

# Why Ethical Codes Constitute an Unconscionable Regression

Michael Schwartz

---

**ABSTRACT.** The article protests against the usage of ethical codes by business organisations. It asserts that professionals are in a different situation to that of employees; and that with the latter ethical codes are used by management to ensure compliance and are devoid of ethical content. Ethical codes it is argued are part of management's control system in a time of flatter organisational structures with a far wider span of control. It is also asserted that the ambitions of some to utilise ethical codes so that the business organisation is able to engender societal change is dangerous and likely, if successful, to return us to an age which we could not seriously desire to re-visit.

## Introduction

Within my university a written code of ethics prevails. It is not the intention of this paper to comment on that ethical code. Its existence is merely noted as a, perhaps, none too subtle reminder of the pervasiveness of ethical codes. Indeed, attempting to comment upon the moral implications of any specific ethical code, per se, seems futile. This is because such codes are created in, and for, a specific society. What thus needs prior consideration, is why in our society there is the tendency to create such codes. And further to that, the implications for society of the

creation of such codes. Undoubtedly, historically, some of the implications have been beneficial. After all, contemporary philosophy would have been different had Jeremy Bentham not come across Oxford University's Thirty-Nine Articles.

## The workplace

It seems indisputable that in developed economies, both the nature and character of work is changing. Post-industrial economies are characterised by a shift from the manufacturing sector to services. As a result less people serve as "lifers" on the factory floor. In the service sector, the product is intangible. Intangibles tend to exhibit a much shorter product life cycle than those of tangible goods. Employment in the service sector tends as a result, overall, to be far less static, than it was in traditional large-scale manufacturing. Also, the ability to supervise service-providers is different to that of manufacturing workers.

Much of this business seems cognisant of. Within business corporations operating in these economies, we witness much flatter organisational structures along with claims of employee empowerment. Simultaneously, corporations continue to "downsize" (*Fortune* 17th February, 1997, p. 69), whilst any new employees accept that their tenure will probably be of limited duration. Whether such events are some catastrophic manifestation of the "liberal utilitarian experiment . . . striving to impose the utopian free-market system" (Adams, 1992, p. 398) or valiant attempts at preserving the remaining jobs in the face of intense global competition is of little solace for many employees. For them the

---

*Michael Schwartz is a senior lecturer in the Faculty of Business at the Royal Melbourne Institute of Technology. He teaches business ethics both to undergraduates and also to the M.B.A. class. His articles have appeared in the Institute of Public Affairs Review and Business Ethics Quarterly. He is also the treasurer of the national committee of the Australian Association for Professional and Applied Ethics.*



reality is that jobs are less secure and they are vulnerable.

According to historians, such changes to the nature of work are accompanied by changes to the economic order within which work exists (Taylor, 1979). There has even been some speculation on the capitalist model eventually succumbing to a new scenario, and to some what does “seem . . . likely (is) *The Medieval Replay*” (Gramm, 1989, p. 367). In a similar vein, nearly thirty years ago, Baratz was forecasting “by the year 2000” . . . (corporations) . . . “might . . . fully merit (the) label . . . our new Feudalism” (1970, p. 80). Currently social critics such as John Ralston Saul claim that the trend towards corporatism is creating “a conformist society. It is a modern form of feudalism” (1997, p. 94).

However, whilst referring to the medievalists for illustrative purposes, medieval reality with regard to both the similarities and differences between medieval culture and contemporary western culture, cannot be fully accounted for here. It is used merely as a pertinent example given that the prevailing economic philosophy is linked to socio-cultural conditions which change over time.

Current socio-economic conditions in the developed economies are such, that some depict an “apparent parallel (with) the chaos of the decline of the Roman Empire (where) . . . the free citizens of Rome evolved into the serfs of feudalism . . . (and) today, the corporation mimics the (medieval) manor in offering a refuge” (Adams, 1992, p. 398); not from civil chaos but from the social and economic uncertainty associated with the shift to a post-industrial society.

Within these corporations ethical codes are becoming increasingly ubiquitous (Farrell and Cobbin, 1996). This, some suggest, results from the ongoing intensification in the volume of global capital, which they believe has made increased corporate governance necessary. John Hawkins, the managing director of consultancy Russell Reynolds, sees society “evolving to a situation where there will be the issuing of codes of conduct all over the world” (1998, p. 109). This he, and others, see as beneficial.

This paper, however, seeks to successfully

contend such sentiments. It seems most unlikely, that those framing such codes can engage in moral discourse, on some common moral ground, with those at whom these codes are directed. The reason for claiming this, is that most authorities recognise, that it would not be uncommon for different individuals to possess conflicting moral insights regarding different issues; after all, our moral judgments remain uniquely our own. The framers of codes of ethics, must by necessity accept their moral stance as valid. Any doubt regarding this, according to ethical theorists, would undermine their ability to formulate an ethical code. Conversely the presupposition of common moral ground between them and others is difficult; especially if the latter have not yet been employed. And given that in ethics “the logic of practical discourse is intelligible only against a background of agreement on moral principles” (Nowell-Smith, 1957, p. 173), on the whole, most codes of ethics must be devoid of ethical content.

