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Questioning the Domain of the Business Ethics Curriculum: Where the Law Ends or Where it Starts?

Andrew Crane and Dirk Matten

Abstract

This paper reassesses the domain of the business ethics curriculum and, drawing on recent shifts in the business environment, maps out some suggestions for extending the core ground of the discipline. It starts by assessing the key elements of the dominant English-language business ethics textbooks and identifying the core elements of academic inquiry as reflected by those publications. Based on this, the paper identifies potential gaps and new areas for the discipline by drawing on four main aspects. First, it argues that the domain of business ethics requires extensions dependent on the particular geographic region where the subject is taught. A second factor for broadening the scope are recent scandals, which arguably direct the focus of ethical inquiry towards the ethical nature of the business systems in which individuals decide. Third, the impact of globalization and its result on growing corporate involvement in regulatory processes is discussed. Finally and fourth, business ethics reaches beyond the traditional constituencies of 'economic stakeholders' as new actors from civil society enter the stage of ethical decision making in business. We conclude by suggesting that a reconsideration of the domain of business ethics, especially in Europe, is timely, but that to do so represents a major challenge to business ethics educators.

Keywords: business ethics, curriculum, law, Europe, globalization, scandals, institutions, civil society, government

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Introduction

This paper emerges from our attempt to define the ‘appropriate’ domain of the business ethics curriculum for the purposes of writing a business ethics textbook in English relevant to European audiences (see Crane and Matten, 2004). Having been teaching business ethics for a number of years, we had for a number of reasons become dissatisfied with the main texts currently on the market in the English language¹. Although one of these reasons was purely the US dominance of the business ethics textbook market, this was accompanied by a deeper concern that the available texts simply did not seem to cover in any real depth (if at all) many of the areas of business activity that we felt were increasingly relevant, and indeed central, to the business ethics curriculum. This included relatively new concepts and issues, such as globalization, sustainability, and corporate citizenship, as well as specific questions about the ethics of business relations to government, civil society, and other ‘non-economic’ stakeholders.

What was most significant about our attempts to introduce such concepts into our teaching, and then into the textbook, was that they actually drove us to begin reconsidering the very domain of the business ethics curriculum. Whereas we had always been relatively happy with the idea that business ethics effectively began where the law ended, consideration of these further issues and concepts increasingly turned our attention to the role of business in shaping and defining the law and other forms of regulatory activity. So, rather than just being concerned with issues where the law could not, or had yet to, define right and wrong – if you like, the classic *ethical dilemma* situation – we had begun to think of business ethics also in terms of how businesses (as well as governments and civil society organizations) contributed to the institutionalisation of certain laws, rules and rule-making processes in society. This, we would suggest is more a situation of *ethical institution building*, which it would appear from the themes of recent business ethics conferences such as the 2003 European Business Ethics Network (EBEN) conference, has become a major issue in current debates about the subject.

This paper stakes out our view of the potential domain of the business ethics curriculum in this context, and further examines the theoretical, cultural and practical arguments that might support or contest particular views of the ‘appropriate’ domain of the subject. In particular, we first set out the domain of business ethics as represented

in the main textbooks used in Europe, and then go on to explore a number of interweaving forces that appear to be shaping our conceptions of what might be an appropriate domain of business ethics, namely: (i) different regional conceptions of the appropriate business ethics curriculum, focusing particularly on US and European approaches; (ii) the effect of recent corporate scandals on our ideas of what should be taught on business ethics courses; (iii) the consequences of globalization for defining the boundaries of the business ethics subject; and finally (iv) the implications for the business ethics curriculum of ongoing institutional shifts between business, government and civil society. We conclude by assessing the overall prospects and pitfalls for an extension of the business ethics domain.

The domain of business ethics

Questions about the appropriate domain, purpose, and focus of the business ethics subject, and more specifically the business ethics curriculum, have long been a subject of discussion amongst business ethics scholars (Furman, 1990; Stark, 1994; Prodhan, 1997; Zsolnai, 1998; Kaler, 1999; Maclagan, 2002; Sims and Brinkmann, 2003). These questions of the appropriate scope of, and approach to, teaching the subject have been complimented by surveys of the extent of business ethics teaching in universities (e.g. Collins and Wartick, 1995; Enderle, 1997; Cummins, 1999; Aspen/WRI, 2003; Cowton and Cummins, 2003). However, these surveys have not tended to seek a descriptive answer to the questions posed above, namely what exactly do business ethics courses cover and how? In the absence of such evidence, probably the most effective way of ascertaining how business ethics teachers are actually likely to define the domain of their subject is to review the main textbooks on the market (Furman, 1990). Textbooks are generally considered to contain the core stock of knowledge on a subject and textbook writers are usually expressly encouraged by their editors to align their material with the content and approach typically found on major courses. This is essentially good marketing practice – moulding the textbook product to fit the consumer's (here the student's) needs.

