What are Ethicists Doing in Corporations?

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Abstract

This paper focuses on the following questions: What exactly is the function of an ethicist in a company or in its ethics committee? What should he or she do in this environment What are the limits of their actions?

It is argued that the legitimate role of the ethicist is not primarily that of an expert in moral philosophy, but rather that of an advisor whose contribution consists in helping the company to meet certain key conditions that allow the company to genuinely address ethical issues. Other roles will be distinguished as well. They can be characterized as vacillating from the one extreme, where an ethicist acts as a moralizing guide to another extreme where they play the role of a facilitator.

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1. Introduction

Ethicist can be involved in corporations on different levels: they can be managers or executives (employed by the company), external consultants, or be an 'independent' member of an ethics committee. In this paper I will describe and analyze an ethicist's role in a private company. First, I will try to clarify the ambiguities related to the possible roles an ethicist can play in a business environment. The specific characteristics of business, i.e. the constraint to be profitable - at the very minimum in order to avoid bankruptcy -, the competitive environment of the market and the specific governance structure may imply that the role of an ethicist in a corporation may be different from a the role of an ethicist in other organizations such as, for example, hospitals or universities.

Secondly, I will argue that the legitimate role of the ethicist is not primarily that of an expert in moral philosophy, but rather that of an advisor who contributes to the realization of some key conditions which allow a company to address ethical issues. On the basis of these elements, the different roles can be characterized as vacillating from the one extreme, where an ethicist acts as a moralizing guide to another extreme where they merely play the role of a facilitator.

2. Ethicists in Corporations

In the corporate world, we can distinguish three types of ethicists. First, some companies have hired ethicists in salaried positions, often called 'Chief Ethics and Compliance Officer'. These people may have different educational backgrounds. Many of them are lawyers, but some have a general management background that often started, or have had a part of their career, in human resource management. One may occasionally come across a person with a philosophy education. The above mentioned are top managers and therefore company employees. The second category of ethicists consists of consultants. Paid consultants are hired for different tasks related to ethics: ethical risk analysis, anti-corruption policy development, anti-discrimination education or corporate social responsibility (CSR) report writing. The third category consists of ethicists who are external members of a company's ethics committee; they are neither employees nor consultants. In principle they exercise independent judgment. Unlike the previous two categories their participation is not directly linked to their financial livelihood, although other factors may be at work (prestige, access to networks, benevolence). These three categories of ethicists occupy different

positions when looking at the (perceived) independence they have from a company's interests. It is obvious that an ethics officer depends, economically, more on the business interests of the company than a consultant who has other clients, and the latter is more dependent (on his client) than an external ethics committee member.

Categories of ethicists are also likely to differ from each other with regards to their access to information and their possible impact. At first glance, a company's executives seem to have more first-hand information than external partners; yet in specific situations this may not always be the case. Prima facie, I would guess that the external ethicist is also likely to have less impact. But, again, just like for the access to information, I did not come across empirical research that would allow drawing strong conclusions.

3. Applied Ethics as Casuistry

What these people have in common is that they are considered 'experts' in ethics. But what exactly is an ethics expert in business? When we hear the term 'ethics expert' we could think of a person with extensive training in moral philosophy. But business leaders who want the opinion of an ethicist are generally not looking for a philosophical discussion about the foundations of ethics, or about the details of some meta-ethical debate. What business people are seeking is found in the field usually called 'applied ethics'. Then the question that immediately jumps out is: What is the relationship between fundamental ethics and applied ethics? Would a specialist in moral philosophy be a good guide in the field of applied ethics?

Some authors have thought about this exact question. Alasdair MacIntyre published an article with a rather provocative title: "Does Applied Ethics Rest on a Mistake?" [7]. MacIntyre raised the question: What exactly is the field of applied ethics? One possibility is that one first develops a general ethical theory and then applies it to a particular area or situation. If this were the case, applied ethics would not really constitute a discipline as such, but would merely be the application of a previously developed theory. If, however, it was thought of as an autonomous discipline where ethical reflection is linked to a specific practice, it would be considered as an application. MacIntyre suggested that applied ethics is less about the application of a rule (principle, value), or the evaluation of how important a rule is over another in a particular situation. It is rather an understanding of the context in which a rule is appropriate, and in which situations it is not relevant.

