



AGENDA 2004

The purpose of the Agenda 2004 is to identify and describe the major global challenges for business ethics from 2004 to 2008 and to guide the activities of the International Society of Business, Economics, and Ethics (ISBEE) in these upcoming years.

Agenda 2004 is a work in progress. It was launched with the ISBEE Task Force for Global Challenges in 2002 that consisted of Richard De George, Georges Enderle, Kenneth Goodpaster, Bryan Husted, Peter Koslowski, and Henk van Luijk. Based on the newly established affiliation between the Caux Round Table (CRT) and ISBEE, preliminary findings on emerging ethical challenges in international business were presented by Bryan Husted and Kenneth Goodpaster at the 2002 CRT Global Dialogue in Mexico and by Georges Enderle and Kenneth Goodpaster at the 2003 CRT Global Dialogue in Caux-sur-Montreux, Switzerland. Five topic areas were identified in the Interim Reports, which were further explored in consultation with the ISBEE Business Executive Advisory Board.

In order to continue this process and elaborate these challenges in more depth, five colleagues prepared the document "Agenda 2004" that is now posted on the ISBEE website. It will be included in the ISBEE Congress packet for all participants and publicly discussed in the concluding Congress session on July 17, 2004 in Melbourne.

Agenda 2004 includes five parts drafted by the colleagues mentioned below:

(1) Corporate Governance and Trust in Business

By Professor G. J. (Deon) Rossouw, Rand Afrikaans University, South Africa

(2) Globalization and Global Ethics

By Professor Georges Enderle, University of Notre Dame, Indiana, USA

(3) Fairness in International Trade and WTO

By Dr. Marta Sañudo Velázquez, Universidad de Monterrey, Mexico

(4) Place of Institutional Actors

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(5) Ethical Implications of Contemporary Technologies

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We invite you to participate in the drafting process by providing thoughts, comments, and suggestions either by email to Georges Enderle (genderle@nd.edu) or in oral contributions at the concluding Congress session on July 17, 2004 in Melbourne.

Topic Area #1: Corporate Governance and Trust in Business

G. J. (Deon) Rossouw

That trust in business corporations is on the decline is beyond dispute. It was made very visible in the 1999 'Battle of Seattle' where disgruntled opponents of global capitalism tried to disrupt the World Trade Organisation (WTO) meeting. Since then several surveys have added further testimony to the reality of this phenomenon of ailing trust in business. A Gallup International poll in November 2002 revealed that the levels of trust in business corporations are very low. Since then a global opinion poll conducted on behalf of the World Economic Forum (WEF 2003) in twenty countries found that the trust in business leaders are even lower than trust in the institutions they are leading. Only 33% of people surveyed, indicated that they had either 'a lot' or 'some trust' in business leaders. Business leaders also enjoyed considerably less trust than leaders of NGO's, the UN and spiritual leaders. These low levels of trust is clearly reflected in the 2003 Zogby Poll of college seniors where 56% of respondents agreed with the proposition that: "the only real difference between executives at Enron and those of other big companies, is that those at Enron got caught" (Goodpaster 2004, 1).

Business leaders are obviously scorched by these findings and some do not hesitate to acknowledge that rebuilding trust in their institutions and themselves has to become one of their major challenges. Ewald Kist, CEO of the ING Group said: "Restoring trust is the principal challenge that leaders of big companies have to face" (Kist 2002, 1). The fact the theme of the 2003 World Economic Forum meeting in Davos was '*Building Trust during a Time of Global Uncertainty and Mistrust*' further illustrates this concern.

There is an expectation that adherence to the principles and standards of good corporate governance might turn the current tide of low trust in corporations (Payne 2004, 6). In fact, the current emphasis on corporate governance is often seen as a direct response by business to counter the devastating effects that a series of well publicised business scandals had on the image of business in general. This point is well illustrated in the fact that the report on corporate governance reforms required in MCI (the former WorldCom) is titled: "Restoring Trust" (Breedon 2003).

Trust and ethics

There is often a perception that trust is ethical in nature. The relation between trust and ethics is however ambiguous. In trust relationships the trustee is expected to respond positively to the objectives that the trustor has entrusted her or him with. The honouring of trust means that the trustee assists the trustor in attaining her or his goals. This creates the impression that the trustee behaves morally in respecting the interests of the trustor. The problem, however, is that there are no constraints on the objectives of the trustor. If the goals of the trustor are moral goals, then one can indeed agree that honouring trust is moral behaviour. If the trustor's goals are immoral, however, the honouring of trust does not amount to ethical behaviour. Trust is thus not moral where the interests of the trusting parties are advanced to the detriment of those outside that relationship. A case of fraud can illustrate the point. Should a person involve another in plans to defraud the organization they both work for, they stand to benefit from this trusting relationship. Their actions will, however, be detrimental to the interests of everyone else in that organization, and so their trust relationship cannot be considered moral.

This demonstrates the moral ambiguity of trust. Trust can be both moral and immoral. When trust is used to exclude third parties or to disadvantage third parties, it can constitute moral abuse of trust. This is the case when it is used to protect the interests of an in-group. Nepotism, cronyism, favouritism, racism, and sexism are all examples of trust used to exclude third parties.

The challenge for Agenda 2004

The challenge that the above developments and expectations poses for *Agenda 2004* is to determine whether there is any substance in the expectation that corporate governance can enhance the level of trust in business. This question gives rise to a series of other questions that need to be addressed in finding an answer to the above question. These questions include the following:

- What is meant by trust?
- How can trust be enhanced?
- Whose trust should be the focus of concern?

What is meant by trust?

Central to the current generation of definitions of trust are the concepts 'vulnerable' and 'reliance' (Soule 1998, 261). *Trust* revolves around the propensity of people to take the risk of making themselves vulnerable by relying on others for the protection or enhancement of their interests. The seminal work done by Mayer, Davis and Schoorman made an important contribution to the new generation of trust definitions. They defined trust as: "the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustor, irrespective of the ability to monitor or control that other party" (Mayer et al. 1995, 712).

The quality of trust relations can vary both in terms of duration and intensity. Some trust relations are merely temporary, whilst others are more enduring. Equally in terms of intensity, some trust relations might be superficial whilst others are profound. These variations in trust have led to a number of different kinds of trust being distinguished. Brenkert for example distinguished between "Basic Trust, Guarded Trust and Extended Trust (Brenkert 1998, 303).

Basic trust is a kind of trust that has to be shared by all stakeholders of corporations. This is the kind of trust that underlies our social practices and that provides the necessary condition for social interaction. An example of basic trust is my trust in the banking system. When I enter a bank I assume that when I deposit my money, it will be safe in the bank and that I will have access to my money in the future. It reassures both the business and its stakeholders that they will not be taken advantage of. Individuals and institutions can of course abuse this basic trust and when this happens, the legitimacy of such practices or institutions are called into question.

Guarded trust applies specifically to situations where people enter into contractual relationships. No contractual agreement can ever cover all the possibilities that might arise in a contractual relationship. Certain areas of uncertainty and thus vulnerability to either or both of the contractual parties will remain. In order to cope with these deficiencies in contractual relationships, trust is required to bridge such unforeseen or non-articulated aspects that might arise in the lifespan of a contractual agreement.

Extended trust emerges when parties enter into relationships that go beyond or without the protection afforded by contracts. In such extended trust relationships, one or more parties in the trust relationship make themselves vulnerable by relying on the other party. Although this leads to higher risks, it can also afford either party more freedom in the absence of the constraints that typically accompany contractual relationships.

A challenge for Agenda 2004 is to bring clarity to the current discourse by articulating more clearly what kind of trust is at stake in the discourse on the declining trust in business.

How can trust be enhanced?

Trust needs to be distinguished from the related concept of *trustworthiness* (Rossouw 2002, 150). Where trust is an action taken by a trustor (the party who trusts), trustworthiness is a characteristic of a trustee (the party who is trusted). It is an evaluation of the quality of a party as a trustee. A trustworthy party is one who is judged to be worthy of the trust invested in it (Brenkert 1998, 300, Brien 1998,399).

Studies on trustworthiness have revealed that a person's trustworthiness depends upon a number of characteristics. Those factors that determine how trustworthy a trustee is perceived by a potential trustor are referred to as *facilitators* (characteristics or antecedents) of trustworthiness. Research on trustworthiness highlights a number of core facilitators of trustworthiness, consisting of factors such as openness, competency, integrity, benevolence and reputation (cf. Bews 2000, Becerra & Huemer 2002, 80). Parties who display these characteristics are judged to be more trustworthy than those who lack these qualities. This suggests that trustworthiness is a quality that can be developed and enhanced (Bews & Rossouw, 2002, Verstege Ryan & Buchholtz, 2001, 183).

Given the above exposition on the nature of trust and trustworthiness the question arises on whether corporate governance has the potential of enhancing the trustworthiness of corporations and their leaders. In the light of the facilitators of trustworthiness identified above, the question more specifically revolves around the contribution that adherence to the principles and standards of good corporate governance can make towards the perceptions that trustors have of the openness, competency, integrity, benevolence and reputation of corporations and their leaders.