Such codes are in fact better described as a management tool of control – albeit a highly subtle one. The employee, employed against a background of uncertain market forces, is expected to yield to moral suasion quite divorced from any overt managerial pressure. It is this factor that makes the comparison with feudalism so significant, as it was the “structure of the feudal mode . . . (which) . . . requir(ed) the intervention of a practice other than the economic within the process of production” (Taylor, 1979, p. 111).

Consideration, incidentally, was given to utilising – as opposed to medievalism – “elements of fascist doctrine and policy, which include . . . codes of behaviour” (Gramm, 1989, p. 354); and also codes of conduct with “which absolute compliance” (Gilbert, 1986, p. 40) was sought. Fascism however, is not compatible with the emergence of a philosophical outlook hostile to the extensive state. It is coupled with this, that we witness calls for business to undertake activities which “may substitute for . . . functions which might otherwise be performed by the state” (Moon, 1995, p. 1). Such activities – whilst often outside the firm – are however also often

“evidence(d . . . by) . . . internalised” (Moon, 1995, p. 6) acts where it seems possible that the business corporation can “mimic the manor”.

The possibility of such a “mimic” was always possible; especially if the modern state surrendered its powers to a powerful intermediate institution such as business. In feudal times the majority of the populace were serfs. Today, within developed economies at least, the vast majority are employees; “93 percent . . . and . . . the job . . . the one avenue of access to personal property” (Drucker, 1985, p. 180).

Such developments pose grave questions for management practitioners. The founding fathers of modern management insisted that “management after all was a moral discipline” (Scott, 1992, p. 155). This claim has been re-iterated by subsequent theorists and practitioners (Drucker, 1979, Peters and Waterman, 1982). This would imply management recognising workers as autonomous individuals, and not merely as the means to an end. Any infringement upon the “freedom of individuals” or the assumption of “paternal authority” is, according to Drucker, a “socially irresponsible usurpation” (1979, p. 460).

However, a chairman of the British retailer, Marks and Spencer, who according to “The Economist”, is admired by its peers for its social responsibility (17th October, 1992), chooses to differ. He insists that, “there is a new morality in the business world . . . (and) . . . in taking on new responsibilities for the well-being of their employees business leaders should not fear being described as paternalistic” (Sieff, 1990, p. 182).

Paternal authority in the organisation however, will be constantly undermined by changes in the market as well as cognitive differences within the organisation’s work force. It has been suggested, that unless upheld by political means, paternalism will fail; for paternalism can only continue to exist for those who fully accept that they are unable to help themselves (Shanin, 1979).

In any event “paternalistic” business leadership and other such workplace developments are not commensurate with contemporary, post-industrial, pluralistic societies. Both modernity and post-modernity implicitly renounce such corporatism. Yet the article postulates that under the

guise of business ethics, ethical codes are being utilised, by management, as value-setting controls within flatter organisational structures with a much wider span of control. The paper, however, does not seek to deny the relevance of morality to business. It merely suggests that ethical codes might do so, and if so, they are unconscionable.

### Business ethics

Some business ethics practitioners acknowledge this. They bemoan that business ethics has been effectively hijacked by business for – along with other means such as an internal audit – the purpose of ensuring employee compliance. De George (1991), claims that business corporations possess certain ethical preferences and without any moral debate as to the rightness or the wrongness of their preferences is satisfied to use business ethics to inculcate their credo. In such a situation business ethics is reduced to being merely a “legitimising label for company indoctrination” (Freeman, 1991, p. 13).

Within Australia the trend, in recent years, has been the adoption of ethical codes by numerous corporations. The Australian Consumer Association questioned (*Business Review Weekly*, 15th August, 1994) the efficacy of such codes in protecting local consumers. Unfortunately any such aspirations remain unduly optimistic. Product safety, according to Australian researchers examining the actual content of the top 500 Australian enterprises’ codes, was one of the least frequently included items; whereas the “most frequently included item related to employee conduct” (Farrell and Cobbin, 1994, p. 13).

These researchers were to conclude that these “codes tend to be concerned with behaviour in areas protective of the enterprise” (Farrell and Cobbin, 1994, p. 15); also that they were “predominantly inward looking . . . (and) . . . for many items a reiteration of legal obligations of staff” (Farrell and Cobbin, 1994, p. 24). They also did compare their findings with similar research undertaken in the United States (Robin et al., 1989). Here they report on the contents of the United States codes containing much, that whilst “perhaps, worthwhile outcomes for a

corporation (were) not to be elements related to ethics" . . . but . . . a "prescriptive approach to setting rules of behaviour . . . protective of organisations . . . (and) not the outcomes of an ethical process" (Farrell and Cobbin, 1994, pp. 16–17). Their overall conclusion was that the level of "ethical content in each country's codes was very low" (Farrell and Cobbin, 1994, p. 25).

Herein lurks considerable danger, as whilst this might be apparent to these researchers it might not be so apparent to the employees of those organisations. Managements cognisant of this fact, will exploit the innocent impression that ethical codes contain ethical wisdom, and so manipulate the prevailing "framework of interpretation (to ensure) obedience and conformity" (Blau, 1993, p. 169) which are aspects of morality.

The probability of such occurrences is heightened in "excellent companies marked by a very strong culture . . . (as we) . . . surrender a great deal to institutions that give us a sense of meaning and . . . seem all too willing to yield to authority, and (others) in providing meaning . . . are all too willing to exert power" (Peters and Waterman, 1982, p. 78).

