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CONSIDERATIONS FOR A GLOBAL BUSINESS ETHICS FRAMEWORK

Paul Ostasiewski
Assistant Professor of Marketing/Management
Wheeling Jesuit University

Introduction

With the emergence of multinational corporations and increasing economic globalization has come a greater concern about the ethics of businesses in a global environment. Within the United States, interest in the ethics of multinational firms is a continuation of the study of business ethics which began in the late 1960's. An important part of the study of business ethics in the United States has been defining and formulating an acceptable code of conduct for businesses. Efforts to do so have evolved through legal means, the passage of legislation, and considerable discussion about what comprises an ethical code of conduct for business. The spectrum of discussion has grown over the years as societal concerns encompassed a variety of business related issues, such as environmentalism, equal rights in the work place, and increasing ethical complexities caused by changes in technology. While laws have been passed and individual behaviors and corporate practices have changed, the complete code of what is socially acceptable business ethics is far from complete.

The problem of defining a code becomes more acute when examined on a global basis. As businesses attempt to engage in commerce outside their homeland, they encounter numerous ethical problems beyond those encountered at home. The problems are caused in part by differences in culture, values, and differing levels of economic development among nations. In addition, while there is a common body of international law, its content is smaller and often less comprehensive than that of many individual countries, and its capability of being enforced differs from that of an individual nation, since the mechanisms for enforcement, e.g., police forces and court systems, are less clearly defined. Thus, compliance is often left up to individual nations. Consequently, the task of developing an effective global business ethic is a daunting one.

The purpose of this paper is to discuss some of the attempts made to define basic ethical principals for multinational firms and the intellectual bases on which those attempts were established. The paper will also provide an example of the complications that can occur when the attempt is made to turn ethical precepts into law.

Historical Development Of An Ethical Framework

The development of a business ethics framework is derived in part from basic theories of ethics. However, over time, additional perspectives have been proposed to stimulate discussion of issues. Paul (1992) notes that three ethical systems seem to have shaped western moral thinking in the last three centuries—utilitarianism, natural rights theory, and Kantianism. Developed in the late eighteenth and early nineteenth century, primarily by Jeremy Bentham, with later adaptation by John Stuart Mill, the concept of utilitarianism assumes that human beings are pain-avoiders and pleasure seekers; furthermore, human beings assume this is the way they should act. Using this basic principal, utilitarianism thus proposes that society should attempt to achieve the greatest good for the greatest number. The modern idea of cost/benefit analysis developed from the pragmatic concepts of utilitarianism.

The Second Treatise of Government written in the late seventeenth century by John Locke is the foundation for natural rights theory. Locke's basic tenet is the importance of the individual and the

protection of individual rights in the pursuit of liberty and exercise of property. Consequently, government is a trustee that exists for the protection of the individual's property (i.e., life, liberty, and estates) and can be over- thrown if it violates the rights of the individual.

Kantianism was developed in the late eighteenth century by Immanuel Kant. He proposed that individuals should act in the way they think everyone should act, a principle called the categorical imperative. Another part of Kantianism is the belief that one should treat people as ends only and never as means to one's own ends. In many ways, Kantianism reflects the Christian concept of the Golden Rule.

Augmenting these philosophies are the societal concepts of individualism and communitarianism. As its name implies, individualism asserts the value of the individual in society and thus derives much from natural rights theory, since it too asserts that government exists to serve the people. Similarly, it also assumes that businesses have rights as well and are free to pursue their aims as long as they do not engage in force or fraud. Communitarianism assumes the importance of the society and the need for individuals to consider the value of maintaining the society as being of greater importance than the individual. The concepts of utilitarianism are visible within communitarianism (Lodge and Vogel, 1987).

Attempts At Establishing A Global Ethical Framework

Since World War II, several multinational agreements have been drafted in an attempt to establish a basic code of ethics. Some are more focused on the broader issue of human rights, while others specifically address business practices. Frederick (1991) identifies six agreements which are among the most prominent.

The first of the six agreements is the United Nations Declaration of Human Rights (1948). The Declaration states that all people are born free and equal in dignity and rights (Frederick) and then expands on this basic precept. However, the Declaration also addresses business-related areas, such as encouraging the development of non-discriminatory employment policies and favorable working conditions, and providing workers with basic living wages, although it does not precisely specify the criteria for these.

The European Convention On Human Rights (1950) also affirms human rights. The document includes the principle that multinational corporations should respect the rights of all persons regarding freedom of thought, conscience, religion, and expression.

The Helsinki Final Act (1975) reaffirms the United Nations Declaration that multinational corporations should promote a standard of living to support the health and well being of workers and their families (Frederick). However, it also addresses environmental concerns such as preserving ecological balance and environmental rehabilitation, and respecting the environmental laws of the host country.

The Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (1976) also affirm human rights issues addressed in the documents listed above; however, there is a greater emphasis specifically on the actions of multinational corporations. The Guidelines advocate the rights of workers to bargain collectively and to join unions if they choose but do not specifically advocate collective bargaining. The Guidelines also propose that firms provide worker training. Further, the Guidelines encourage corporations to engage in responsible actions toward the environment and propose that corporations develop new technologies to monitor and protect the environment. Politically, the Guidelines insist that firms not make bribes to government officials or become illegally involved in the politics of a host country.

The International Labor Office Tripartite Declaration of Principles Concerning Multinational Enterprise and Social Policy (1977) is, as its name implies, concerned primarily with labor issues. It proposes that multinational firms provide workers with equal pay for equal work, advance notice of plant closings, severance pay, health care benefits for lower income groups in host nations, and advance notice of plant closings. In addition, they should promote a minimum standard of living that supports the health and well-being of their employees in host countries.