The principles and standards of corporate governance do emphasise factors that potentially might have a positive bearing on these facilitators of trustworthiness. Perceptions of openness can for example be enhanced by regular and sufficient disclosure of relevant information to stakeholders. Perceptions of competency can be bolstered through proper board compilation, the monitoring of board effectiveness and the regular review of board performance. The emphasis on ethical values and consistent adherence thereto (organisational integrity) in corporate governance can improve perceptions that stakeholders have of the integrity of corporations and their leaders. Perceptions of benevolence can be enhanced through corporate social responsibility or corporate citizenship that is often central to corporate governance discourse. Reputation is also a key concern in corporate governance as the protection of the symbolic assets (reputation) of a corporation is one of the driving forces behind corporate governance reform. Thus at least in theory a positive correlation between trust and corporate governance can be established.

A challenge for Agenda 2004 is to establish whether and how this theoretical correlation can be translated into a reality of improved perceptions of the trustworthiness of corporations and their leaders.

Corporate governance plays out on two levels. The first level relates to the manner in which companies direct and control their performance. It can also be called the *internal* dimension of corporate governance. This is the dimension that has been the focus of discussion thus far.

The other dimension of corporate governance that also might have an impact on the trustworthiness of corporations is the *external* dimension. This refers to the regulatory environment within which corporations function. It consists of the control over companies that are exerted from the outside. For example, the state, the judiciary and stock exchanges exercise such external control over companies in general and over securities transactions in particular (Coffee 1998, 69, Romano 1998, 144). The state may also opt for delegating some of its control over companies to regulatory bodies. Additionally, parties with a stake in corporate performance can form self-regulatory bodies and seek statutory status for themselves. All of these arrangements combine to form the landscape of external corporate governance. The purpose of such control over the operations of companies is not only to lay down ground rules for key role players

in order to provide protection to all stakeholders in corporate action, but also to prevent the market as such from failing due to malpractices (Romano 1998, 148).

An effective regulatory regime within which corporations operate can provide stakeholders with the peace of mind that their interest will not be taken advantage of and that their rights and interests will be protected. Through laws, regulations, listing requirements, professional codes, etc., stakeholders can be given the assurance that corporations can be trusted to adhere to certain standards of behaviour. In cases where corporations do not adhere to such standards, the regulatory regime provides stakeholders with the opportunity to seek recourse. These assurances provided by the regulatory environment is a necessary condition for cultivating what was earlier referred to as basic trust in corporations. Without an effective regulatory environment, the trust of stakeholders in business can be seriously undermined. Factors that can contribute towards instilling trust in the external regulatory regime of corporate governance include effective market regulation, predictable and equitable enforcement of regulations, disclosure requirements that ensure transparency, the protection of the rights of all shareowners and other stakeholders as well as mechanism that compels companies to act socially responsible.

A challenge for Agenda 2004 is to identify the characteristics of regulatory corporate governance regimes that will bolster trust in business taking into account cultural and economic differences between countries.

Whose trust should be the focus of concern?

A further vital issue in the quest to restore trust through corporate governance revolves around the question about whose trust in business should be improved. Should the focus be on the trust of certain privileged categories of shareholders, such as institutional investors or majority shareholders, or should it be on the trust of all shareholders, including minority shareholders? Or should it go beyond shareholders towards the trust of all stakeholders (those who can affect or are affected by the corporation)?

This issue is closely related to the distinction between exclusive and inclusive models of governance. In *exclusive* models the focus of corporate governance is geared towards shareholders and their trust in the performance of the corporations in which they have invested. While exclusive models of corporate governance can succeed in enhancing the perception of trustworthiness among shareholders, they are unlikely to do so among the non-shareholding stakeholders of business.

Inclusive models of corporate governance emphasise that corporations should not only be accountable to their shareholders, but also have responsibilities to their other stakeholders. Such inclusive models of corporate governance emphasise the need to regularly engage with stakeholders to determine which aspects of corporate performance are material to them. The issues that matter to the non-shareholding stakeholders of a corporation are likely to include more than the mere economic performance of the corporation. They are likely to demand information also on the social and environmental performance of the company. The same demand for triple bottom-line (or sustainability) reporting and disclosure can however also arise from institutional and individual investors who believe that sustainable economic performance requires good social and environmental performance. It can also be demanded by ethically discerning investors. Companies that regularly disclose information on their sustainability performance through processes of shareholder and stakeholder engagement thus stand a better chance to experience an improvement in the perceptions of trustworthiness that both their shareholders and stakeholders have of them.

An Agenda 2004 challenge is to explore the potential and viability of inclusive and exclusive models of corporate governance respectively in generating and sustaining trust in business.

It is however important to recognise that corporate governance can also have the reverse effect on trust – it can alienate shareholders and other stakeholders. This can happen in two ways. The first is when corporate governance standards are only complied with in a formal and legalistic fashion (*quantitative compliance*), without any real substance and adherence to the principles of good governance (*qualitative compliance*). When corporate governance deteriorates to a checkbox exercise without much substance, it is not only likely to undermine trust, but also to fuel cynicism about corporate governance.

A challenge this poses to Agenda 2004 is to develop instruments that can distinguish between quantitative and qualitative adherence to corporate governance.

The second way in which corporate governance can undermine trust is when a proper balance is not struck between the economic performance of companies and the demands imposed upon them to be both accountable to shareholders and responsible to other stakeholders. Definitions of corporate governance usually revolve around two core concepts: *direction* and *control* - as in the classical Cadbury definition of corporate governance: “corporate governance is the system by which companies are directed and controlled” (Cadbury Report). The direction side of the definition emphasises the responsibility of the board to attend to strategic positioning and planning in order to enhance the *performance* and sustainability of the company. The control side of the definition emphasises the *conformance* responsibility of the board to oversee the executive management of the company in their execution of the strategy and control of the company. This responsibility results in the board doing account of the performance of the company to shareholders, stakeholders, security exchanges and other regulatory bodies.

The demand for conformance to various accountability standards can drain the energy and focus of the board away from company performance. This situation is further aggravated by the ever more stringent demands imposed by financial regulators on boards and also by the personal liability that directors potentially face in the case of corporate scandals and failures. When corporate governance has this effect on business, it not only can distract the board from its responsibility of enhancing company performance, but might also make directors risk averse. As corporate success is often intimately linked with risk taking and the exploitation of uncharted possibilities, an over-emphasis on conformance might result in poor economic performance. The trust of both shareholders and all other stakeholders who stand to benefit from the economic performance of the company ironically might be dented should corporate governance result in undermining the performance of companies.

What is thus needed is a sound balance between performance and conformance. There is a growing body of empirical evidence (e.g. the McKinsey and Deutsche Bank surveys) that indicates that good corporate governance correlates with improved corporate performance and enhanced investor confidence. Thus corporate governance does have the potential to increase stakeholder perceptions of the trustworthiness of corporation, but also the potential to achieve the reverse.

A challenge for Agenda 2004 is to identify structures and strategies that will assist boards in finding an appropriate balance between the demands of performance and conformance.

Bibliography

Becerra, M., Huemer, L. 2002. Moral character and relationship effectiveness: an empirical investigation of trust within organizations. In: Heidi von Weltzien Hoivik (ed.) *Moral Leadership in Action*. Cheltenham, UK: Edward Elgar.

- Bews, N. F. 2000. *An Investigation into the Facilitators of the Trustworthiness of Managers*. Unpublished doctoral dissertation. Johannesburg: Rand Afrikaans University.
- Bews, N. F., Rossouw, G. J. 2002. A role for business ethics in facilitating trustworthiness. *Journal of Business Ethics*, 39, 377-390.
- Breeden, R. C. 2003. *Restoring Trust*. New York: Report to the United States District Court for the Southern District of New York.
- Brenkert, G. G. 1998. Trust, morality and international business. *Business Ethics Quarterly*, 8(2), 293-317.
- Brien, A. 1998. Professional ethics and the culture of trust. *Journal of Business Ethics*, 17, 391-409.
- Coffee, J. C. 1998. Inventing a corporate monitor for transitional economies; the uncertain lessons from the Czech and Polish experiences. In: Hopt, K. J. et al. *Comparative Corporate Governance: The State of the Art and Emerging Research*. New York: Oxford University Press, 67-138.
- Goodpaster, K. E. 2004. Ethics or Excellence? Conscience as a check on the unbalanced pursuit of organizational goals. *Ivey Business Journal*, March/April, 1-8.
- Kist, E. 2002. *Restoring and Building Trust in a Turbulent World*. Paper delivered at Yale University on 15 November.
- Mayer, R. C., Davis, J. H., Schoorman, F. D. 1995. An integrative model of organizational trust. *Academy of Management Review*, 20(3), 709-734.
- Payne, N. 2004. Board Effectiveness. *Directorship*, March: 6-7.
- Romano, R. 1998. Empowering investors: a market approach to securities regulation. In: Hopt, K. J. et al. *Comparative Corporate Governance: The State of The Art and Emerging Research*. New York: Oxford University Press, 143-217.
- Rossouw, D. 2002. *Business Ethics in Africa (2nd ed.)*. Cape Town: Oxford University Press.
- Soule, E. 1998. Trust and managerial responsibility. *Business Ethics Quarterly*, 8(2), 249-272.
- Verstegen Ryan, L., Buchholtz, A. K. 2001. Trust, risk and shareholder decision making: an investor perspective on corporate governance. *Business Ethics Quarterly*, 11(1), 177-193.
- WEF. 2003. *Declining Public Trust Foremost a Leadership Problem*. World Economic Forum. Downloaded from www.weforum.org.