De George's criticism has not been joined by many others, although there have been some criticisms of a different nature. The management theorist, Peter Drucker, charged business ethics with practising "casuistry" for business executives aware of "the political potential of business ethics" (1985, p. 244). This accusation stems from conceptual problems. These problems are due to "the terms corporate social responsibility and business ethics tend(ing) to be used almost interchangeably" (Vogel, 1991, p. 104). This is unfortunate as these terms denote two distinct activities.

Business ethics itself, attempts to ascertain whether the behaviour of a business is moral. A "Dictionary of Philosophy" (1984) defines "moral" as "1. Opposed to immoral. 2. Opposed to non-moral or amoral". Yet, it is possible, that the behaviour of a business attempting to discharge its corporate social responsibilities might be immoral, non-moral or amoral; especially if the business in doing this is merely attempting to assuage the prevailing societal expectations.

Here it is not inconceivable, that any business

in a society, might, if seriously intent on discharging their perceived corporate social responsibilities, remain oblivious to any moral conflict or ambiguities. They might, as Downing attests, not be so much "taking charge of . . . ethical judgments, as . . . constantly re-sensitising . . . to what (the) community 'knows' is right" (1996, p. 211). If so, the adoption of these corporate social responsibilities could be viewed as divorced from the actual morality of that business.

Following Dawson (1994), being ethical means being independently able to decide what is morally right or wrong and not being constrained morally by an external set of rules prescribing morally acceptable behaviour. This by no means advocates a state of moral anarchy. It merely re-iterates what was stated earlier – namely that our moral judgments are unique to each of us as autonomous individuals. Nor does this dispute the observations of writers such as Hosmer (1991), that the prevailing norms, values and beliefs within a common social context result in individuals there often being in moral agreement. All it does is recognise within ethics, the supreme value of "conscientiousness" (Ayer, 1990), where it is incumbent upon the individual to be morally bound to do what he or she believes to be right. In fact, some philosophers have insisted that we should encourage an individual to be "conscientious even in a case in which we think that the principle on which he thinks he ought to act is a bad one" (Nowell-Smith, 1957, p. 222).

### **Rationalising ethical codes**

Deciding independently as individuals what is morally right or wrong has never proved easy. Given the above comments regarding conscientiousness this should be apparent. It should also be apparent from the individual moral dilemmas which we all experience. This is why we still seriously contemplate Aristotle on the subject of ethics. His advise to midwives filled with "some genuine recipes for causing speedy delivery" (preface to Aristotle, 1779 edition) is however, not required reading for those currently studying obstetrics. Nonetheless, because ethics is difficult to apply, we should not be surprised to encounter

criticisms of it. These predicably are along the lines of business ethics not being “practical enough; that it is too abstract to allow straightforward application” (Cavanagh, Moberg and Velasquez, 1995, p. 399).

Although, unfortunately, such criticisms seem unjustified, especially as in the main, we experience in business not the abstract or critical thought demanded by business ethics, but in its place merely the widespread utilisation of ethical codes. Etheredge (1995) and others have researched these phenomena. Some of this research has sought to correlate the existence of corporate codes of ethics with ethical behaviour in the workplace. Here researchers concluded that “corporate codes of ethics are negatively related to unethical behaviour in the workplace” particularly where “an organisation attempts . . . to ensure compliance” (McCabe, Trevino and Butterfield, 1996, pp. 471–473). Others such as Richardson insist that even “an effective code . . . would” not “establish exemplary business standards” (1995, p. 35).

To this writer such observations are heartening. However, whilst they are supportive and do buttress the argument they cannot supplant it. This is because they relate to specific instances whilst what is presented here is broader. Here what is being asserted, is dependant on the acceptance of differentiating between the ethics of a business and its social responsibilities. The argument, is that when a business reacts to the prevailing social expectations, then it is discharging its perceived corporate social responsibilities. To do this does not require any moral deliberation upon the part of that business. In fact, in assuaging such social expectations the business might be wilfully excluding itself from any true moral deliberation. An example of this might be the actions of Barclays Bank when still operating in South Africa. Barclays then encouraged investment in the so-called black homelands. No doubt this helped provide employment and also alleviate poverty there. Within white South Africa this probably was seen as being socially responsible. However whether such acts, which did serve to perpetuate the apartheid system, were in fact ethical or not is another matter entirely.

Much akin to that can we not argue, that an employee re-acting to some rule prescribed in the corporate code of ethics, is likewise excluded from moral deliberation? Here if such a code was not in existence then the individual could morally deliberate as to what was right or wrong. Of course the employee might not . . . but as soon as a code exists the employee cannot. And here should the existence of the code result, per chance, in the employee choosing to do what the framers of the code view as morally correct; indeed should this even be the moral choice that that individual might have made, it is still not the result of any moral deliberation on the part of that employee. In short the existence of the code alienates the employee from his or her own innate morality.

Such reasoning however, does little to diminish the rationale for business itself utilising codes. Especially if they believe that such codes will lead to more compliant workers, and that compliant workers create fewer problems. Here it is not difficult to perceive a Marxist insisting that this is a logical progression . . . with private property first alienating the employee from their labour and next of their morality. The inference here would be that alienated labour is more productive. The reality, unfortunately, seems to be that corporate managers concur.

