CREATING CULTURE: THE CHALLENGE OF TEACHING CORPORATE ETHICS

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Ethics instruction doesn't happen in a vacuum.

When ethics is taught in traditional post-secondary classrooms, it is taught in an environment that includes an already present culture — that of higher education. Ethics education doesn't occur as naturally in non-traditional learning environments, such as corporations or governmental agencies. For ethics instruction to be meaningful in those settings, management and ethics teachers must work together to create culture to support ethics instruction.

This paper reviews some major differences between organizational ethics training[1] and classroom ethics teaching. Differences in the specific teaching settings become magnified by differences in culture, with the term 'culture' meant to comprise practices and expectations of behaviors within the environment. If ethics teaching within organizations is intended to promote enhanced employee awareness or interest in ethics within the organization, or, more ambitiously, a more ethical workforce, a culture that supports that outcome must be intentionally developed. This culture supports characteristics of ethical employees and ethical employers, as described later in this piece. Programs that stop with the promotion of compliance with organizational rules are likely to lead only to increased employee frustration and cynicism.

A CASE IN POINT

What follows is an experience of a newly hired ethics "trainer." Tim Jackson[2] was hired by a managerial consulting firm to be the firm's ethics training specialist. The firm included ethics training and ethics program development as part of its portfolio. Tim's experience included an undergraduate degree in Business Management and four years experience directing a unit in a major multi-national corporation. He had recently completed a Master's degree in philosophy with an emphasis in teaching ethics. The M.A. program included course work in philosophical and practical ethics, in teaching ethics, and a practicum that gave him the opportunity to design, teach and evaluate a unit in an undergraduate ethics class.

When Tim joined the consulting firm, one of his early assignments was to pick up the ethics consultation already begun with a local bank. As a move to mitigate risk, the legal department had two years earlier requested that Tim's firm help to develop a comprehensive ethics program for the bank. Tim's predecessor had assisted the bank's top managers in defining needs and then in creating an ethics office within the bank's legal department. Input was occasionally sought from executives and middle managers, but rank and file employees were not included in the development of the initiative. Managers contracting with Tim's firm initially cited the Federal Sentencing Guidelines for Organizations as the motivating factor for creating the office. The primary focus was to mitigate risk, but the bank's executives reportedly had been open to the development of a more broadly focused program. The ethics office, staffed by one full-time lawyer and one full-time assistant, was created and given the following responsibilities:

a. assist in new managerial hires and in orientation for all employees to ensure that new hires understood the company's values and the ethics office role,

b. design a code of conduct along with methods for enforcement of that code,

c. investigate and respond to expressions of ethical concern within the organization, including those received from an ethics hotline, and

d. provide ethics training for all 150 staff members and 10 managers.

By the time that Tim was asked to take on this client, the bank had assigned one of its lawyers, Marianne Cooper, to be the ethics officer, had written the new code, developed enforcement techniques including penalties for infractions, and articulated procedures for conducting ethics investigations.

Marianne decided that it was time to start employee ethics training. That is when Marianne had called Tim's firm and found that the previous consultant had left and that Tim was now assigned to the job.

In a series of brief conversations with Marianne, Tim discovered that the vast majority of employees were not aware of the program's existence, not aware of how it came into being, nor were they aware of how it would affect their daily lives. Tim was expected to disseminate information about the program to the employees and, in Marianne's words, "do whatever needs to be done to show that we are providing ethics training to our employees."

Fresh from an academic setting, Tim winced at the phrase "ethics training" because of the lack of analytic learning he thought that terminology implied, but understood that this was the language most commonly used by corporations. He developed a two-hour seminar from materials supplied by Marianne as well as notes from his predecessor. Marianne communicated with Tim through e-mail and by phone and approved the materials he developed for the training.

Managers received packets of materials on the launch of the ethics office from Marianne prior to the beginning of the employee training. Tim had not been invited to the managers' meeting.