MacIntyre notes another small disturbing point about applied ethics as a discipline. He writes that in applied ethics, (bioethics or economic ethics), ethicists often roughly agree on what is acceptable or what is best to do in relation to a given situation. MacIntyre admits that there are exceptions, such as the debate on abortion, but ethicists who serve in medical ethics committees, or committees who wonder whether or not we should censor some images on TV, very often arrive at a consensual recommendation. However, their consensus may conceal serious disagreements about the reasons why they have taken this option. At the level of justifications they can be tangled in conflicting theoretical puzzles while the practical decision seems less problematic. Regarding this situation MacIntyre referred to Stephen Toulmin [6] who argued that what happens in these cases is not that ethicists apply their favourite theory, but rather that they engage together in casuistry; not in the application of fundamental principles [7].Here their role is to identify morally relevant aspects, regardless of the relationship between these aspects and the great ethical theories, and then to take into account their relative importance when ethically assessing. In other words, applied ethics is actually more like common sense, or a form of wisdom that incorporates reasonable considerations. This is independent of the link between the considerations and the various theoretical frameworks they are compatible with, and without worrying about whether or not the philosophical argument is sound. In a company's ethics committee managers and business leaders very quickly identify the essential points of an ethical issue, but they are not concerned about whether these points are rooted in a single theory or opposite theories - their goal is to find an answer, one they consider ethically acceptable, to a specific problem. The fact of focusing on a singular case also means that they do not explore where the consensual answer would lead them if they would extrapolate it and apply it to all other business practices. Typically, an ethics committee tries to find an ad hoc response, relative to a specific question, and not to extrapolate the arguments used in this case to other situations.

Let us take a real life example. In an ethics committee meeting the market position for fair trade products (labeled Max Havelaar, i.e. Fairtrade coffee) was debated. As this label indicates that some standards are met regarding the coffee growers' quality of life, the conclusion was that it would be a positive action for the company to promote Fairtrade coffee in their business. In the discussion that followed, the Committee recommended that if the consumer made an effort by paying 20% more than for non-Fairtrade coffee of the same quality, the retailer should make a similar effort on their profit margin. However, more fundamental questions that could have broadened the discussion were not raised at all. Such questions could have

been: Why does this type of product continue to occupy such a marginal place in the product range? Why not gradually fade out the sales of non-Fairtrade coffee? But these questions were not raised. The issue was treated in isolation without a concern as to whether the reasons used to justify the decision were consistent. The casuistry approach to ethics in a business environment is based on a crucial assumption: business ethicists in a company uncritically accept the general idea that a company's purpose is to maximize profit in the competitive environment of the market economy. Ethical discussions focus only on particular aspects of economic practices in this capitalist system without questioning its larger framework.

4. The Role of the Expert in an Ethics Committee

What role can, and should, the 'ethics expert' play on an ethics committee? First, it must be mentioned that there are forms of expertise used by an ethics expert that are not strictly ethical expertise, in the sense that it is not related to the defense of some position in a normative debate about a business subject. Two cases in point could be the expertise shown with regards to achieving compliance - or the implementation of a specific policy -, and benchmarking business practices from an ethical perspective. For example, if a company wants to avoid being implicated in a corruption case, it could be the Ethics Officer's job to implement verification systems for assessing risk to avoid unpleasant surprises when working in dubious countries, as well as organizing managerial training sessions. Even if the company's ethics expert is involved in this process, it does not require a normative debate. The ethical response is clear and it then follows how to implement the solution efficiently. Similarly, benchmarking best ethical practices amongst competitors in the same sector is demanding more empirical knowledge than normative debate. For example, 'green' labeled products are never 100% ecological. Sometimes they are transported by air, or the packaging is not recyclable etc. It may be important to know competitors' thresholds for using the 'environmentally friendly' label and whether one's company is more or less credible than the market average. This knowledge is not really an argument, nor an ethical justification, but it may have great importance when discussing an ethical issue, yet it is not really ethical expertise.