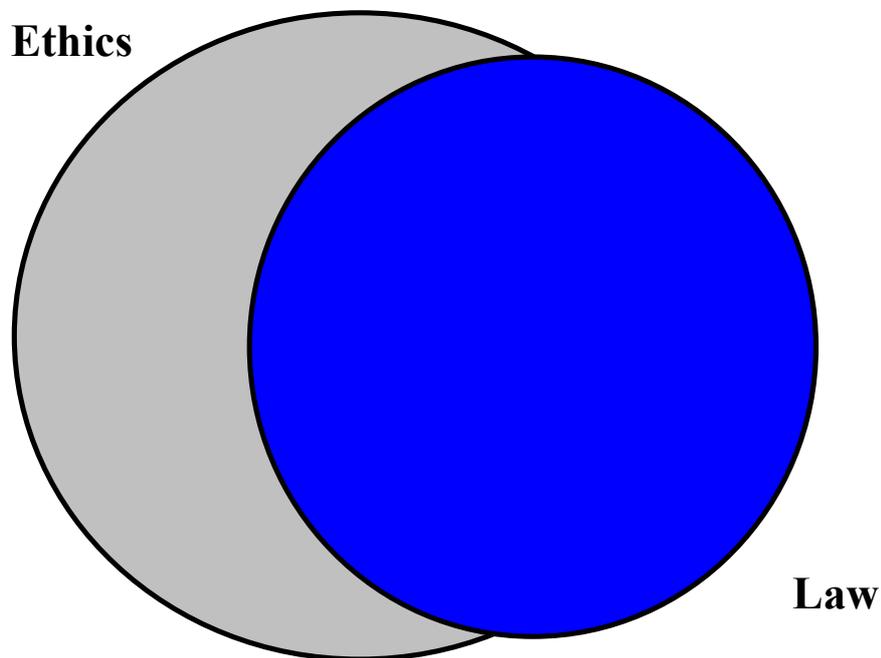
If we look to the books currently available for business ethics courses, the first thing that becomes immediately apparent is that there is a significant dominance of texts from the US. Books by Beauchamp and Bowie (2004), De George (1999), Ferrell et al. (2002), Treviño and Nelson (2004), and Velasquez (2002), among others, currently dominate the market in terms of course adoptions – and not only in the US, but also in

Europe and elsewhere. Significantly, the US market has seen something of a cleavage between dedicated 'business ethics' books and 'business and society' books, with Carroll and Buchholtz (2000) and Thorne McAllister et al. (2003) representing key examples of the latter. This hiving off of societal issues from the business ethics curriculum has reinforced an emphasis in the business ethics subject on individual values and dilemmas and the management of internal decision-making that is symptomatic of the Anglo-American tradition of the subject (Enderle, 1996).

We will examine the significance of this and other regional approaches to business ethics in more detail in the next section, but it is evident that the micro focus of US texts is also manifested in the growing collection of UK authored texts that have entered the market. The last few years have seen a number of new UK books, including those by McEwan (2001), Mellahi and Wood (2002), and Fisher and Lovell (2003), and with titles such as *Managing values and beliefs in organizations* (McEwan) and *Business ethics and values* (Fisher and Lovell), the micro focus of the curriculum covered is made fairly explicit.²

Looking to the domain of business ethics defined by such books, there are actually few formal definitions in evidence. Probably the clearest example is posited by Treviño and Nelson (2004: 16) in their popular textbook *Managing Business Ethics* where they state that 'the domain of ethics includes the law but extends beyond it.'³ In order to represent this relationship, Treviño and Nelson (2004) depict ethics and the law as two intersecting circles, similar to that shown in Figure 1. The law might be said to be a definition of the minimum acceptable standards of behaviour. However, many morally contestable issues, whether in business or elsewhere, are not explicitly covered by the law. For example, there is no law in many countries preventing businesses from testing their products on animals, selling landmines to oppressive regimes, or preventing their employees from joining a union – yet these are issues which many feel very strongly about from an ethical point of view. Similarly, it is possible to think of issues that are covered by the law, but which are not really about ethics. For example, the law prescribes whether we should drive on the right or the left side of the road. Although this prevents chaos on the roads, the decision about which side we should drive is not an ethical decision as such.