### **Codes of conduct**

And yet despite such sentiments codes of conduct are relevant. The existence of a morally defensible corporate code, could mean genuine legitimacy for the management of a business. It thus seems worth re-examining our presuppositions regarding the nature of ethical codes. This, fortunately, was done by the American philosopher, John Dienhart.

Dienhart, in an ambitious paper titled, “Rationality, Ethical Codes and an Egalitarian Justification of Ethical Expertise: Implications for Professions and Organisations” (1995), launched a defence of the morality of ethical codes. Dienhart’s paper is exceptionally useful in contemplating these issues. His defence of ethical codes is so comprehensive that it provides the

opportunity for a critical examination of all those facets on which he builds his case.

Dienhart rebuts the argument underlying most moral critiques of codes. This is that, “if ethics is not a matter of following rules, the very possibility of ethical codes is in doubt” (1995, p. 419). Dienhart does this by arguing that this is no longer valid, if we accept a non-classical or non-rule guided view of rationality, which he borrows from Brown (1988 as in Dienhart, 1995). Here an individual can “come to a reasonable decision without following rules” (Brown, 1988, p. 137 in Dienhart, 1995, p. 420) as following rules would not be a rational process at all, “but mere rule following” (Brown, 1988, p. 171 in Dienhart, 1995, p. 425). In other words, following Dienhart, there is more to a code than merely following it. Whether this is possible needs to be addressed.

One does suspect Dienhart of a certain glibness, in asserting a distinction, between a supposedly classical and non-classical form of rationality. Simultaneously, given that the crux of all critiques of ethical codes are that they revert to the imposition of rules, one can understand the urgency with which Dienhart would seek to make such a distinction. None the less that humans are rational, clearly means them capable of either rationality or irrationality, and under either of these conditions it would seem that they are able to follow, or not follow rules. Nobody can define not yielding to a red traffic-light, in a wild storm at midnight, as being rational.

Rationality or rationalism means being open to reason. Rationalists in the philosophical sense believe “that no moral system can rest solely on authority” (Ayer 1990, p. 173). Traffic-lights however, are not within the moral system of individuals. Nor is Brown’s example of basketball which Dienhart (1995) utilises. Yet ethical codes always are, and thus here rationality must be what Dienhart terms non-classical. The suggestion of anything else would be nonsensical. No one could seriously assert a supposedly “classical” rationality, and believe that we need only to follow rules to arrive at a “reasonable decision”. Mere rule following one would suppose to be the antithesis of rationalism.

The distinction Dienhart thus offers, between

classical and non-classical rationality, is meaningless. Nonetheless such a distinction can be made. Collingwood distinguishes between the Hellenistic idea of the individual as “a rational animal . . . an animal capable of reason” (1994, p. 41) and the less exaggerated idea of “tentative, experimental (action, which is) directed not by a knowledge of what it will lead to but rather by a desire to know what will come of it” (1994, p. 42). The former here might be termed as classical rationality. The latter non-classical. And yet in neither of these situations can the individual, in making a truly moral decision, rely on some higher authority. The existence of any such authority, must diminish the moral autonomy of the individual.

Dienhart insists however, that with codes of conduct this is not the case. This is because such codes “do not dictate moral principles to others” but only “suggest ways” (Dienhart, 1995, p. 428). The problem with such an argument however, seems to be that Dienhart fails, as Collingwood would have it, “to take account of certain important regions in moral experience” (1994, p. 41); specifically, the autonomy of the moral agent. Employees, as compared to self-employed professionals, have little autonomy. They are in the main, engaged in “blind activity . . . without foreseeing its end and being led to that end only through the necessary development of that course itself” (Collingwood, 1994, p. 42). Codes of conduct might understandably, be perceived as more than merely “suggestive” to them.

Within Australia the 1995 annual report of Ampolex – (since acquired via a hostile takeover by Mobil, a North American oil and gas company) – proudly noted that prospective employees were required to sign adherence to the ethical code of the company. Ampolex’s code, might well have promoted “ethical behaviour” and not “dictated moral principles” but it is difficult to envisage work-seekers believing they enjoy sufficient leverage to dispute this.

Dienhart in asserting that an ethical code such as Ampolex’s, “represent(s) one of the central ways . . . organisations . . . promote ethical behaviour” (1995, p. 426) obfuscates matters. This is not due to “ethical behaviour” being denigrated by the paucity of employee involve-

ment in developing a code of ethics, but because imposed ethical behaviour cannot be moral. Moral principles are those adopted by autonomous individuals. Supposedly “moral” impositions are essentially immoral. And indeed whether employees value their input in developing such codes is irrelevant. Because if such input should then lead to the creation of an ethical code it is going to be immorally imposed upon future employees.

Further to that as Nowell-Smith perceptively observes, a “moral code . . . cannot help us, because difficulties will always arise about the application of the rules to new cases and because the cases in which the need for practical thinking is particularly acute are just those which are new and those in which we suspect that there is some good reason for breaking the accepted code. The need to think afresh about moral problems is ever present and particularly great in a period of rapid economic and social change” (1957, p. 17).

### **Unethical behaviour**

Omitting whether ethical codes can engender ethical behaviour, we also have Dienhart claiming that they will not conversely “promote unethical behaviour” (1995, p. 433). This according to him is due to the vested interests of those who create these codes as “they will inevitably be written by those who are subject to them” (1995, p. 434).