Topic Area #2: Globalization and Global Ethics

Georges Enderle

The terms of globalization and global ethics are both used in many different ways and can express a wide variety of complex facts and views. We should face this confusing reality and not assume that we already have a kind of implicit common understanding of globalization and global ethics. To silently accept this confusion is a mistake. We need to clarify these terms, at least to some extent, if we want to engage in a meaningful dialogue on globalization and global ethics. Only in this way can we discover to what extent we already have a common understanding, examine to what extent our views diverge and conflict, and explore how we can find a broader and sustainable common understanding that can guide our actions and policies more effectively.

Different views of globalization

A widely held view is that globalization is essentially an economic process, due to an immense reduction in the cost of transportation and communication, crossing all national borders and having far-reaching consequences for all spheres of life. Within this broad economic perspective, we find the narrower notion of globalization as a “corporate driven” process pointing to the dominating influence of big transnational corporations. In contrast to this focus on economics and big business, another concept of globalization includes and emphasizes a multitude of global transformations not only in economic terms, but also in technological, cultural, political, legal, and environmental terms and including migration and the expanding reach of organized violence. Moreover, many advocates and critics alike portray globalization as if it has already reached or is about to reach every part of the planet earth and all humankind. On the contrary, skeptical observers believe that its actual reach is highly overestimated and “globalization” is still far away from being truly global.

For the Agenda 2004 it is advisable to be aware of these differences and adopt a view which provides a firm informational basis about globalization for ethical judgment and guidance.

As a working definition, globalization is proposed to mean *a kind of “international system in the making” with multiple dimensions*. Although the economic dimension and the role of big business are of paramount importance, small and medium-sized companies and multiple non-economic factors also play indispensable roles in this immense and highly complex field, one which clearly goes beyond “global capitalism.” The “international” character of this definition indicates that this kind of system is far more than an aggregation of nations and leaves behind the division of the world into the First, Second, and Third Worlds. The qualification of a “system” means, roughly speaking, a certain order of interactions among key elements (such as individuals, organizations, and nations), governed by law-like regularities, which not only have emerged from interactions among the elements, but also shape them. And the specification of the system as being “in the making” emphasizes the fact of transition, namely that some systemic features, perhaps in need of change, are already in place while others still have to be created. From the ethical perspective, this notion of globalization involves a dual responsibility of our generation: how we understand and work with this emerging system and how we shape and hand it over to the next generation.

Morality and ethics matter

If one assumes that globalization is not a fate, but made deliberately by human beings, an inherent dimension of globalization is morality, meaning what is “importantly right and wrong” in globalization

and pertaining to human conduct and human institutions. It therefore comes as no surprise that the defense of globalization as an “amoral” or value-free mechanism has stirred a lot of criticism. While morality is part of practice, ethics is the study of morality. In particular, normative ethics evaluates human conduct not according to how it actually is manifested, but according to how human persons *should* act. It points out what is authoritative, guiding, obligatory, and consequently, valid and binding. Accordingly, ethics in globalization is here understood in the normative, not descriptive sense. Key ethical terms are: humanity, justice, human rights, responsibility, and integrity, to name a few.

Different views of global ethics

Assuming one accepts that morality matters in globalization, there are still many disagreements on what kind of morality and of ethics should prevail. In order to sort out these difficulties to some extent, we may distinguish between the status, content, and scope of global ethics.

From skepticism to an affirmative view

With regard to the *status* of global ethics, five views can be observed:

- (1) Skepticism or even cynicism that global ethics is impossible or even harmful in international relations.
- (2) Dominant legal views that the rule of law has top or even exclusive importance in international affairs while global ethics plays a subordinate or negligible role.
- (3) Ethical imperialism, often disguised as global ethics that imposes the promoter’s own ethical norms and values on other cultures and countries.
- (4) Ethical relativism that requires one to accept and follow only local ethical norms and values. (“When in Rome, you should do as the Romans do.”)
- (5) Affirmative view that global ethics is possible and necessary in the age of globalization.

From these five views, only the affirmative view provides a basis to search for a common ethical ground of globalization. Skeptical and cynical attitudes as well as overly legal, imperialistic, and relativistic views cannot but fail in this endeavor.

Contents of global ethics

With respect to the *content* of global ethics, we can observe many concepts, theories, and traditions. First of all, we may distinguish between “comprehensive” and “limited” views. The former cover the full range of ethical guidance from minimal ethical requirements to ethical ideals while the latter contain only a limited set of ethical values and norms. In facing pluralism of opposing ethical views, this distinction is of utmost importance. In history, the attempt of imposing a “comprehensive” view on a whole nation has resulted, again and again, in oppression. Rather, a “limited” (though, not necessarily minimalist) view should be adopted, not just for the lack of a better alternative, but for respect of ethical and cultural diversity. Consequently, global ethics is proposed to be based on “an overlapping consensus” in the global arena (similar to John Rawls’s “idea of an overlapping consensus” for a constitutional democratic regime).

Furthermore, we may mention several prominent approaches. Since the *Universal Declaration of Human Rights* in 1948, human rights have become a global ethical framework, often equated with global ethics. Human rights also have been portrayed as a kind of “ethical imperialism” of the West. As there is no room to discuss this controversy here, it may suffice to mention that the creation of the Declaration involved also representatives of numerous non-western countries and cultures. In the meantime, human rights have gained broader worldwide support and now constitute the common ethical ground for many national and international legislations and, more recently, for transnational corporations within the United Nations Global Compact. Despite considerable progress, the implementation of the Declaration and subsequent Conventions poses major challenges with regard to women, children, migrant workers, and

ethnic minorities. Moreover, it is controversial in what respects transnational corporations should be held accountable for the fulfillment of human rights.

A second form of global ethics is contained in *Towards a Global Ethics: An Initial Declaration*, promulgated in 1993 by leaders from all world religions. Based on human dignity and the Golden Rule, the Declaration affirms four irrevocable directives, on which all religions agree: (1) “You shall not kill!” or “Have respect for life!”, (2) “You shall not steal!” or “Deal honestly and fairly!”, (3) “You shall not lie!” or “Speak and act truthfully!”, and (4) “You shall not commit sexual immorality!” or “Respect and love one another!” The Declaration has a strong religious emphasis and places the demands at a high general level, which can be embraced by non-religious people as well. Although it does not intend to promote a “comprehensive” view, let alone an “umbrella” religion, the limitations of its ethical content are not sufficiently clear. The challenges lie in making the demands more specific and in providing more room to non-religious traditions.

In exploring further possible contributions to global ethics, we may examine the familiar perspectives of utilitarianism, Kantian ethics, and virtue ethics (be it of Aristotelian or Confucian nature). As ethical theories, they make not only propositions about the contents of what ought to be done or how one ought to be, but they also develop justifications for their views. With regard to global ethics, this distinction is crucial. It might well be the case that in important instances such as the well-being of the poor or the need for a well-ordered international system, these different theoretical perspectives come to the same or similar conclusions. However, their particular justifications differ greatly. In light of what has been said about the “overlapping consensus,” a common ethical ground for globalization can and should be justified by different philosophical and theological views. Nevertheless, the great challenge of developing such a common ethical ground remains, and the limitations and deficiencies of these theories should not be overlooked. New and promising perspectives are offered by the capability approaches of Amartya Sen and Martha Nussbaum.

Scope of global ethics

The search for a common ethical ground leads, thirdly, to the question of the *scope* of global ethics. Like in the question of its content, we can distinguish between a “comprehensive” and a “limited” notion. According to the first, global ethics extends and applies to all persons and institutions on the planet earth. As for the second notion, it pertains only to the attitudes, activities and institutions, which are relevant for living and working together at the global scale. Again, this distinction is basic and a “limited” notion is proposed. The ethics of global citizens—be they individuals, organizations, or nations—and of global institutions should be related and limited to global tasks. Obviously, this perspective again sheds light on the importance of clearly understanding globalization as an international system in the making.