Figure 1: The relationship between ethics and the law



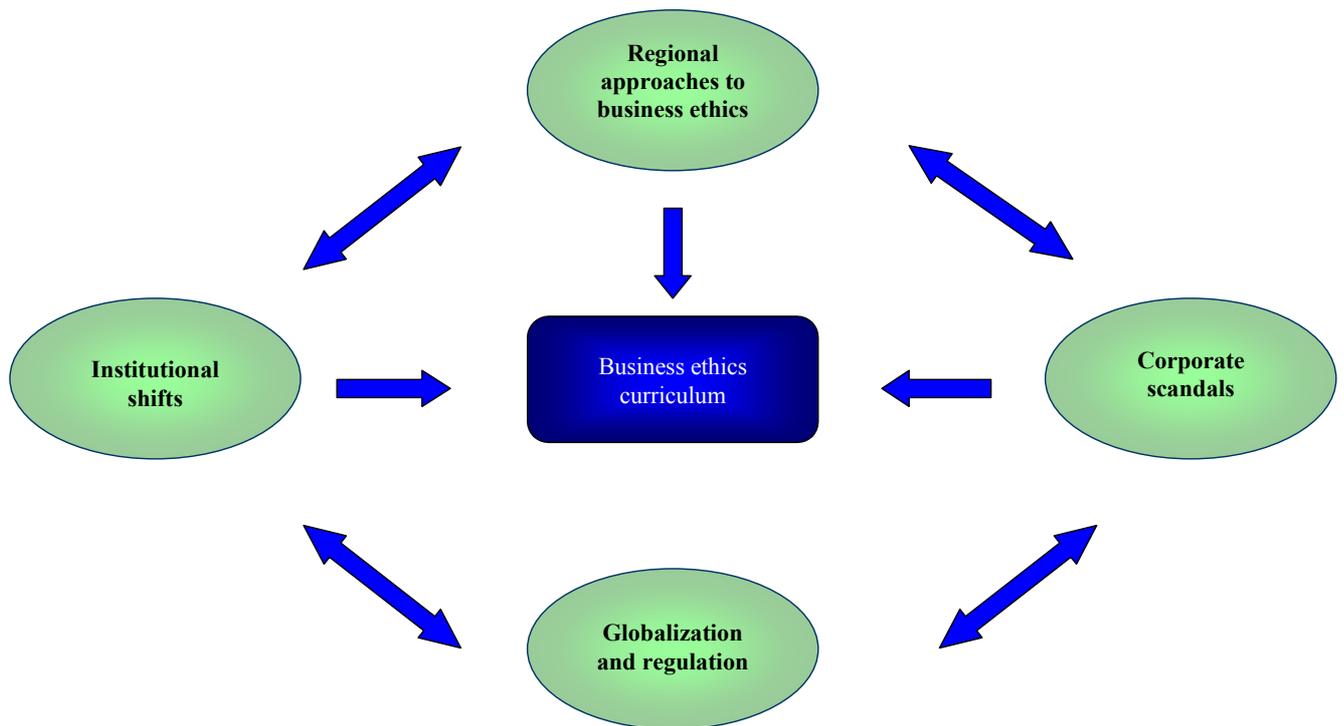
In one sense then, the domain of business ethics can be said to begin 'where the law ends'. Business ethics is primarily concerned with those issues not covered by the law, or where there is no definite consensus on whether something is right or wrong. Discussion about the ethics of particular business practices may eventually *lead* to legislation once some kind of consensus is reached – as Beauchamp and Bowie (2004: 4) contend, 'law is the public's agency for translating morality into explicit social guidelines and practices' – but for most of the issues of interest to business ethics, the law typically does not currently provide us with guidance. For this reason, it is often said that business ethics is about the 'grey areas' of business, or about going 'beyond the legal minimum'. Another good illustration of this view is the well-known, and widely cited Carroll pyramid, which describes four elements of corporate social responsibility (Carroll, 1991). Most notably, 'ethical' responsibilities are depicted as those that are above and beyond 'legal' responsibilities.