Again a distinction is called for, between employees in business and the professions; for whilst this might be true of the latter, it is simply not so for the former. As Mencken states, “the essence of a professional man is that he is answerable for his professional conduct only to his professional peers” (1958, p. 216). This certainly makes sense with a dentist. A patient normally does not approve, of what is currently being done in his or her mouth, by their dentist. Nonetheless, the patient would find it difficult to objectively comment on the standard of professional conduct being exhibited by that dentist. Ethical codes could thus make sense for dentists, and other professionals; with them answerable for their professional conduct to their peers.

Employees, however, are not in such a situation. They are answerable for their professional conduct to their employers who can fire them. And given employment at will, who often do fire them.

However, despite this distinction, it is worth noting that professionals can promote unethical behaviour for their profession despite the presence of a valid code. The German medical profession, for example, “set its own course” in 1933 with the leading German medical journal “aggressively promot(ing) . . . eugenic ideas” (Hanauske-Abel, 1996, p. 1455). German doctors, bound by the Hippocratic code of medical ethics, found the leaders of their profession communicating ethical expectations to them through this journal which soon led to “crimes against humanity by . . . the German medical profession” (Vollman and Winau, 1996, p. 1447).

Contemplating such disturbing episodes, it seems worth examining Dienhart’s claim that with ethical codes, ethical experts can “impose their views . . . (and) . . . that we have the right to impose moral views on others” (1995, p. 439). Undoubtedly, one can impose such views, but such moral impositions seem decidedly at odds with most conceptions of morality. Dienhart (1995), might well insist that if an act is commonly accepted as being morally wrong, then it cannot be held as morally wrong to impose moral standards . . . but normally if such an act impinges upon the rights of others then we do not insist on moral compliance, but utilise the law.

In Germany, incidentally, there existed prior to the Nazis attaining power, the most “legally advanced regulations regulat(ing) therapeutic and non-therapeutic research in human subjects . . . (which was) . . . not annulled in Nazi Germany, when unethical experiments were performed by German doctors” (Vollman and Winau, 1996, p. 1447). Existing civilised legislation can do much good if upheld by the authorities.

### **Imposing morality**

In the medieval period, Dienhart would not even have to suggest that morality be imposed, because

it always was. But in those times, the powerful enjoyed extensive powers that were “enshrined in the manor” (Rigby, 1991, p. 27) which in any exchange was to the detriment of the other party to that exchange. Furthermore, in medieval society “the overriding purpose seems to have been to promote the . . . establishment, (and) patronage . . . dominated the political scene . . . (and had) . . . moral stature” (Bridbury, 1986, p. 82).

Dienhart’s assertion thus, that morality be imposed, is not without historical precedent. It also has some frightening ramifications. Especially with the aspiration of “changing moral standards . . . becom(ing) institutionalised into the formal legal framework” (Hosmer, 1991, p. 84), which must ensure the complete imposition of such a morality. Currently the situation is very different. Under our present legal system laws seldom deal with “morality by focusing on what a good person ought to do” (Oliver, 1979, p. 60).

Such a distinction “between law as it is and law as it ought to do” (Oliver, 1979, p. 60) stems from the desire not to “enshrine” extensive powers “in the manor” and instead to seek universal rules. Such “universality” implies rules with a negative context such as the above German laws prohibiting certain medical research methods. These prohibitions prevent interference with the individual. They are purpose-independent and are not likely to conflict with one another and thus need no hierarchy nor exceptions. But they also are unable to specify what morally “ought” to be done.

Dienhart however, seeks not only to justify the use of ethical codes in the organisation to specify morality, but further to that, that such business “organisations and their ethical codes (can) provide opportunities for resolving social ethical issues” and that “corporations can be seen as testing grounds for social policy and, correlatively, as engines of social and moral change” (Dienhart, 1995, p. 445).

Now, whilst the laws in our legal system might be purpose-independent, the rules governing a corporation are not. On the contrary such rules are completely purpose-oriented, which, whilst suitable for a group committed to the same goals, is not so when these rules are then universalised

to include those who are not a part of this purpose-oriented group. Corporate management has no legitimate authority within our society to assert such responsibilities. The responsibility entrusted to them is for “conducting the enterprise so as not to undermine our social beliefs” (Drucker, 1979, p. 460). Dienhart’s desire that they be the “engine of social and moral change” is absurd unless one does believe in the “corporation mimic(ing) the manor”.

### **Asymmetric distributions**

Further evidence of Dienhart’s ambition is manifested in his desire to utilise ethical codes to remove one of the major sources of immoral conduct in our society . . . and thus to remove, one supposes, the need for the appearance of ethical codes. In a society such as ours, governed largely by rules with a negative context, individuals are left “free to use their own knowledge for their own purposes” (Hayek, 1988, p. 270). However, different parties have conflicting goals, which they each seek to maximise. Moral problems can thus commence due to the related “asymmetric distribution of information” (Oliver, 1979, p. 69). Yet, according to Dienhart, researchers have shown that “ethical codes are a way to reduce the asymmetry of information” (1995, p. 443).