Business ethics and corporate social responsibility (CSR)

As we saw with the concepts of globalization and global ethics, we can observe a big and confusing variety of notions implied in the terms of “business ethics” and “corporate social responsibility.” Again, if we want to engage in a meaningful dialogue, we need to clarify these terms to some extent, given the compounded difficulties of communication in the multi-cultural and multi-lingual context. Such clarification can provide not only deeper understanding and better guidance for actions and policies, but is also necessary for measuring and reporting on corporate performance in ethical terms.

Business ethics

The English term “business ethics,” now commonly used to denote the field, covers various meanings, which becomes particularly apparent when it is translated into different languages. It can primarily focus

on “good” practice of individuals, for instance “to do business with moral integrity” or on “values-based management, ethical leadership, and companies’ responsibility in society.” Its goal can be defined as “search of peaceful solutions for business-related conflicts through dialogue between practitioners and academics.” Its field can be limited to ethical conduct within the business organization as opposed to “corporate social responsibility” that defines the organization’s external relationship. It is striking that, in numerous business ethics circles, economics doesn’t seem to be relevant, and questions of public policy or even of the economic order and capitalism supposedly lie far beyond the field of business ethics. However, since business ethics is going global, it cannot but be confronted with different types of economic systems and capitalism. Therefore, it is advisable to adopt a broad understanding of business ethics (in the sense of business *and* economic ethics), which aims to improve the ethical quality of decision making and acting at all levels of business and economics.

Corporate social responsibility

Corporate social responsibility, or CSR, has become a buzzword that hides more than it reveals. It can mean the ethical responsibility the company has toward society (which might equate to profit maximization), or the ethical responsibility of the company to make a contribution to society (which lies beyond its economic and legal obligations). It can be “social” in the sense of philanthropic or “societal” indicating its obligations of contributing to the common good. As already mentioned, CSR is often distinguished from business ethics. Moreover, it can include environmental responsibility and exclude economic responsibility. Given this confusing variety of notions, it is proposed to adopt the term “corporate ethics,” meaning the ethics of the business organization with its internal and external relations and constituting one part of business (and economic) ethics. As “responsibility” has become a key ethical term in contemporary moral understanding, it makes sense to name corporate ethics also “corporate responsibility” with the company as subject and economic, social, and environmental obligations as objects or realms of responsibility.

Making “the business case” for business ethics

It has been argued increasingly over the past years that, in order to promote ethical business, one has to make “the business case,” meaning to demonstrate that “good ethics pays.” In fact, this discovery of “good ethics” as a business tool is not as new as it might appear. Smart business people always knew that keeping promises, treating employees and customers fairly, building a corporate culture of trust, etc. can save considerable transaction costs, strengthen the motivation of employees and enhance the company’s reputation and bottom line. However, if the promotion of ethical values is only used as a tool and has no intrinsic value at all, the ethical motivation loses its power, the promotion becomes self-defeating and can provoke even cynicism. To make the business case is therefore a risky undertaking and only succeeds if it is based on a firm ethical ground in a long-term perspective.

Measuring and reporting on corporate performance in business-ethical terms

Admittedly it is difficult to determine and measure what an “ethical” company is. If the ethical dimension is of qualitative nature, how can it be quantified? On the other hand, ethical conduct is concrete and thus must somehow be measurable. If the company wants to act in an ethical way, it needs to specify its responsibilities. For what is not measured is not managed. Also, from the perspective of outsiders who scrutinize and criticize corporate behavior, measuring corporate responsibilities is indispensable in order to evaluate companies in a fair manner.

As a first step, it is proposed to conceptualize corporate performance as economic, social, and environmental performance and to develop a consistent set of indicators for these types of performances. At present, we can observe various valuable attempts in this direction, among them the “Sustainability

Reporting Guidelines” of the Global Reporting Initiative, whose design comes closest to this tripartite distinction of corporate performance.

The second step is to evaluate these items from the ethical or responsibility perspective. Just as the third dimension transforms the square into a cube, this normative perspective adds a new and qualitatively different dimension by placing ethical weight on the performance indicators (thus reflecting the very nature of “applied ethics”). To be sure, these weights can vary from minimal ethical requirements over positive obligations beyond the minimum to aspirations for ethical ideals. This distinction of different ethical levels is crucial in order to avoid sweeping moral judgments as to whether or not a company is simply “ethical.” To illustrate this point, if a company does not aspire for lofty ethical ideals, but does honor all human rights within its sphere of control, it should not be called “unethical.” In line with this plea for a differentiated approach to ethical assessment, the Caux Round Table has developed the *Self Assessment and Improvement Process*, which explicates a set of ethical standards with specific measures in a sophisticated manner.

Bibliography

Arruda, M.C., Enderle, G. (eds.). 2004. *Improving Globalization*. Rio de Janeiro: Editora FGV.

Caux Round Table (CRT). *Principles for Business*. www.cauxroundtable.org.

De George, R.T. 1993. *Competing with Integrity in International Business*. New York: Oxford University Press.

Donaldson, T. 1989. *The Ethics of International Business*. New York: Oxford University Press.

Dunning, J.H. (ed.). 2003. *Making Globalization Good: The Moral Challenges of Global Capitalism*. New York: Oxford University Press.

Enderle, G. (ed.) (1999). *International Business Ethics: Challenges and Approaches*. Notre Dame: University of Notre Dame Press.

Friedman, T.L. (2000). *The Lexus and the Olive Tree*. New York: Anchor Books.

Global Reporting Initiative (GRI). www.globalreporting.org.

Held, D., McGrew, A., Goldblatt, D., Perraton, J. (1999). *Global Transformations. Politics, Economics and Culture*. Stanford: Stanford University Press.

Held, D., McGrew, A. (eds.) 2000. *The Global Transformations Reader*. Cambridge, UK: Polity Press.

Held, D., McGrew, A. (eds.) 2002. *Governing Globalization. Power, Authority and Global Governance*. Cambridge, UK: Polity Press.

Nussbaum, M.C. 2000. Symposium on Martha Nussbaum’s Political Philosophy. *Ethics*, 111/1, October 2000, 5-140.

Rawls, J. 1996. *Political Liberalism*. New York: Columbia University Press.

Sen, A. 1999. *Development as Freedom*. New York: Knopf.

Singer, P. 2002. *One World. The Ethics of Globalization*. New Haven: Yale University Press.

Towards a Global Ethic: An Initial Declaration. www.cpwr.org/resource/global_ethic

UN Global Compact. www.unglobalcompact.org.

Williams, O.F. (ed.). 2000. *Global Codes of Conduct. An Idea Whose Time Has Come*. Notre Dame: University of Notre Dame Press.

Topic Area #3: Fairness in International Trade and WTO

Marta Sañudo

No matter what advocates or opponents of globalization wish the term to mean, to most citizens the concept of globalization means the expansion of international trade. International trade is a fact of our world, and a fact that many applaud, others question and a few dare to oppose. But whether this fact can be regulated in ways that bring about more social justice is an issue involving all camps, from fans of globalization to globalophobes. Discussions around this issue must consider the role of fairness in international trade.

In the following pages I have presented some of the challenges in international trade that are considered of utmost consequence for the well being of the global society in the coming years. In these pages I have also exposed some of the difficulties for considering the WTO a fair organisation.

Bringing the bottom up. Economic development for whom?

We have grown accustomed to the coldness of statistics, yet some of these statistics are so shocking that they cannot but impact us. The often quoted Development Report 2001 by the World Bank stated that in spite of the globalization of trade, during the whole decade of the 90's, there was only a minor decline in the world poverty, an estimated 3% which becomes negligible by taking into account the increase of population. So at the moment we have an estimated 4,000 million people living on less than \$2 a day, this is about 80% of the global population of 6,000 million.

From such statistics, however, it does not follow that the poor may have been better off without international trade. The statistics only show that inequality between rich and poor has deepened, but the ethical question would be whether such inequality means that the worse off have suffered the impoverishment of their well being or human capabilities due to globalisation. And to prove something like that one would need to look at reports such as the Human Development Report 2003 by the UN, only to come to understand that the links between free trade and well-being are difficult to settle. For example, the plummeting of life expectancy in Sub-Sahara Africa (a most telling aspect of well-being) is more related to the pandemic presence of HIV/AIDS and political conflicts than to straight forward global trade (or its absence).

But what we can deduce from such findings offers a powerful insight, as powerful as a Modus Tollens syllogism. If what is good for the economy is not necessarily good for everyone, then at least much of the social justification given to international trade is put into question. If it is clear that the problem of inequality of distribution of wealth is not directly affected by the liberalization of trade within a country because the poor of the poor have little access to assets (such as education), or access to areas where economic growth takes place (namely, non-agricultural sectors), and suffer from historical race or gender discrimination, then at least we must commit to the view that international trade by itself will not maximize nor even improve indirectly the well-being of the global population. Then, what will?