This is all very well, and such a view certainly seems to be a good starting place for locating the domain of business ethics. After all, once matters have passed into law, there is certainly less obvious reason to consider them as part of a business ethics

course rather than in a law course, unless of course there is a grey area wherein illegal practice is difficult to establish, identify, or prevent. But the key thing is that defining business ethics in this way tends to focus our attention on classic ethical situations – such as high pressure sales techniques, whistleblowing, advertising to children, employee privacy, or gift giving – where the law can not, or has yet to, define right and wrong. These dilemmas, important as they are, automatically put the manager or the organization in the position of a ‘hostage to fortune’ – ethical dilemmas and problems will continue to confront because they are always in the grey area unless government intervenes with a change of the law. This is the basis of the classic Friedman (1970) argument, that ‘the rules of the game’ have already been determined. What this seems to exclude, or at least ignore, is the potential for businesses to participate in the making of the law, or more generally in defining rules and rule-making processes and the processes of ethical institution building that we mentioned earlier (see Crane et al., 2003). This is particularly an issue in an increasingly globalizing business environment (Sethi, 2003), where we would suggest that business can participate in shifting the boundaries of what is legal or ethical, in essentially lightening the hue of the grey areas towards greater clarity and certainty.

Should such processes or arguments thereof be part of the business ethics curriculum? Is such a definition, or even extension, of the domain of the business ethics curriculum warranted or appropriate? Is it indeed even new, or is this what many business ethics scholars already teach their students about? And what exactly does, or would, it imply in terms of teaching practice? In the next four sections, we shall explore a number of theoretical, cultural, and practical developments that, we contend, help to throw some light on some of these issues. These, as we indicated earlier, can be broadly categorised as a set of four interweaving forces, namely: regional approaches to business ethics, corporate scandals, impacts of globalization, and institutional shifts. These are shown in Figure 2 and are described in more detail below.

Figure 2: Forces shaping the ‘appropriate’ domain of the business ethics curriculum



Regional approaches to the business ethics curriculum

First, any questions about the ‘appropriate’ domain of the business ethics curriculum have to consider the region in which the subject is being taught. As with many subjects, business ethics teaching occurs within an academic and cultural tradition that shapes what is deemed essential or relevant for inclusion, as well as the theoretical or pedagogical approach typically adopted. Given our particular interests in determining the domain of business ethics in Europe, the starting point here was clearly the longstanding debates about a specifically European approach to business ethics, and analysis of ‘continental European’ versus ‘American’ (or ‘Anglo-American’) approaches to business ethics (Vogel, 1992; Enderle, 1996; Spence, 2002).

The formal academic subject of business ethics is largely an American invention and has most of its roots and a large part of its traditions in the US. The reception of business ethics in Europe is fairly young, and only became visible from the beginning of the 1980s (van Luijk, 2001). In assessing the European perspective, it is evident that although many of these original ideas have been, and still are, very useful in the European context, there are definite limits to the transfer of North American approaches. The European context poses some distinctly different questions, which

are not necessarily on the agenda from an American perspective (Spence, 2002). Likewise, Europe has quite a distinct historical, philosophical and religious legacy, giving rise to a different approach to the study, as well as the practice, of business ethics in Europe (Zsolnai, 1998; von Weltzien Hoivik, 2002).

Table 1: Differences between approaches to business ethics in Europe and the United States

	United States	Europe
Who is responsible for ethical conduct in business?	The individual	Social control by the collective
Who is the key actor in business ethics?	The corporation	Government, trade unions, corporate associations
What are the key guidelines for ethical behaviour?	Corporate codes of ethics	Negotiated legal framework of business
What are the key issues in business ethics?	Misconduct and immorality in single decisions situations	Social issues in organizing the framework of business
What is the dominant stakeholder management approach?	Focus on shareholder value	Multiple stakeholder approach

Table 1 provides a summary of the main differences between the European and US approaches to the subject, as described by authors such as van Luijk (1990), Vogel (1992; 1998) and Enderle (1996). Perhaps the key issue here is the proposition that continental European business ethics has tended to focus more on the choice of constraints for ethical decision-making compared with the Anglo-American approach of focusing on choice *within* constraints (Enderle, 1996). The source of this contention is that in most European countries there has been quite a dense network of regulation on most of the ethically important issues for business, including workers' rights, social and medical care, and community contributions (through corporate taxation). European managers could be said therefore to have traditionally not had to consider so very much the moral values which should guide their decisions since these questions have, at least in principle, been tackled by the government in setting up a tight institutional framework for businesses. Therefore, in Europe, governments, trade unions and corporate associations have typically been key actors in the business ethics curriculum, whereas in the US, in most (but not all) areas, the institutional framework of business ethics has been significantly looser, and so the key actor has tended to be

the corporation or the individual manager. This, at least partly explains the more practical approach to business ethics evident in the US approach (Vogel, 1992; Enderle, 1996), and underscores the ethical dilemma approach to business ethics that we identified earlier.