To utilise ethical codes – not only as a means of promoting morality within the business corporation – but also as a means of removing the cause of immoral acts in society itself, is a highly ambitious undertaking. It also, rightly or wrongly, flies directly in the face of current ethical codes which seek from employees “confidentiality” (Farrell and Cobbin, 1994, p. 13).

Ignoring the fact of whether such appeals for “confidentiality” can be morally defensible, there does seem valid reason for not actively seeking to reduce the “asymmetry of information” in a society. The reason for this is that although access to perfect information by all parties would make the perpetration of immoral acts difficult, the reality remains that superior information has to be acquired initially by someone. Such information incidentally might merely constitute the



saleability of shoddy suits. The knowledge still has to be acquired. And it normally will be acquired, solely due to it being in some manner profitable. Reduce any such “asymmetry of information” and there will be less reason to acquire knowledge. Furthermore, the very essence of corporate strategy is to differentiate a firm from the competition. Corporate strategy comes down to not reducing, but increasing the “asymmetry of information” (Porter, 1985).

Kant (1993), when renouncing lying, does so in the belief that lying destroys the major source of human development, that being knowledge, since lying thwarts the discovery of new truths. At present within our society there are rewards that promote the acquisition of such knowledge. Although there are recognisable costs, in terms of the resultant immoral acts, due to the different scales of knowledge possessed by different participants in the market.

However, such immoral acts can only consistently occur due to the different degrees of power enjoyed by different participants in the market, quite apart from any asymmetry of information. Here it should be noted, that our rules with a negative-context, are actually oriented towards a certain purpose – namely the attainment of social justice – and that the market itself is a manifestation of this purpose in view of rulings that attempt to ensure the market’s efficiency. This efficiency would be undermined by the imposition of ethical codes seeking to remove the asymmetry of information. Our current legal system is grounded on moral principles directed towards the ends of social order and social justice. And one of the means to such ends is an efficient market where with the power of different participants little is “enshrined in the manor”.

Such a position seems to be supported by Moore’s research (1990), into the ethics of insider trading. Moore argues that an individual is “not morally obligated to tell those who deal with (that individual) everything that it would be in their interest to know . . . (as) . . . we frequently think it is fair for people to benefit from informational advantages of their own making; this is an important justification for patent law and the protection of trade secrets” (1990, p. 173). Moore goes on to assert that any “disparity

of information . . . is simply something that is built into the fact that people choose to specialise in different areas” (1990, p. 174). Such specialisation has always been viewed as increasing the efficiency of capitalist societies. And any gains thereof seem difficult to arbitrarily dismiss as unfair.

Lastly, whilst it is probable that an asymmetry of information can lead to unethical acts, rules with a negative context at present prohibit interference with an individual. Such interference, incidentally, extends to prohibiting corporations often from enforcing the “confidentiality” sought in their ethical codes (Brooks, 1971). Dienhart provides no examples of the asymmetry of information leading to unethical acts. No doubt examples exist, but where they do recourse should be sought through the law, and not imposed by means of an organisation’s ethical code.

### **Electoral authority**

Whilst earlier, Dienhart was characterised as ambitious in promoting the business corporation as the “engine of social and moral change” (1995, p. 445), so is his assertion that when corporate “managers act under the mandate of law, the authority of the electorate is inherited by the managers through the medium of law” and there “are those laws . . . that make ethical codes a critical feature of organisational management control systems” (1995, p. 446).

Such assertions as to the inheritance of the electorate’s authority seems somewhat tenuous. When you legalise streetwalking, streetwalkers also then act under the mandate of law which should not imply that they have thus inherited the authority of the electorate. All that has occurred is that unlawful sexual intercourse is now legal. But it would be absurd to imply that due to this change in status, we can now look to streetwalkers for moral leadership. However, within the corporation the manager does have the legal status to manage that corporation; and codes do seem very much a feature of management’s control system.

A recent article in the Australian Financial Review, claimed that “ethics, values and reputa-

tion . . . are becoming an important part of the corporate planning process” with management needing “to use more sophisticated ways of controlling (their) employee(s)” (Marshall, 1998, p. 56). Such ruminations seem similar to research into how “the principle of humanity modified plantation slavery, but did so by subjecting blacks to a psychologically manipulative form of control that avoided the appearance of physical cruelty” (Chaplin, 1990, p. 301). Nonetheless, the slaves remained the chattel of their owners, and the employees remain employees. The appearance of an ethical code in the one case, or the concept of humanity in the other, is nothing more than a further intrusion by those in control.

Dienhart exacerbates such situations by promoting a commission’s view, that the auditors be held “responsible for corporate ethical codes since those codes are part of the internal control system” (1995, p. 443). Further to this, given the global economy experienced by multinational corporations, it seems trite to raise the “authority of the electorate” if in the “host” country employees exist under ethical codes promulgated abroad.

## Conclusion

Alfred Marshall saw “ethical forces (as) among those of which the economist has to take account” (1925, preface p. vi) and no hindrance to the working of an economy. However, he did portray feudalism, as an institution where the conscience of the powerful was “satisfied when they had acted up to (their) code” (1925, p. 737). This, according to him, harmed that society, and historians of that period relate how it put “obstacles . . . in the way of productive development” (Rigby 1991, p. 27).