Trading values

To stop the "race to the bottom" that many see as the inevitable force of free marketers, some point to the urgency of international regulations for labour and the environment. Even when international NGOs convincingly state that unless the most vulnerable are protected from the inhumane pattern of free trade

practices, how these non-economic factors (child labour, animal welfare, human rights, and environmental protection) are to be included in international trade agreements is far from clear.

Peter Singer has documented in detail (2002) the dilemma faced by the WTO to attempt to, on the one hand, hold its concern for the environment and human rights, and on the other, prevent any disguised protectionism. Accordingly, when complaints arise, the WTO chooses to tilt the balance to the latter, leaving environmental and human rights issues well in the margin of agreements. This marginalisation of apparently non-economic factors, takes place particularly by ruling against countries that wish to forbid the entrance of foreign products on the basis of the process of the product, rather than on the quality of the product. The allegation of the WTO is that if the process is considered as a legitimate means of restricting free trade, then a door is opened for protectionism since it would be a unilateral restriction of what processes are to be allowed in a country. The point made by Singer is that if a nation cannot restrict the process of a product –no matter what abuses of human rights, animal mistreatment, or environmental detriment is incurred during the production-, then countries have no way of protecting their own values as members of the WTO; while at the same time such choice of perspective pre-empts the WTO from being the incentive that it could be to further non-economic goals in today's global world.

It may be that Singer's account is just an example of the localization of cultural values struggling in a global economy, but the account raises the important question of the role of values in international trade. What are the responsibilities of trading partners to secure or promote certain cultural values? If one is to assert that there are major differences between the values endorsed by developed countries and those endorsed by developing countries, we need to clarify our approach to those differences. We can think of three approaches: 1. Taking the differences of values as intrinsically related to irreducible worldviews (thus, committing to the view that there are no universal values), 2. Taking the differences as a matter of positioning values in a priority scale (in this case, some developing countries can be seen to take survival and economic growth as a priority, overriding other values, such as the children's right to play), or 3. Taking the differences as the result of ignorance, corruption or bigotry (in which case, trading partners should denounce, condemn and forbid certain developing countries' practices such as sex discrimination, nepotism, and tyranny). Either approach has its consequences, and to strike a balance between what may be seen as cultural imperialism or cultural indifference is hard to achieve. One suggestion is to promote the view that international trade should be accompanied by an explicit awareness of cultural differences, and thus realise that a long term dialogue with partner/other cultures may be of much benefit.

Double-standards on agricultural issues

In no sector can the double-standards of some of the WTO's member countries be so obvious as in the agricultural sector. After nine years of the WTO, there continues to be a high level of agricultural subsidy in developed countries, and those same countries push multilateral agreements to eliminate quotas and tariff cuts in developing countries. The result has been the deterioration of farming within developing countries, and the dramatic increase of products sold by multinational agribusiness corporations in developing countries.

Farming is perhaps the most politically sensitive issue. Millenarian farming tradition in most countries prevents seeing food as a simple commodity to be negotiated. With the unfair policies of agricultural trade the impoverishment of farmers has resulted in brutal social crises in countries such as Mexico, India and Korea.

The Doha Agenda sought to work out a fairer agreement on agriculture in 2001, but the divide that took place in the Fifth Ministerial Meeting of the WTO in Cancún, Mexico last September (2003), is provoking real concern to most nations. The political will of developing countries to oppose most of the

WTO's draft presented to them, tilted the balance of power in the WTO, and no consensus was possible in the meeting.

Whilst many were, and still are, aghast for the sudden transformation of the WTO into a forum for social protests, the most feared outcome of such plain struggle of power within the WTO is the loss of interest in multilateral agreements by developed countries, and their turn away from the WTO to a more efficient strategy of picking and choosing individual countries that will conform to their agricultural trade offers. Much effort needs to be done by ethicists and other experts on conflict resolution to facilitate fruitful dialogue among the diverse factions of the WTO's members, as well as between the various NGOs and company representatives to meetings of the WTO.

Trumping TRIPS

The risk for a developing country to enter multilateral agreements lies in its power to negotiate and promote its own interests in the face of much more powerful countries. Many consider the agreement on TRIPS as the perfect example of political bullying. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came about at the Final Act of the Uruguay Round and was clearly an initiative undertaken exclusively by developed countries; above all, the United States fought consistently for the consensus of the agreement, chiefly motivated by its powerful pharmaceutical lobby. TRIPS was seen as the culmination of a long process within industrialised countries to harvest their investment on research and development (R&D), and establish international laws that secure property rights (including computer programs and databases, trademarks, geographical indications, industrial designs, patents, integrated circuits and undisclosed information). The details of the Agreement was a hot dispute mainly between the US and the EU given their distinct law traditions and the way in which various developed countries, by 1995, had organised their protection to intellectual property. Many studies show that the developing countries had little to manoeuvre against the rhetoric used which affirmed that enhancing intellectual property rights would facilitate the transfer of technology, promote innovation and the flow of investment to developing countries. After nine years of the agreement, the results have been disastrous for most developing countries particularly in what concerns the transfer of technology, since developed countries profit most exporting their finished products rather than their technological know-how. Moreover, royalties and patents have served more as barriers, than as motors for innovation in developing countries (costs of licenses are too high, the patents are often for each step of a given process and not only for a product, limits have been set to reverse engineering, etc.).

The main ethical issue regarding TRIPS is whether the agreement has only strengthened a division of the world in which developed countries generate innovations and the developing countries become markets for these innovations, producing in this way a dependency that handcuffs the possibility of poor countries to compete in those areas of trade (technology and services) that generate the most wealth in today's "knowledge economy".

The most controversial side of TRIPS has been regarding patents on drugs. When pharmaceutical patents in practice meant that poor countries were not able to afford medicines for major illnesses that affect their population (HIV/AIDS, Malaria and Tuberculosis), much discussion was given as to how the TRIPS agreement should be interpreted. Surely the agreement had to consider exceptions for the binding of the agreement when what was at stake was a matter of national security, as in cases of epidemics or circumstances of extreme urgency. At the Fourth Ministerial Conference of the WTO in Doha, Qatar in November 2001, a crucial part of the agenda was to set rules for the interpretation of the TRIPS agreement in a manner that endorsed the right of WTO members to protect public health. Flexibility was emphasised, but it was not until August 2003 that a consensus was reached regarding legal changes that permitted some of the poorest countries that did not have enough pharmaceutical infrastructure to import cheaper generics made under compulsory licensing.

The ethical question regarding the justification for intellectual property rights can be traced to the fundamental notion of the right to private property. However, most would agree that incentives for innovation are essential, the ethical issue is whether believing that patents and monopolistic rights are the sole way to offer incentives to developers of new products (or technologies) is simply too narrow. An example of an alternative could be finding international institutions that pay for an innovation and then make such innovation freely available to the public. Is this a matter of mere political will?

Fairness and the WTO

Theories of fairness consider whether a framework can be devised to secure that each of the parties involved in a transaction can be said to have fair opportunities to pursue their idea of what is good. Theoretically, the easiest way to settle the issue of fairness is when a transaction is seen to carry mutual advantage to the parties involved. But the concept of “mutual advantage” has difficulties in at least two fronts. On the one, it has the instability characteristic of the prisoner’s dilemma, namely that the ideal situation would be the one in which “everyone follows the rules that are of mutual advantage but I break the rules when it is to my greatest advantage.” On the other, the concept of “mutual advantage” poses the problem of motivation to act with equality when the negotiating parties are of dissimilar power, so as to prevent speaking of “mutual advantage” when the reality is the stronger pushing the weaker to yield and yield further.

Thus, unlike theories of justice whose main purpose lie in providing a framework where competing ideas of the good can live together without conflict, theories of fairness discuss the commitment that parties seeking justice must have to equality. Thus, in issues of fairness toleration is not the leading virtue, but equality.

But when the WTO’s states in its main electronic page that its existence provides a “more prosperous, peaceful and accountable economic world”, and this is done mainly because “trade friction is channelled into the WTO’s dispute settlement process” where negotiation among countries reduces “the risks of disputes turning political or military”, it is clear that at its very foundations, the WTO seeks toleration and not equality.

Now, it may be the case that toleration is all that the WTO can aspire to settle among trading nations, for after all, what equality can be agreed between parties as dissimilar as the developed and developing countries? What negotiating power can the developing countries have in the face of the developed countries? Why would developed countries be willing to act with an ideal of common equality when acting in self-interest benefits best their economies?