Bernard Williams questioned the status of the ethics expert qua ethics expert and to clarify his position Williams compared an ethics expert with an expert in a different field [9]. If, for example, you have to change the heating system in your house, a young 'expert' in heating systems will

calculate the minimum capacity that it should have depending on the volume of your house, the insulation, etc. You do not know the details of the formulas he or she will use, which is what makes this person an expert, but still you vaguely grasp the logic behind these calculations and you trust their expertise. In the field of ethics, according to Williams, things are different. Imagine a discussion about a complicated euthanasia case. Faced with this dilemma you could seek the advice of an ethicist, say a young man who just defended his doctorate in applied ethics. This ethicist would apply a series of formulas, balancing the deontological and consequentialist aspects of the issue, and, following his reasoning, he would recommend that we can quietly give a lethal injection. Would you trust him and his expertise? Probably not. You would not be impressed by his theoretical knowledge and especially not by his degree. Why is this so? The reason is, according to Williams, that 'ethical knowledge' does not work in the same way as technical knowledge works in other fields, such as chemistry. When we seek out an ethics expert we are not seeking someone who masters a corpus of texts, but, as Williams puts it, an advisor. To explain the role of an advisor, Williams refers to a passage in Aristotle's Nicomachean Ethics: "Therefore we ought to attend to the undemonstrated sayings and opinions of experienced and older people or of people of practical wisdom not less than to demonstrations; for because experience has given them an eye they see aright."[9]. Aristotle suggested that we should listen to what older and sensitive people have to say. Williams points out that Aristotle does not say that we should always follow their advice, only that we should consider it. An advisor is "someone who may see better than you how things stand and will help you to see them aright. An advisor, above all, helps you to understand"[9]. Therefore, a counselor must be reliable, but "rather in terms of certain capacities, such as judgment, sensitivity, imagination, and so forth"[9]. If we trust him or her, due to these capabilities and their attitude, that is what commands respect. It may be that an advisor has more practical knowledge than the person who needs advice, but it is not this type of knowledge then makes them an ethical advisor. An essential element in the ethics advisor's approach is empathy, which is needed to assess the situation. The advisor says, "If I were you" notes Williams, which does not mean, "If you were me. [9]"

Williams' reasoning relates to ethics in general. These may be necessary qualities in the field of applied ethics, but they are not sufficient. In 1995 Antonio Argandona made an inventory of the specific characteristics of a good business ethics advisor [1]. In his discussion, he stressed the importance of having technical knowledge of the industry where one gives ethical advice. He believed it is impossible to judge the situation clearly when you do not have a good grasp of the operations and practices

within the specific sector. This requirement includes several aspects. First, it is important to have a basic knowledge of the financial implications of different propositions and to know the widely shared industry standards. Without this it is very difficult to judge from the outside what behavior is unacceptable in certain business relationships, such as between the company and suppliers. By interacting with people of a particular trade you learn what practices are negatively perceived by the entire profession. Again, without this information it is particularly difficult to judge what recommendations are realistic and economically feasible. In practice it is impossible to gather all the necessary skills in one person - hence one of the reasons to have an ethics committee - but it is essential that the ethicist himself, or herself, also has a basic economic knowledge of their sector.

So far we have focused on the specificity of 'ethical knowledge' by distinguishing it from technical knowledge and from moral theoretical knowledge [8]. However, there are occasions in which an ethicist's philosophical training is useful. Occasionally it is important to distinguish an ethical issue from other issues that can come up in discussions. For example, sometimes there is confusion between, on the one hand, an ethical question and, on the other hand, the company's difficulties with their external communication, like in the following example. A bank wants to create an investment fund in 'soft commodities' (wheat, coffee, etc.). In this case, the real ethical issue is: Does financial speculation on food products indirectly create famine, as some NGOs claim? Or, more technically: Does the price of the derivatives (futures) affect the price of the products 'on the spot' and therefore, at some point, the shelf price of bread and rice? As this relationship is very difficult to establish, unlike what various NGOs claim, it is difficult, ethically, to strongly object to this project. However, given that some NGOs strongly believe that such speculative funds would kill people (without providing proof), it may be better not to launch this product, not for intrinsic ethical reasons, but rather because of public relations. In practice it may be difficult for members of an ethics committee to distinguish both issues because an important motivation (but not the unique one) of ethics in business is precisely, and rightly so, the company's reputation. Therefore, what is perceived as ethical is often identified with what the public opinion will consider as ethical.