With shifts in the European model of capitalism towards a more Anglo-American approach (Hunt, 2000; Mayer and Whittington, 2002), it could be contended that the business ethics curriculum will move towards a more micro focus. However, our analysis suggests that in fact, this exposes a need to increasingly broach individual, corporate, and institutional levels of analysis in order to provide a critical lens on current business practice. This is because specific 'micro' dilemmas and broader 'macro' context are interrelated – or as Kaler (2000) puts it, their relationship is one of 'epistemological dependence'. For instance, he uses the example of an ostensibly micro problem, executive pay, to argue that although this can be approached as a purely micro problem, 'any answers produced will presuppose answers to other and distinctly macro questions' (2000: 261), namely about issues such as executive accountability, corporate governance, responsibility to stakeholders, and ultimately the social role of business. The same could be said for a whole host of apparently micro problems such as bribery, downsizing, or labour conditions, which are at once immediately relevant to individual managers, yet deeply embedded in macro structures. 'What this demonstrates then', Kaler (2000: 261) argues, 'is that while micro questions *can* be discussed without questioning the system as a whole, any answers to those same micro questions might only be as good answers to the macro issues which they will very often entail.'

Corporate scandals

A similar argument can be made in relation to our second issue of consideration, corporate scandals, which it might be said have prompted renewed discussion about the scope and purpose of business ethics education. In one sense, it could be said that the typical US approach of focusing on the individual actions of the manager has received further impetus from the spate of corporate scandals involving companies such as Enron, Worldcom, Andersen, and others. To many, these are incidents of personal greed and misconduct that need to be analysed from the perspective of individual decision-making.

However, in a closer analysis it becomes rather evident that individual immorality, or

even criminal behaviour, can hardly be understood without an appreciation of the ethical presuppositions of the broader systems in which these scandals occur. Just to stick with the example of recent scandals in the US, a closer analysis seems to expose quite a close link between a micro-perspective on decision making– or a ‘narrow’ (Sorrell and Hendry, 1994) focus on economic stakeholders and their actions – and a macro perspective on the broader economic system in which those individuals act. The gradual slide into what ultimately ended up being corporate fraud and misappropriation of assets at Enron, Worldcom et al. was clearly influenced by a specific business model that raises the maximisation of shareholder value to pre-eminence. Initially within the legal boundaries, the accounting tricks applied at Enron could be argued to be the rational managerial response to the American model of capitalism.

The same applies to the damage inflicted on employees in these companies, just to name another aspect of these scandals. In a welfare system which over the last few decades has increasingly shifted responsibility for pensions away from the state to the individual, the fact that so many employees lost their pensions is another result not only of individual unethical behaviour on the part of managers, but of a system that entrusted these individuals with the administration of their employees’ social and economic welfare in the first place.

One could argue that this ethical link between micro- and macro-issues is by no means confined to Anglo-American forms of capitalism: in continental Europe many of the major scandals of the past – such as the Elf-Thyssen Scandal in France (Crane and Matten, 2004: 431-4) and Germany or Berlusconi’s dubious business practices in Italy (Crane and Matten, 2004: 403-4) – are usually embedded in a capitalist system which is governed by deep interlocking patterns of ownership, long-term relations and friendships in business as well as close governmental and political involvement in the economy. The same would also apply to other parts of the world where specific forms of corruption can only be understood – let alone prevented or disincentivized – by understanding the ethical nature of the broader economic context (Kidd and Richter, 2002).

Impact of globalization

This leads to our third area of consideration, namely the impact of globalization on the

role and relevance of national and transnational regulation of business activity. The power of a government has traditionally been confined to a certain territory, for example: French laws are only binding on French territory, UK laws on UK territory, and so on. As soon as a company leaves its home territory and moves part of its production chain to, for example, a third world country, the legal framework becomes very different. Consequently, managers can no longer simply rely on the legal framework when deciding on the right or wrong of certain business practices (Donaldson, 1996).