Many of the criticisms posed against the WTO go precisely to show that the very structure of the WTO goes in detriment of the interests of developing countries. Take for instance the appeal that a country can make to the WTO’s Dispute Settlement Body when it decides that its rights under the WTO Agreements have been violated, or that another country has not fulfilled the obligations agreed under the WTO Agreements. If such a country happens to be a developing country (take the current Brazil’s dispute on cotton as example), the risks and costs involving the dispute are disproportionate to its possible gains. This is because of the bureaucracy of the Dispute Settlement Process is far too long (can take two years and by then importers of the developed country may find other country as supplier of the product in question), too costly (developing countries need to provide information and present a case in such a way that more often than not it means hiring a foreign law firm), and finally, too ineffective. This last issue, the WTO’s ineffectiveness, in this case, is attributed to the evidence that the WTO’s only weapon to enforce its rulings is by allowing certain retaliation in terms of trade restrictions against any guilty country which decides not to comply to the recommendations made by the WTO; but the developing

countries may have no gain whatsoever in starting a dispute since trade retaliation against a powerful country brings no benefits to a developing country. The asymmetry of resources between developed and developing countries to enter negotiations at the same footing, impedes fair trade within the WTO as it is functioning now (lack of internal transparency and participation in the WTO is criticized by enumerating the economic burden of developing countries due to excessive meetings held simultaneously, expenses of Geneva's offices, informal exclusive meetings, political pressures to vote as part of a consensus, etc.).

Major reforms must take place within the WTO in order to favour equality in international trade which may include revising agreements (many which were entered into under incremental pressure from developed countries), and the manner in which these agreements are implemented by the WTO. In a more general stance, the main suggestion given by critics of the so called "free trade" agreements between developed and developing countries, is that trade should be accompanied by non-conditional grants (not loans) to help building the infrastructure necessary to promote development of regional economies in order to pave the road to added labour and environmental restrictions to trade (see for instance NGOs such as Third World Network, Global Trade Watch or Citizens Trade Campaign).

The main criterion to judge various positions could be to set to decide whether specific trade agreements tend to foster sustainable long-term economic development and improvement of living standards in rich and poor countries alike, or whether the agreements tend to serve short-term mercantilism. This is not an easy task. But perhaps it is the task that organisations such as ISBEE and the CRT ought to undertake in order to guide the decision making of business people and international policy makers.

Bibliography

Singer, P. 2002. *One World. The Ethics of Globalization*. New Haven: Yale University Press.

Topic Area #4: Place of Institutional Actors

Henk van Luijk

Mainstream Business Ethics and Its Ramifications

Since business ethics as a discipline made its appearance in its present form, some twenty five years ago, much progress has been made on the theoretical as well as the practical level. Recently some new tasks have come to the fore that deserve to be included in the Agenda 2004, an agenda that, therefore, next to an extension of activities already undertaken, will have to contain some fresh issues. Achievements and emerging lacunae both can guide us in drawing up the agenda for the time to come.

In the course of time, 'mainstream business ethics' has taken shape. In the United States initially, in Europe soon after, and increasingly in other continents as well. Mainstream business ethics can be depicted as the ethical analysis of business relations and activities, the elaboration of their moral relevance and of possible moral alternatives connected with them, it all based on solid normative argumentation. Up to today it constitutes the backbone of the discipline, and should continue to do so. It is what ethicists from their expertise have to offer to the business world.

Grafted onto the corpus of mainstream business ethics, ramifications have appeared, of a theoretical as well as practical nature. In view of an Agenda 2004, it is important to ask whether they deserve to be cultivated or rather to be pruned.

Theoretical ramifications consist in *fundamental considerations* at the border of philosophy and economics, *area-bound specifications* as marketing ethics, ethics of international business relations, ethics and finance, and normative comments regarding other business relations, and *medium-range business ethical theories*, as there are stakeholder theory, social contracts theory, and a theory of corporate integrity.

Practical ramifications of mainstream business ethics take the form of tools and methods to implement ethics in daily practices of business: ethical codes, ethical dilemma training, forms of social and ethical monitoring, auditing and reporting, and strategies developed to manage business ethics and corporate social responsibility successfully on the individual, interpersonal and corporate level.

All in all a positive development, with one risk however. The extensive attention given to introducing ethics in corporate practices with the expert help of relative outsiders as change agents and management consultants, has led business ethics as a discipline towards a plateau that offers an impressive view, but leaves an uneasy feeling that pressing problems at a deeper level remain underexposed.

For an Agenda 2004 the theoretical and practical ramifications of mainstream business ethics have some clear implications:

Mainstream business ethics continues to deserve a prominent place as the effort to clarify the normative implications of business activities, relations and instruments.

Fundamental considerations at the border of business ethics and philosophy of economics deserve a place on the Agenda 2004 under the category 'work in progress'.

Area-bound specifications, as a sign of the ongoing vitality and alertness of the discipline will take care of themselves, as they have done up to now.

The design and development of tools and strategies for managing ethics in business has reached the stage of 'more of the same'. Activities in this resort should cede the prominent place on the Agenda they presently occupy to more urgent issues and activities.

The most prominent places on Agenda 2004 are to be reserved for medium-range theories as entries to what needs to be discussed thoroughly if business ethics is to retain or to regain its radical impact, the first place being reserved for the question which medium-range theories are most needed today.

Pressing Problems

In order not to overload the agenda, here is a suggestion of two possible candidates: (1) the relations between the private and the public domain with regard to business activities, and (2) the distance between actors and institutions.

(1) The private and the public domain

At the background of many positions taken in business ethics a conception is prevalent that sees the private and the public domain as two clearly distinct regions with each its own structure, privileges and moral obligations, and not to be confused inadvertently. Often the distinction between the two domains is equalised to the distinction between the market and the state as the two basic institutions of social ordering. Today this conception is under pressure. With regard to state and market: this dichotomy has gradually changed into a trichotomy of state, market and civil society, giving rise to new contacts and coalitions as well as new possible conflicts (Dubink 2003). For business ethics it is of the utmost importance to develop a clear conception of the mutual relations and possible tensions between the three basic institutions. What can be reasonably expected from each of them with respect to establishing and maintaining a just and sustainable societal order?

More specifically, are there particular duties and responsibilities linked to each of the basic institutions? It is not uncommon to draw the following picture of the three basic institutions, their managing task, objectives and guiding moral principles:

- . the *market*, represented by business people, corporations, and national and international business organisations, manages *property* in view of the safeguarding and growth of prosperity and well-being of its participants, under the guidance of the principles of reciprocity (including equality and honesty) and efficiency;
- . *civil society*, represented, among others, by non-governmental organisations (NGO's) and interest groups, 'anti-globalists' and environmentalists among them, manages *special knowledge and expertise* in view of the fostering of liberation of groups and individuals where needed, and democratic citizenship where possible, under the guidance of the principles of transparency, emancipation and commitment to a special cause;
- . the *state*, represented by governmental agencies, manages *power* by safeguarding public security, by establishing the necessary physical and social infrastructure, and by the creation and application of effective legal arrangements in view of maintenance and growth of the common good under the guidance of the principles of fairness and commitment to all, especially the unfortunate.

This way of putting it, however, could lead to the idea that the market is accountable, first and foremost, for the growth of profit within the limits of the rule of law and decency, that the state is primarily accountable for the creation and supervision of a suitable legal framework to sustain a common order, whereas on civil society the burden is laid of shaping and maintaining moral consciousness, often kept alive by moral indignation. This is too primitive a picture. It neglects the fact that all three basic institutions are bound by their own specific morality and responsibilities, *and* that we are witnessing a gradual blurring of the boundaries between the three basic institutions. Much more reflection is needed about the rights and interests inherent in each basic institution, the fostering of not yet tried forms of co-operation, and the progressive reduction of tensions and conflicts. New political-economic compromises will be needed that stand the test of moral scrutiny. On the conceptual level this requires intellectual teamwork in which economists, political philosophers, experts in public administration and business ethicists are prepared to take part on an equal footing.

The same is true when we talk in terms of the private and the public domain. Here too we witness a blurring of the boundaries. Private enterprises, presenting themselves as belonging exclusively to the *private* domain, increasingly are addressed as responsible partners in the protection and fostering of *public* interests. Business ethics as a discipline fails if it is unable to provide a clear answer to a question that deeply worries business representatives: 'How far does my corporate responsibility extend itself?' The answer increasingly goes in the direction of: 'Further than, up to now, you were prepared to think'. The answer effectively given decides about the radical or the superficial character of business ethics as a discipline and as a practice.

To ground the answer in a solid basis, the moral principles underlying the private and the public domain respectively *and* their increasing mixing have to be elaborated thoroughly. Once properly delineated, the question can be tackled whether the *corporate* domain, located at the intersection of the private and the public domain, requires, as a guidance, special principles, adapted to the special position of market participants in a world of shifting boundaries. The outcome could well be that the first moral obligation of corporations is to be profitable and to protect long term continuity under the guidance of the principles of reciprocity, honesty and equality, accepting duties of justice and fairness toward their stakeholders, and simultaneously recognising the obligation to participate, on a regular basis, in common endeavours to improve the overall state of the social fabric they find themselves working in. If they fail to participate, they subject themselves to legal corrections and to infringements on their corporate reputation, and rightly so, the extent of the corrections and infringements being dependent on the social and moral consciousness of the society within which they are operating (van Luijk 2004).