Finally, the most important role of an ethicist working in business should not be classified terms of ethical expertise. An ethicist, insofar as he or she has a sufficient level of independence, can play a vital role as a gatekeeper against the risk of rampant cynicism. It is important, indeed crucial, for the ethics of an organization that there is, within it, a space where ethical issues can be discussed freely. 'Freely' means that questions can be

addressed in an open debate where only the arguments are important, and not the person who states them. Normal company hierarchy must not be followed and must be 'checked at the door'. In order to meet this requirement, the presence of external people not involved in company politics and power games is very important.

To put it simply, without external independent observers it would be possible for a 'heavyweight' within the organization to sweep an ethical issue away by asking a rhetorical question such as "Is it a priority for us?", or "Do you believe that one of our customers is concerned about this?" For people who report to this person it is hard to respond affirmatively and press the issue. The presence of people from outside the organization can prevent this avoidance technique. Once an issue is on the table their presence generally means that it will be taken seriously. The committee cannot steer clear of without losing face. Having an external presence neutralizes the hierarchy between executives and the ethics committee members which allows making the discussions more rational in Habermas's (1981) sense. According to Habermas [4], a discussion is rational when it is possible to challenge all statements and their 'illocutionary conditions' (the transcendental conditions of all communication) without any fear of retaliation, and so, therefore, the best argument should win. Habermas's model is an ideal, impossible to achieve, but it is obvious that the participation of an ethicist who fears no retaliation helps an ethics committee come closer to this ideal. By the same logic, it is not uncommon that committee members who work for the company encourage, informally, the external ethicist to make a point they judge important, but they think it is more appropriate (and prudent) that someone external to the company airs it.

This absolutely crucial condition of independence does not concern only external ethicists, but also a company's Ethics and Compliance Officers. The professional association of corporate ethicists claims that a responsible ethicist (Chief Ethics Officer), in order to ensure a minimum of independence, should report to and refer to the Board, and not to the CEO of the company. His salary and bonuses should also depend on the Board of Directors. This is obviously to protect the ethicist from possible pressure from management [3]. Hoffman et al. published an empirical study based on interviews with business ethicists and confirmed the absolute need for this protection [5]. It turns out that ethicists who depend on top management cannot effectively do their job [5].

However, even if precautions are taken with the model of governance (Ethics Officers who report to the Board of Directors, integrating external ethicists in the Ethics Committee), independence - and as a consequence the impact of the ethicist on the company's practices -

depends ultimately on the willingness of the shareholders and the conviction of the CEO. If the 'tone at the top' is lacking, the influence and the position of the ethicist will remain, given the power structure in a company, necessarily fragile. Executives will kindly listen to the ethicists and then move on to the next item on the agenda. However, if the 'tone at the top' is supportive, ethicists can play a bolder role within the company. Once they have gained the trust of leaders, and other members the Ethics Committee, they may, in a constructive spirit, suggest new questions and open new fields of reflection [1], or try to broaden the level of accepted responsibility [2]. The ethicist then becomes something like an accepted troublemaker who can cautiously try to expand the scope of ethical questioning. Again, this can only be appreciated in a company whose leaders and shareholders have a long-term vision of responsible development. As we have already mentioned, the presence of such a vision is a necessary condition.

6. Conclusion

As in other organizations, ethicists in enterprises play primarily a Socratic role. Their main purpose is to ensure that the right questions can be asked and taken seriously. Once an issue is on the table business leaders can no longer act as if it does not exist. Like all rational beings, business people are perfectly able to assess the ethical aspects of a particular issue, but an ethicist can actually contribute to a clarification of the debate. They can bring up elements of comparison, but this contribution of expertise is limited without some safeguards against the risk of rampant cynicism and moral blindness. Their major role consists in being in part this kind or safeguard.

The specific context of doing business, i.e. the fact that a company is in a competitive environment and has various pressures from stakeholders - including shareholders -, to maximize profit, it makes the role of the ethicist perhaps more delicate. Their contribution can be limited to casuistry insofar as that the ethical discussions, within private companies, take profitability as an axiom that cannot be questioned without questioning the existence of the organization as such.

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