If business ethics essentially begins where the law ends, then such forces of globalization increase the demand for business ethics because deterritorialized or transnational spaces such as global financial markets or the ozone layer are beyond the control of national (territorial) governments (see Scholte, 2000). However, in the absence of effective global regulation and governance by governments, what we have also increasingly witnessed is business itself becoming more involved standard setting and enforcement, through self-regulation, global codes of conduct, ethical sourcing etc (Ronit, 2001; Cashore, 2002). This regulatory function of businesses actually pertains to the broadest array of levels, from the company level through to the industry level, to national and international levels (see Crane and Matten, 2004: 387-434)

At the *company level*, most companies operate company-wide codes of practice about a variety of ethical issues such as the usage of PCs or email for private purposes, the acceptance of gifts and hospitality from suppliers, or corporate policies on child labour or human rights in general. These company codes and policies, in a sense, substitute for, or reinforce, legal or regulatory instruments of government.

At the *industry level*, it is evident that in some circumstances these company-specific codes are supplanted by industry-wide codes that maintain a level playing field for all competitors or maintain a good reputation for an entire industry. An example of the first category would be the efforts by the sporting goods industry to ensure compliance with labour standards (van Tulder and Kolk, 2001), while an example of the second would be the Responsible Care programme of the chemical industry (King and Lenox, 2000). As these examples show, industry codes vary from national to international in scope.

At the *national level*, there are a number of initiatives where industry self-regulation pertains to a particular country. These would include, for example, the Financial

Services Authority (FSA) in the UK, which self-regulates the country's financial industry. In Europe, the area of environmental issues has frequently been addressed by national self-regulatory initiatives which have anticipated governmental acts by setting up sectoral and cross-sectoral programmes of corporate self-commitment (ten Brink, 2002).

At the *international or global level*, there have been a few initiatives of global self-regulation (or at least non-governmental regulation), which have substituted for direct legislative action. Most notable are the codes set up by the International Standard Organization in the area of quality (ISO 9000) and the environment (ISO 14000). The most recent example would be the United Nation's initiative of the Global Compact as a voluntary scheme of global reach by which corporations voluntarily subscribe to nine ethical principles and assume responsibility for their company wide implementation and enforcement (McIntosh et al., 2003).

The main implication of our argument here then is that the earlier cited narrow view of business ethics ('where the law ends') does not correspond with the reality of business today. Corporations are quite heavily involved – and by all accounts more and more so – in setting and shaping the law and it is exactly here where moral issues are increasingly evaluated and ethical decision-making enacted. We can conclude from this that business ethics in fact is an important issue far earlier and is highly relevant also, as it were, 'where the law begins' and consequently, business ethics as a discipline can no longer exclude this area from its core body of academic inquiry and instruction.

Critics, however, might contend, that the character, status and processual antecedents of regulation made by business can hardly be compared to laws issued by governments. While we agree in principle to this point we would argue that this only exposes another important shift in the ramifications of business ethics today. Laws, and regulation in general, are increasingly not made by governments alone – or by other individual social actors for that matter – but rather are products of multi-actor coalitions. Amidst these 'privatised' processes of legislating in which, we would admit, governments still have a key role to play, laws come into existence in close cooperation and interaction with a broad array of actors, including business, but also involving other governmental and non-governmental actors.

Institutional shifts

This leads onto our final main area, namely the implications for the business ethics curriculum of changes in the role and power of the institutions of business, government and civil society. It is, we would contend, increasingly myopic to address business ethics in isolation from civil (NGO) and governmental activities. There are two main factors involved here.

First, many business ethics decisions in corporations have become significantly influenced by civil society action, whether because of direct action on corporations by civil society through protest and boycott, and/or because of the increasing propensity to develop business partnerships with civil society organizations to deal with ethical problems as diverse as labour standards, corruption, and sustainability practices (for examples, see Bendell, 2000). This has led to the development of the idea of the 'civil regulation' of corporations by non-government organizations (Bendell, 2000; Zadek, 2001), suggesting that business-civil society relations are intrinsically caught up in the processes of setting the standards for evaluating business ethics.