In feudal society the ruling – class believed that only they knew what was right. Today, De George notes, it is widely believed that everyone really knows “what is right or wrong, and the task of business ethics is to enforce these notions” . . . whilst in reality . . . “there is no agreement on what is right and wrong” (1991, p. 13) and thus that the task of business ethics is to facilitate a consensus as to what is right or wrong.

With no evidence of such a consensus existing one must question the validity of ethical codes.

The compilers of Fortune’s fifteenth annual Corporate Reputations Survey report that those corporations employ a “style of corporate behaviour that’s comfortable with”. . . amongst other things . . . “risk” (O’ Reilly, 1997, p. 42). Kenneth Goodpaster (1991), has commented on the psychological risks prevalent in such organisations. These, he states, were identified drawing on the work of Erich Fromm. Goodpaster expresses his belief that “this psychological view harbours at its core an ethical view” (1991, p. 91). This is an interesting observation, for Fromm, whilst world renowned for his work as a psychoanalyst, also wrote extensively in the field of ethics and morality.

Fromm believed it important, in trying to understand the problems of ethics, to distinguish between an “authoritarian ethic and a humanistic ethic” (1967, p. 54). The former, which he also calls a “heteronomous conscience” (and also refers to as “Freud’s super-ego”), are the rules of authority which individuals adopt and obey as if it were their own. Such a conscience, he describes, as both good and bad. Good as it guarantees that individuals can be relied upon to act according to their conscience; but bad in that such individuals will in turn consider it their duty to comply with that authority to which they submit, regardless of its content. Ethical codes fall into this category.

On the other hand Fromm’s “humanistic” ethic is where an individual’s “conscience is essentially autonomous (and) does the right things not by forcing himself to obey the voice of the internalised authority, but because he enjoys doing what is right” (1967, p. 55).

Business organisations have no business prescribing morality to their employees . . . nor to society. They can, however, strive to create an environment in the workplace where employees can be comfortable in choosing to do what they believe is the right thing to do; that is, they can seek not to encroach upon a “humanistic” ethic. This invariably will be a far more arduous task than creating an ethical code, but it is this which is required if we truly seek ethical business organisations.

## References

- Adams, J.: 1992, 'The Corporation Versus the Market', *Journal of Economic Issues* **XXVI**(2), 397–405.
- Aristotle: 1779, *The Works of Aristotle* (John Smith, High Holborn).
- Ayer, A. J.: 1990, *The Meaning of Life* (Scribners, New York).
- Baratz, M. S.: 1970, *The American Business System in Transition* (Crowell, New York) as quoted by Gramm, W. S.: 1989, 'Oligarchic Capitalism', in M. R. Tool and W. J. Samuels (eds.), *State, Society and Corporate Power* (Transaction Publishers, Oxford), pp. 353–374.
- Blau, J. R.: 1993, *Social Contracts and Economic Markets* (Plenum Press, New York).
- Bridbury, A. R.: 1986, 'Markets and Freedom in the Middle Ages', in B. L. Anderson and A. J. H. Latham (eds.), *The Market in History* (Croom Helm, London), pp. 79–120.
- Brooks, J.: 1971, *Business Adventures* (Penguin, Ringwood).
- Brown, H. I.: 1988, *Rationality* (Routledge, New York).
- Cavanagh, G. F., D. J. Moberg and M. Velasquez: 1995, 'Making Business Ethics Practical', *Business Ethics Quarterly* **5**, 399–418.
- Chaplin, J. E.: 1990, 'Slavery and the Principle of Humanity: A Modern Idea in the Early Lower South', *Journal of Social History* **24**, 299–315.
- Collingwood, R. G.: 1994, *The Idea of History* (O.U.P., Oxford).
- Dawson, A. J.: 1994, 'Professional Codes of Practice and Ethical Conduct', *Journal of Applied Philosophy* **11**(2), 146–153.
- De George, R. T.: 1990, *Business Ethics* (Macmillan, London).
- De George, R. T.: 1991, 'Will Success Spoil Business Ethics?', in R. E. Freeman (ed.), *Business Ethics: The State of The Art* (Oxford University Press), pp. 42–56.
- Dienhart, J.: 1995, 'Rationality, Ethical Codes, and an Egalitarian Justification for Ethical Expertise', *Business Ethics Quarterly* **5**, 419–450.
- Downing, F. G.: 1996, 'On Applying Applied Philosophy', *Journal of Applied Philosophy* **13**(2), 209–214.
- Drucker, P. F.: 1979, *The Practice of Management* (Pan, London).
- Drucker, P. F.: 1980, *Adventures of a Bystander* (Harper and Row, New York).
- Drucker, P. F.: 1985, *The Changing World of the Executive* (Times Books, New York).
- Etheredge, J. M.: 1995, 'Corporate Codes of Ethical Conduct', *Proceedings of the Second Annual Conference of the Australian Association for Professional and Applied Ethics*, 9–23.
- Farrell, B. J. and D. M. Cobbin: 1994, 'Evaluative Study of Ethical Codes and Cultures in Australian Enterprises', *School of Accounting Ethics Research Group Paper* (University of Technology, Sydney), pp. 1–25.
- Farrell, B. J. and D. M. Cobbin: 1996, 'A Content Analysis of Codes of Ethics in Australian Enterprises', *Journal of Managerial Psychology* **11**(1), 37–55.
- Flew, A. (ed. con): 1984, *A Dictionary of Philosophy* (Pan, London).
- Freeman, R. E. (ed): 1991, *Business Ethics: The State of The Art* (Oxford University Press, Oxford).
- Fromm, E.: 1967, *You Shall Be as Gods* (Jonathan Cape, London).
- Gilbert, M.: 1986, *The Holocaust* (Collins, Glasgow).
- Gramm, W. S.: 1989, 'Oligarchic Capitalism', in M. R. Tool and W. J. Samuels (eds.), *State, Society and Corporate Power* (Transaction Publishers, Oxford), pp. 353–374.
- Goodpaster, K. E.: 1991, 'Ethical Imperatives and Corporate Leadership', in R. E. Freeman (ed.), *Business Ethics: The State of The Art* (Oxford University Press, Oxford), pp. 89–110.
- Hanauske-Abel, H. M.: 1996, 'Not a Slippery Slope or Sudden Subversion: German Medicine and National Socialism in 1933', *British Medical Journal* **313**(7070), 1445–1449.
- Hawkins, J.: 1998, As quoted in *Business Review Weekly*, 27th April, 1998.
- Hayek, F. A.: 1988, 'The Principles of a Liberal Social Order', in T. Donaldson and P. H. Werhane (eds.), *Ethical Issues in Business*, 3rd ed. (Prentice-Hall, Englewood-Cliffs), pp. 269–278.
- Hosmer, L. R. T.: 1991, *The Ethics of Management* (Irwin, Boston).
- Kant, I.: 1993, 'Ethical Duties Towards Others: Truthfulness', in T. Donaldson and P. H. Werhane (eds.), *Ethical Issues in Business*, 4th ed. (Prentice-Hall, Englewood-Cliffs), pp. 84–89.
- Marshall, A.: 1925, *Principles of Economics* (MacMillan, London).
- Marshall, K.: 1998, 'Companies are Placing High Values on Ethics', *Australian Financial Review* (22nd May), 56.
- McCabe, D. L., L. K. Trevino and K. D. Butterfield: 1996, 'The Influence of Collegiate and Corporate Codes of Conduct on Ethics-Related Behaviour in the Workplace', *Business Ethics Quarterly* **6**, 461–476.