Employees had been divided into groups of 30. Tim was contracted to conduct five seminars to capture all 150 employees in the training. As Marianne had not had time to meet with Tim prior to the beginning of the training, he scheduled a two-week break between his first seminar and the repeats. Tim planned to meet with Marianne during this time and work out any kinks before he continued meeting with employees.

As the first employees entered the room for the initial seminar, Tim saw from their facial expressions and body language that they resented this mandated training. Tim smiled and shook their hands as they trickled in, but found it hard to maintain eye contact with many of them. While he waited for the last of the stragglers, Tim began to field questions from the most belligerent:

"Why do we all have to attend these?"

"Is this another sexual harassment seminar?"

And Tim's favorite, "Are you some kind of chaplain?"

Tim gave brief responses in his most upbeat voice and decided to ignore the building tension. Fifteen minutes into the session, 25 of the 30 expected employees had arrived. Marianne said that she would try to pop in at the beginning of the session to thank the employees for attending, but she wasn't there yet. Tim decided that he should begin. He handed out an outline for the session, along with a packet of materials describing the ethics program, code, and procedures for reporting ethics concerns. Tim's content for the session included the following:

- an overview of the company's core values,
- why ethics codes are important,
- how and why this code was developed,
- an overview of the code itself,
- how possible code violations and other ethics concerns would be handled,
- how the ethics hotline worked,
- who the ethics officer was and what her responsibilities included,
- and some basic skill training in ethical decision-making for the participants.

Tim believed that teaching ethics meant that he should encourage autonomous action and find ways to empower his students. His own agenda was to help participants become more ethical decision-makers in the workplace, but he understood that they also needed to receive information about the new office and program. He knew that he had a lot to deal with even under the best of circumstances, and these were not those circumstances.

Tim initially asked the participants to talk with the person next to them about the kind of ethical issues that they run into and then to share some of those issues with the large group. Group members were listening thoughtfully to one another until Tim suddenly realized that his introduction and opening exercise had taken almost 45 minutes. Adding that to the 15 minutes he had spent waiting for stragglers and Marianne, the session was now half over. He'd better get down to business.

As soon as Tim changed the focus from the employees' experience to the company's new policies, the group's interest dissolved. The employees' comments made it nearly impossible for Tim to plow through the materials:

"Those don't look like any core values I see around here!"

"Who decided that we needed an ethics code in the first place?"

"This code will never be enforced for management. They'll use it against us when they want an excuse to trim staff."

"Why doesn't this code address the real problems around here?"

"That hotline is going to get me tied up in false accusations and investigations."

"Won't the really unethical people just keep on being themselves? How is this really going to help?"

"There is no such thing as business ethics: Ethics is what my boss says it is."

Finally, Tim decided to respond to his students rather than lead them through the materials packet. "You can read through all of this information in your own time," he said. "Let's take the last 45 minutes and work through a case together. Maybe that will provide some clues of how the new process might work."

Tim asked the employees to separate into small groups of five. He handed out a case that he wrote based loosely on an issue that Marianne told him had come up. The case dealt with a white loan officer and how he handled minority clients. Tim's goal for the employees was to understand how to report such a concern and how that kind of concern would be handled by the ethics office.

The case was well received, in that Tim noted that all of the groups were engaged in animated conversation. Then, suddenly, the conversation in one of the groups became heated. Tim walked over to the group where an African-American woman was confronting a white man. The man stood up, his face flushed with indignation and spoke to Tim in a voice loud enough to be heard over all of the small group chatter. "How in the world can we ever find out what's right and wrong in this case? This is all a big charade. This company lacks integrity. This code lacks integrity, and YOU lack integrity." He walked out of the room and the others stared at Tim, waiting for his next move. Tim struggled through the last half hour, but knew that he had major work to do before continuing on with this project.

Tim's difficulties in teaching this seminar were fueled by differences between classroom teaching and corporate training, lack of involvement by management in the training, and a difference in agendas between the supervising manager and the ethics trainer. Articulating those differences is a step toward designing content and process for organizational ethics training that fit the learning environment while maintaining the integrity of the subject. It is also a step toward articulating cultural needs to support employee's learning of ethics.