Secondly, just as business has increasingly worked with civil society to address social, ethical, and environmental problems, so too have corporations joined governmental organizations, and intergovernmental organizations such as the UN and the OECD, to develop solutions to such problems. These developments, in concert with the efforts at business self-regulation discussed in the previous section, and business-civil society partnerships mentioned above, have contributed to a growing role for business in actually shaping and enforcing 'the rules of the game' that a micro focus on business ethics largely accepts as given. Quite simply, the rules of the game are no longer a strictly governmental responsibility, but are also influenced and enacted by business and civil society through a variety of processes and mechanisms.

What this means is that whereas in the past business ethics has been primarily concerned with either macro context issues, such as the regulatory environment provided by government (in the European tradition), or specific micro dilemmas (in the US tradition), what we see now is that corporate and civil society efforts to address ethical dilemmas have had impacts on the regulatory environment itself. For example, let us take the problem of labour standards in developing countries. Whilst we could

consider this either as a matter of insufficient legislation (or weak enforcement) in the country concerned, or as a matter of ethical choice for a company operating there, what we have seen happening here in recent years is a new system of softer regulation or 'ethical institution building' emerging from business attempts to respond to criticism of their practices. This includes developments such as industry programmes and codes like those emerging from the sporting goods industry (see van Tulder and Kolk, 2001), multi-actor partnerships such as the Ethical Trading Initiative and the UN Global Compact, or certification schemes such as the fair trade labelling scheme.

Conclusion

In conclusion, we contend that questions about the domain of the business ethics curriculum are both timely and necessary, but for all that cannot and should not be conclusive. Waking up to these shifts could be said to move business ethics education from an assumption of managers and corporations as reactive 'victims of circumstance' towards them being seen as 'masters of destiny', potentially able to shape the rules and norms against which they are judged⁴. We certainly would recommend and support further consideration on the part of business ethics educators about these roles of business and their relationships with other institutional actors, but at the same time, it is important to recognise that this takes the subject into relatively uncharted water where the academic literature has only just started to make inroads, and where business ethics scholars in particular have yet to really engage. Indeed, some management scholars from outside the area of business ethics have been critical about the subject's ability to engage with issues of political economy and adopt a critical perspective on institutional arrangements (Parker, 2003). Although such charges may perhaps be unfairly negative (especially given the European tradition of business ethics), we do agree that greater attention to such issues may well be necessary in designing and delivering business ethics courses.

Of course, other business subjects could also be reasonably charged with the responsibility of accommodating the developments outlined in this paper, as could non-business social science disciplines such as politics, international relations, and sociology. However, this does not address the argument that many teachers and students of business ethics are currently discussing broader questions of globalization, corporate citizenship, government and civil society relations, sustainability, etc *anyway*,

and therefore a redefinition (or refinement) of the domain is underway regardless. Moreover, to argue that such issues are dealt with outside of the business school ignores many of the expectations typically placed on business education. For instance, the most recent quality benchmarks for masters level business degrees in the UK (QAA, 2002) state that the purpose of such is 'the advanced study of organisations ... and the changing external context in which they operate', where 'external context encompasses a wide range of factors including economic, environmental, ethical, legal, political, sociological....' Although these benchmarks also indicate the necessity for students to acquire 'skills' in 'ethics and value management' and 'recognising ethical situations [and] applying ethical and organisational values to situations and choices', we have argued that this is just one aspect of the business ethics curriculum, and although the challenge to move past this is a major one, it is also a timely and exciting one that may ultimately serve to maintain the relevance and revelatory potential of the business ethics subject into the future.

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¹ We should add that our paper chiefly draws on the debate in English language. We are well aware, that in other, particularly European languages such as French, Spanish or German, the domains of business ethics (or its corresponding concepts) are significantly different from the discussion in English. In fact, as far as our (limited) acquaintance with some of the contributions reaches, our arguments are partly informed by those different accents in these literatures.

² Interestingly, probably the first UK book with the explicit intention to approach 'the subject from the perspective of business and social practice in Britain and Western Europe' by Sorrell and Hendry (1994: IX) leaves the Anglo-American tradition as described above and differentiates into 'narrow' and 'broad' business ethics. While the 'narrow' view includes the traditional economic stakeholders, the sections entitled 'broad' business ethics look at constituencies beyond these, such as the state, society in general, developing countries and the ecological environment.

³ Although this comment is made about ethics generally rather than business ethics specifically, it is couched in a discussion about 'the relationship between business ethics and the law' (Treviño and Nelson, 2004: 16), and as such can be assumed to be intended to apply at the specific as well as the general level.

³ We are indebted to Jem Bendell for this phrasing.

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