- Moore, J.: 1990, 'What is Really Unethical about Insider Trading?', *Journal of Business Ethics* **9**, 171–182.
- Moon, J.: 1995, 'The Firm as Citizen? Social Responsibility of Business in Australia', *Australian Journal of Political Science* **30**, 1–17.
- Mencken, H. L.: 1958, *Prejudices: A Selection* (Vintage Books, New York).
- Nowell-Smith, P. H.: 1957, *Ethics* (Basil Blackwell, Oxford).
- Oliver, J. M.: 1979, *Law and Economics* (Allen and Unwin, London).
- O'Reilly, B.: 1997, 'The Secrets of America's Most Admired Corporations', *Fortune* (3rd March), 42–48.
- Peters, T. J. and R. H. Waterman: 1982, *In Search of Excellence* (Harper and Row, New York).
- Porter, M.: 1985, *Competitive Advantage* (Free Press, New York).
- Richardson, S.: 1995, 'The Banking Code of Practice. Show or Substance?', *Proceedings of the Second Annual Conference of the Australian Association for Professional and Applied Ethics*, 35–51.
- Rigby, S.: 1991, 'Marxism and The Middle Ages', *History Today* **41**, 24–31.
- Robin, D., M. Gallowakis, F. R. David and T. E. Moritz: 1989, 'A Different Look at Codes of Ethics', *Business Horizons* **32**, 66–73 quoted in B. J. Farrell and D. M. Cobbin: 1994, 'Evaluative Study of Ethical Codes and Cultures in Australian Enterprises', *School of Accounting Ethics Research Group Paper* (University of Technology, Sydney), pp. 1–25.
- Saul, J. R.: 1997, *The Unconscious Civilisation* (Penguin, Ringwood).
- Scott, W. G.: 1992, *Chester I. Barnard and the Guardians of the Managerial State* (University Press of Kansas, Lawrence).
- Shanin, T.: 1979, *Peasants and Peasant Societies* (Penguin, Ringwood).
- Sieff, M.: 1990, *Marcus Sieff on Management: The Marks and Spencer Way* (Weidenfeld and Nicolson, London).
- Taylor, J. G.: 1979, *From Modernization to Modes of Production* (MacMillan, Basingstoke).
- Tawney, R. H.: 1961, 'Tawney on Medieval Economic Thought', in H. W. Spiegel (ed.), *The Development of Economic Thought* (Wiley, New York), pp. 14–24.
- The Economist*: 1992, *Britain's Most Admired Companies* (17th October), pp. 87–88.
- Vogel, D.: 1991, 'Business Ethics: New Perspectives on Old Problems', *California Management Review* **33**(4), 101–117.
- Vollman, J. and R. Winau: 1996, 'Informed Consent in Human Experimentation Before the Nuremberg Code', *British Medical Journal* **313**(7070), 1445–1449.
- Wicks, A. C.: 1995, 'The Business Ethics Movement', *Business Ethics Quarterly* **5**, 603–620.

*Royal Melbourne Institute of Technology,  
Faculty of Business, Level 14,  
239 Bourke Street,  
Melbourne 3000,  
Victoria, Australia.*