The United Nations Code of Conduct on Transnational Corporations (initially developed in 1972) does not address employment practices, since these were the focus of the Tripartite Declaration discussed previously. However, it does address consumer protection through methods such as safe packaging, proper labeling, and accurate advertising. Further, it advocates that firms should neither interfere in intergovernmental relations nor become involved illegally in the internal politics of host countries. The Code addresses many of the environmental issues of the other documents discussed, but also calls for the development of international environmental standards (Frederick).

Attempting To Make A Global Ethical Framework Effective

A major challenge in formulating a global business ethics framework is bridging the gap between abstract principles and their application in daily life. Donaldson (1989), quoting James Nickel, notes:

“rights that possess international scope [should] be viewed as occupying an intermediate zone between abstract moral principles, such as liberty or fairness on one hand, and national specifications of rights on the other. International rights must be more specific than abstract principles if they are to facilitate practical application, but less specific than the entries on the list of rights whose duties fall on national governance if they are to preserve cosmopolitan relevance ...”

Furthermore, while much discussion has occurred about the ethical standards that firms should have, what also must be considered is the rights that firms may have. Donaldson proposes that multinational corporations do indeed have rights. However those rights are accompanied by corresponding duties. Thus, for multinationals to have the right to function, they must respect the rights of others. He proposes three criteria for determining the validity of a right:

- 1.) The right must protect something of very great importance.
- 2.) The right must be subject to substantial and recurrent threats.
- 3.) The obligations or burdens imposed by the right must satisfy a fairness-affordability test. In Donaldson’s context, affordability means firms are capable of paying for the provision of a right. However, firms should be expected to pay only a reasonable amount, for paying more would be an inefficient use of funds entrusted to management by the stockholders.

Some nations have attempted to implement legislation which provides specificity about unacceptable behavior by multinational firms. However, such efforts can generate debate about the particular moral code intended to be enforced and about the process itself. An example of this in the United States is the Foreign Corrupt Practices Act (FCPA), passed by Congress in 1977.

The main components of the legislation passed at that time were:

- Making it a crime for American corporations to offer or provide payments to officials of foreign governments for the purpose of obtaining or retaining business. Violators could be fined up to \$1 million.

- Individual employees of a firm could not be prosecuted for violating the FCPA unless the firm itself was found to have violated the law, thus removing the potential for firms to create scapegoats.
- Requiring additional record keeping for firms to make bribery more difficult to conceal.
- Forbidding corporations to indemnify fines imposed on directors, officers, employees or agents.
- Permitting so called “grease” payments to clerical workers in foreign governments. Such payments were often expected by them for services rendered (Pastin and Hooker, 1983).

Pastin and Hooker (1983) argued that the FCPA was not supported by two basic moral assessment criteria. They utilized end point assessment and rule assessment in advocating their position. End point assessment evaluates law based on its contribution to general social well being using utilitarianism as a basis. Thus, a law is morally sound if it promotes the well-being of those affected by it to the greatest extent achievable. Further, it should do so better than alternatives or no law at all. Given this, using end-point assessment, Pastin and Hooker felt that no law at all was better than the FCPA. They felt the FCPA had a negative effect on the balance of payments, a loss of jobs, and conflict within government itself. They further argued that bribes would continue to be made by non- American businesses.

According to rule assessment, a law is morally sound if it the law is in accord with a code embodying correct ethical rules. On the surface, Pastin and Hooker argue, the FCPA would be morally justifiable, since our ethical codes prohibit bribery. However, they continue, most codes do not forbid exceptions to those codes, and that the ramifications of those exceptions outweigh the code rule. Pastin and Hooker propose that the welfare of a firm’s employees and the economic interests of the firm’s country weigh against the obligation not to bribe. They further argue that the bribes prohibited by the FCPA are often not paid to persuade foreign officials to change their mind about utilizing a firm. Rather, they are requested after the fact—i.e., once a firm has been chosen by the government.

Alpern (1984) disagrees with Pastin and Hooker. He questions the argument that executives of firms who pay bribes are acting to protect the interests of employees. Rather than seeing this as a moral principle, Alpern states the executives are acting in the self-interest of the investors. In addition, refusing to pay bribes which are forbidden by law does not constitute a failure to consider the employees needs, and thus, the employees can have no moral complaint against the firm. Alpern also ‘states that firms paying bribes to foreign government officials are de facto establishing a policy of bribery. Further, he feels that the potential financial loss to firms is small compared to the weight of moral principles against bribery.

In 1988, the FCPA was amended. Brennan (1990) feels that the amendments soften the law by de facto expanding the number of “grease” categories. Brennan also feels the changes diluted the language defining the criteria for giving gifts which are intended specifically as bribes. He further argues that changes in the law also eliminate the language preventing the prosecution of scapegoat employees for bribery rather than the firm itself.

Conclusion

The task of developing a global ethical framework for firms is indeed a daunting one. As we have seen, the bases of ethical criteria can come from different sources. When the attempt is made to develop legislation to impact the ethics of firms, as with the Foreign Corrupt Practices Act in the United States, the result can sometimes be controversial and possibly inconsistent. With the rise of trading blocs, such as the European Union, the possibility exists for creating a common body of law for corporate ethical practice in a larger geographic unit. Conversely, as larger firms expand their global operations, they will

interact with more governments thus increasing the possibility of greater ethical inconsistencies. Nevertheless, the search for a global standard for business practices will continue.

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