Something similar counts for national and international organisations of business. The first duty of the WTO is to defend the rights of Brazilian cotton farmers against state subsidies to their competitors in the United States, for this is what it has been established for. But if in its policy the organisation never takes account of the existence of sweatshops in India, it can be blamed for a moral omission.

(2) Actors and institutions

By far the most pressing problem that today faces business ethics is located at the intersection of an actor-based and an institution-based approach. Of old, ethics in general and business ethics in its own realm is oriented towards human beings as moral actors. The basic question 'What should I do (in such and such circumstances)?' ethics takes up by developing action guides on behalf of single or collective actors. In the whole ethical system, at least in the Western world, the moral actor is pivotal, for his or her conscious and autonomous decisions are ultimately decisive. The history of modern Western moral philosophy has aptly been summarised as 'The invention of autonomy' (Schneewind 1998).

Today, the traditional actor-based approach of moral problems suffers serious infringements from the part of *social institutions*, whereby a social institution is conceived as ‘a set of rules that structure social interaction in such a way as to produce equilibrium outcomes’ (Amable 2003, 36), and, more specifically ‘as political-economy equilibriums, i.e. as the outcome of strategic interactions among agents in a specific power structure’ (ib. 35). Once social structures are in place, they determine to a large extent the playing field and the outcome of action patterns of actors deemed to be autonomous.

Since some years, the role of institutions and the conditions for institutional change are at the core of the economic and sociological debate, but hardly in business ethics (Amable 2003, Fligstein 2001, Schmid and Maurer 2003, Dienhart 2000). Social scientists, economists and sociologists notably, seek to find out how specific configurations of social institutions determine, or at least pre-determine, the action field and actions of individual and collective actors. The results of their efforts are primarily descriptive in nature, and often based on a comparison of nations. This should not be surprising, as relevant national data are relatively easy available. So a major study compares a series of economic institutions in Germany and The Netherlands, as there are health care, labour market, corporate governance, competition practices and some others. It introduces four co-ordination mechanisms, namely competition, control, common values and norms, and co-operative exchange, and asks to what extent they are applied in comparable institutions in both countries, and which trade-offs have to be taken into account accordingly (CPB 1997). More recently Bruno Amable (2003) has studied a complex of six institutions in twenty three OECD countries. His study results in the description of five types of capitalism, each with specific institutional forms and special hierarchies and mutual complementarities (see also Whitley 1998 and Hall & Soskice 2001). Other studies do not compare nations but concentrate on specific social institutions and institutional configurations in a given period or environment, as ownership and control in the 1970’s in the United States, or the role of the shareholder value conception in the 1980’s (Fligstein 2001). In many of these studies new light is shed on the complex configurations and dynamics of institutions in particular circumstances.

The increasing attention given to institutional arrangements presents a major challenge for an actor-based ethics in general, as it becomes clear that, next to autonomous decisions of actors, other moving forces deeply influence and predetermine the moral shape of the social fabric. Business ethics in particular has to take the institutional perspective seriously. For, given the closed, inward oriented character and the innate conservatism of the market, it is of the utmost importance for the development of a solid theory of market morality that business ethicists recognise that institutions may not only support the establishment of a just and sustainable society, but hamper it as well.

The rise of interest in institutional arrangements places business ethics, in search of theoretical in-depth progress, before a twofold task.

(a) While taking notice carefully of new insights about the nature and role of institutions in establishing a stable and yet dynamic social order, business ethicists should ask whether the role institutions play makes it necessary to enlarge the paradigm of the autonomous moral actor. Not simply by introducing the metaphorical notion of ‘corporations as moral actors’, but by accepting that, also with regard to moral affairs, much ‘has been decided beforehand’ by mutual complementary and hierarchically ordered institutions. The decisive moral question then becomes, not: Who should do what? but: Which room for moral behaviour does a given institutional configuration allow? And if we do not like the answer, because not much room seems to be left, the next question is not: Who is to blame? but: Are there ways to interfere at the institutional level so that given configurations need not be final? And who are each other’s allies in this endeavour? Recognising the determining force of institutional arrangements does not necessarily lead to defeatism, but it certainly fosters endurance and modesty.

(b) Much depends here on the willingness to listen seriously to other experts in the field. What remains untouched, however, is the moral responsibility of the business ethicists to keep a critical distance that enables him or her to judge given institutional configurations from a moral point of view. We should keep in mind that business ethics itself is a social institution too, a political compromise in a positive sense. Circumstances being what they are, alternatives reaching as far as they do, it is the moral duty of everyone involved, including the business ethicist, to strive for the best possible compromise, and to defend it openly. Every socially relevant institution, business ethics included, is a political compromise. The final moral responsibility of the business ethicist is to stand for the compromise he or she has arrived at.

The two pressing problems that we have registered have the following implications for the Agenda 2004:

Basic institutions of the social fabric and their shifting relations, as well as blurring boundaries between the private and the public domain deserve explicit attention of business ethicists. Principles underlying basic institutions and domains need thorough elaboration as background of further medium range theories strengthening business ethics as a discipline.

A paradigm shift may be needed from an exclusively actor-based to an institutionally informed business ethics that does not shy away from the political compromises it supports and that, once chosen, it stands for openly, while maintaining its critical distance.

Bibliography

Amable, B. 2003. *The Diversity of Modern Capitalism*. Oxford: Oxford U.P.

CPB Netherlands Bureau for Economic Policy Analysis. 1997. *Challenging Neighbours. Rethinking German and Dutch Economic Institutions*. Heidelberg: Springer Verlag.

Dienhart, J. W. 2000. *Business, Institutions, and Ethics*. Oxford: Oxford U.P.

Dubbink, W. 2003. *Assisting the Invisible Hand. Contested Relations Between Market, State and Civil Society*. Dordrecht: Kluwer Academic Publishers.

Fligstein, N. 2001. *The Architecture of Markets. An Economic Sociology of Twenty-First-Century Capitalist Societies*. Princeton, NJ: Princeton U.P.

Hall, P. A., Soskice, D. (eds.) 2001. *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*. Oxford: Oxford U.P.

van Luijk, H. 2004. Integrity in the Private, Public and Corporate Domain. In: Brenkert, G. (ed.): *Corporate Integrity and Accountability*. Thousand Oaks, CA: Sage.

Schmid, M., Maurer, A. (Hg.) 2003. *Ökonomischer und soziologischer Institutionalismus. Interdisziplinäre Beiträge und Perspektiven der Institutionentheorie und -analyse*. Metropolis

Schneewind, J.W. 1998. *The Invention of Autonomy. A History of Modern Moral Philosophy*. Cambridge, UK: Cambridge U.P.

Whitley, R. 1999, 2000 pb. *Divergent Capitalisms. The Social Structuring and Change of Business Systems*. Oxford: Oxford U.P.

Topic Area #5: Ethical Implications of Contemporary Technology

Richard T. De George

Society has moved from industrialization to a new phase. This post-industrial society is characterized in several ways, sometimes by calling it a service economy, sometimes by calling it an Information Age, sometimes the Age of Globalization. But by whatever name it goes, central to the actual post-industrial development of society, and so of business, are the contemporary developments of technology. I shall deal with only two areas: that of computers and communications (including the Internet) and that of biotechnology. Both raise new issues of great import to business. The general public and those in business ethics tend to react to issues, rather than to be proactive with respect to them. After Enron, WorldCom and Arthur Anderson, all of a sudden great attention was focused on corporate governance and accounting, even though the ethical issues were clear before these events. Many of the issues relating to contemporary technology are similarly present, even though they rarely make headlines. Two important areas concern property and privacy. A third, for business, is international harmonization.

Computer and Internet Related Areas for Business

1. Privacy and the protection of personal information

The issues of privacy and the protection of personal information are becoming more and more pressing. Some companies are aggressively seeking to gather information on people—income, personal preferences, spending proclivities, and so on. One way is through data mining or using computer algorithms to make inferences from otherwise seemingly unrelated information on a person. Another way is through tracking a person's movements on the World Wide Web and a third way is through spy ware. All three are done without the knowledge or consent of the subject individuals. This raises the question of whether informed consent is a principle that applies to personal information about oneself and its use. It also raises the question of what third parties are allowed to put on the computer of others. The correlation of data legitimately gathered, e.g., by credit card companies, is similarly mined.

The United States and the EU have taken very different approaches to the protection of personal information. The U.S. in general allows the above practices and makes “opt in” the default; the EU disallows the practices without informed consent and makes “opt out” the default.

The new technologies associated with Global Positioning Systems and Wi-fi (wireless networking) make possible the tracking of individuals' every movement. The dangers of invasion of privacy are grave, and what the proper limits of the use of these technologies should be is a pressing question that should be addressed before the technology and possible abuses of personal information and privacy become entrenched.

As business becomes more and more globalized, there is an obvious need for the harmonization of laws and rules in this area. Which approach is morally preferable, who decides, and how should businesses respond?

