exist within organizational spaces, based on gender and sexual orientation. There are, however, important developments in how these arguments are made from the perspective of critical management studies and organization studies. Instead of making egalitarian arguments and attempting to safeguard for certain ‘rights’ based on these essentialist categories, the most interesting literature is focused on highlighting the multiplicity and difference that exists within individuals, rather than between distinct groups. An acknowledgement of the fluidity of gender dimensions (Linstead and Brewis, 2004; Linstead et al., 2005; Linstead and Pullen, 2006) contributes much to a better understanding of identity dynamics within workplaces.

It seems fair to say that the infusion of ethico-political perspectives that critical management scholars have brought to the field of business ethics has made important contributions towards highlighting some flawed assumptions that have been operating in ethics management programmes since their inception in the 1990s. It has also succeeded in opening new avenues for research into alternative forms of organizing. Rethinking workplace arrangements and the meaning of work may also offer more space for the emergence of creativity and innovation, which may serve purposes other than increasing the profit margins of large corporations. Acknowledging the perils of organizational control may lead us to a more nuanced perspective on organizational influence and the necessary power struggles that forge open spaces of freedom and moral responsiveness. One can only hope that the scholars who pursue the interface between business ethics and critical management studies will continue to grow in strength and in numbers. We should also take care that the gains made are not hijacked by that part of the business ethics field that is too often keen on solving the problems of business in a compliance-driven fashion, without consideration for its ethical and political effects. What seems to be necessary, above all, is an understanding of the ambiguity inherent in all of our initiatives, and to never be satisfied that we have asked all the ethical questions and managed all the ethical risks. We never have.

Notes

1 Some parts of this chapter draw on the first chapter of my earlier book, *Business Ethics as Practice: Ethics as the Everyday Business of Business*, Cambridge University Press, 2008, reproduced with permission.
2 www.ussc.goc/guidelines-manual/2011/2011–8b21 (accessed 7 June 2014).
3 www.ethics.org/page/fsgo-federal-sentencing-guidelines-organisations-20-years (accessed 7 June 2014).
4 See in this regard www.ethics.org/files/u5/ECOA-Report-FINAL.pdf (accessed 25 June 2014).
5 The Johnson & Johnson Credo is available on the company’s website www.jnj.com/about-jnj/jnj-credo (accessed 25 June 2014).

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