2. Protection of intellectual property

The promise of the Information Age is that information can be spread to all for the benefit of all. But there is a growing counter tendency to appropriate information and protect and limit its use through copyright and patent. The mass downloading of MP3 recordings, of movies and of other digitally encoded

information has raised the issue of copyright and fair use on a broad scale. Are copyright laws too restrictive and should there be thought given to protection of intellectual property appropriate to the new technology? The U.S. Digital Millennium Copyright law has in effect extended copyright protection by making it illegal to attempt to crack protective code placed on movies, recordings, and other digital media. Is this ethically justifiable?

The U.S. Patent Office now routinely gives patents for business practices on the Internet. Thus Amazon.com got a patent on its "one click" technology, even though the technique was claimed by those in computing to be widely known. Numerous other patents have been issued for business practices, limiting innovation rather than promoting it. Reportedly Microsoft has 4,500 patents related to its operating system and may use them to prevent the development and spread of Linux, the free and open source operating system that is beginning to challenge Microsoft. Are patents that inhibit innovation defensible?

Great Britain has refused to issue patents for business practices. Once again the question of harmonization and of which approach is morally preferable arises.

3. Trust, business and computer technology

For all businesses the matter of security and of trust are central. The security of computer systems and the trust that customers can put in secure on-line transactions are issues that too few in business have paid attention to as have too few in business ethics.

Anonymity, encryption, the widespread use of pseudonyms are all issues that have received little attention from an ethical point of view. Surfing the Web can be dangerous; Whether the dangers should be offset by commercial technology, by government regulation, or by other means deserves attention.

The substructure or code of the Internet, making certain actions possible and precluding others, are also determined without the knowledge or consent of users or of the general public. Although such decisions may seem like clearly technical ones, the effects on all users are sufficiently important that they are not only technical. The values embedded deserve discussion and public input, even though the technical details of the implementation of the values may not.

4. Technology and business methods

The globalization of business has been made possible by the computer, cell phones, the Internet and the advances in communication. These have slowly but surely changed the way business is done. One politicized result has been the outsourcing of jobs, both within a country to specialty firms and to other countries. Discussions of the ethics of outsourcing have been overshadowed by the politics and rhetoric associated with it.

Flex-time for workers, telemarketing, and the new management techniques that the technology brings in its wake have received little ethical discussion.

How local businesses, multinationals, governments and workers respond to the possibilities is slowly evolving. As the evolution takes place the ethical implications should be discussed and unethical practices, where possible, precluded.

5. The digital divides

Access to information technology: haves and have nots. This has many dimensions. When one considers that half the population of the world has never used a telephone, the discrepancy between those who are computer literate and those who do not even have access to basic technology may seem overwhelming. There is an ethical imperative to make technology available to all. This means also making its use intuitive. The possibilities of wireless technology, exemplified by cell phones, provide hope that the gap can be bridged more quickly than could older technologies, which were dependent on developing an expensive physical substructure. Another aspect of the divide is linguistic, since the majority of sites on the Web are in English. There is arguably an ethical imperative to make the Web available in all languages, and to make it less dependent on text and more responsive to oral commands.

Biotechnology and Business

Just as computer technology brings with it emerging ethical issues, so does biotechnology. There are ethical issues within biotechnology businesses and there are implications for other businesses as a result of biotechnological developments.

Not surprisingly the issues of intellectual property, of privacy and informed consent, and of international harmonization of laws and rules arise here as well.

1. Biotechnology, privacy and informed consent

Privacy and informed consent arise at several levels and in many ways, but can be exemplified by the progress with respect to the genome project. As it becomes possible to determine the genetic make-up of individuals, to whom does that information belong, to whom should it be released and under what conditions? Should employers and prospective employers have access to it so they can know the likelihood of whether applicants are more or less likely to come down with certain diseases? Should insurance companies have access to it? Should it be part of the public record? The dangers of abuse are obvious, but how to prevent such abuse is not. The issues are pressing and deserve careful and informed discussion. The social implications of any policy that is adopted would be broad, and once in place would probably be difficult to modify.

2. Intellectual property

Issues related to intellectual property arise in a variety of ways. Does knowledge gained by studying the genes of individuals or groups belong at least in part to those whose genes are studied? Should private biotech companies be allowed to reap the profits from such research without sharing it with the subjects? Similar questions arise with respect to biotech companies that develop new drugs based on knowledge, preserved by generations of indigenous peoples, of the powers of certain plants and herbs. To whom does that knowledge belong, and can it be ethically appropriated by drug companies and protected by patent as exclusively their intellectual property? Who owns the species found in isolated parts of the world on land that belongs to a country or tribe? Can genes be owned and patented?

The WTO TRIPS agreement has been criticized as imposing on less developed countries the interest and legal standards of the developed countries with respect to intellectual property. Even the exception for life-saving drugs in time of emergency is difficult to implement.

Stem cell research also raises questions of ownership of the stem cells: should they be freely available for research and should the results of the research ignore any claims of those from whom the stem cells come?

3. Distribution of health care

In the United States health care is provided for the most part through private doctors and hospitals, paid for largely through health insurance paid for in part by employers. In many countries health care is provided by the government. In less developed countries, any kind of health care is often minimal.

The AIDS epidemic has raised the question of the obligation, if any, of pharmaceutical companies with respect to health care. The cost of drugs has similarly become an issue, which is likely to get more acute as biotech drugs are developed and as it becomes increasingly expensive to develop new drugs. The issue of two classes of people with respect to medical care and access to needed drugs within a country, and vast discrepancies between developed and less developed countries is already a pressing issue. The ethical responsibility of business—not only pharmaceutical companies—in helping address the problems is a neglected area.

4. Genetically modified agricultural products

Genetically modified agricultural products are claimed by its proponents as a blessing that can help feed the hungry of the world. But many others, even countries suffering from hunger—have been reluctant to import genetically modified agricultural products or to buy and use such seed.

Countries of the EU have adopted what they call the precautionary principle, which is to refuse to use genetically modified agricultural products until they have been demonstrated to be safe. The alternative is to use such products until there is some reason to believe that they are harmful—evidence of which is presently absent. Whether there is more at issue—such as protection of local farmers and their interests—should be studied further. On a national level there is also the problem of the drift of seeds from fields that use genetically modified techniques to those that do not.

Here is an obvious area in which harmonization of policies worldwide would be beneficial.

Conclusion

Technological innovations are developing and being implemented faster than many companies and than the general public can absorb them, much less evaluate them and the ethical issues they raise. There is therefore an urgent need for those in business ethics not only to react as scandals and harm to people emerge, but to keep up with technological developments and take part in seemingly esoteric discussions among the insiders. It is easier to catch and identify harmful practices as they emerge than it is to try to change them once they have been widely adopted.

Bibliography

Barker, J. H. 2003. Common-Pool Resources and Population Genomics in Iceland, Estonia, and Tonga. *Medicine, Health Care and Philosophy*, 6(2), 133-144.

Brady, T. 1995. The Ethical Implications of the Human Genome Project for the Workplace. *International Journal of Applied Philosophy*, Summer-Fall, 10(1), 47-56.

Cohen, J., Burg, E. 2003. On the Possibility of a Positive-Sum Game in the Distribution of Health Care Resources. *Journal of Medicine and Philosophy*, 28(3), 327-338.

- De George, R. T. 2003. *The Ethics of Information Technology and Business*. Malden, MA: Blackwell.
- Etzioni, A. 1999. *The Limits of Privacy*. New York: Basic Books.
- Flowers, E.B. 1998. The Ethics and Economics of Patenting the Human Genome. *Journal of Business Ethics*, November, 17(15), 1737-1745.
- Holtzman, I. 1979. Patenting Certain Forms of Life. A Moral Justification. *Hastings Center Report*, JE. 9, 9-11.
- Koehn, D. 2003. The Nature of and Conditions for Online Trust. *Journal of Business Ethics*, March I-II, 43(1-2), 3-19.
- Martone, M. 1998. The Ethics of the Economics of Patenting the Human Genome. *Journal of Business Ethics*, November, 17(15), 1679-1684.
- Moore, A. D. 1997. *Intellectual Property: Moral, Legal, and International*. Lanham: Rowman & Littlefield.
- Nissenbaum, H. 1998. Protecting Privacy in an Information Age: The Problem of Privacy in Public, *Law and Philosophy*, 17, 559-96.
- Rachels, J. 1975. Why Privacy Is Important. *Philosophy and Public Affairs*, 4/4, Summer.
- Resnik, D.B. 1997. The Morality of Human Gene Patents. *Kennedy Institute of Ethics Journal*, March, 7(1), 43-61.
- Sagoff, M. 2002. Intellectual Property and Products of Nature. *American Journal of Bioethics*, Summer, 2(3), 12-13.
- Wiesenthal, D. L, Wiener, N. I. 1996. Privacy and the Human Genome Project. *Ethics and Behavior*, 6(3), 189-202.
- Williams, E. D. 2002. Genetics and Bioethics: The Current State of Affairs. *Synthesis Philosophica*, 17(1), 121-133.