At its worst, organizational ethics training has all of the dismal elements of high school teaching, without any hope that the employees will grow out of their belligerence or apathy. Like teenagers, employees usually have no interest in being "trained" and they are not subtle in making their displeasure evident. At its best, organizational ethics training is still different in kind from college-level classroom teaching, requiring different strategies for even the most talented teacher.

DIFFERENCES

Difference in reasons for course development

College ethics teaching tends to be motivated by students' need for education in a particular area. The students' needs are recognized and responded to by faculty and administrators who then provide education to students. In comparison, organizational ethics training and programs tend to be motivated, at least in part, by a concern with mitigating legal liability and risk or in responding to crisis. The decision-makers who determine the "need" for ethics training may be inspired by their accountability to external agencies or their need for a public relations remedy, rather than any perceived need in the potential students. Indeed, the executives who are eager to show that the organization is providing ethics training may be very unhappy if employees actually discover and express their moral agency.

Course control is different

College ethics teaching tends to be designed and delivered by faculty members who have some education and interest in ethical theory or practice. Organizational training, even if conducted by someone with expertise in the field, is likely to be coordinated and controlled by executives within an organization, who may have little knowledge of or interest in the field, but who, nevertheless, ultimately determine course content and outcomes. This may lead to a difference in agendas between trainer and manager and more than a little ambiguity as to what counts as "ethics" for delivery to employees.

Course length is different

Unlike semester-long ethics classes, where students have an opportunity to be introduced to skills, and then to develop and practice those skills, organizational ethics training tends to happen in single shot seminars. How much can be accomplished is limited by the length of the class.

Student expectations are different

College students generally rely on their instructor to determine and justify what they need to learn. Even if course material isn't immediately useful, college students operate in a culture that values knowledge for its own intrinsic worth. Participants in organizational ethics training are pragmatic — they want to know what they need to know, why they need to know it, and how the training will assist or impact them in doing their jobs.

Power issues are different

While college students have some control over which classes they take or when they take them, employees generally have no power in deciding whether or when they will receive ethics training. College students may drop a course or decide not to attend a class meeting. Employees are usually required to attend and their lack of control may lead to passive-aggressive behaviors. The employees grudgingly attend, but they may work to avoid learning anything in the seminar.

Compliance and ethics are different, but ultimately connected

Compliance, even with rules that are ethical in nature — such as those prohibiting conflicts of interest or favoritism, is externally directed, rule bound, and minimalist. Compliance requires obedience. Ethical behavior, on the other hand, engages the internal motivation of the agent and is governed by the agent's understanding of the spirit or intent behind governing rules. Ethical behavior requires autonomous thought and choice. Unlike compliance, which focuses on prohibitions, ethics allows for the agent to make choices that range from those that are minimally required to those that express the best of the employee and the organization.

Management naturally wants to ensure individual compliance with the company's rules and regulations, with Federal and state laws, and with accrediting agency requirements. But, executives may not realize that the move to make requirements explicit and to encourage employee reporting of suspected wrongdoing stimulates individual moral agency, like it or not. Articulation of rules and expectations gives employees an opportunity to ask for justification for those rules and point out inconsistencies between articulated expectations and actual practice. Encouraging employee reporting of suspected wrongdoing implies that employees should take responsibility for the organization beyond their job descriptions. It leads to the reasonable expectation that the organization will respond to wrongdoing in a way that can withstand employee scrutiny.

The Federal Sentencing Guidelines for Organizations (FSGO) as Motivation for Organizational Ethics Training

Organizations have various reasons for incorporating ethical practices and ethics training. Some managers may wish to infuse ethics into the organization's culture, others may be convinced that a nod to ethics improves the bottom line. Many respond to external requirements or inducements that they offer such training. The FSGO have, since their inception in 1991, offered a pragmatic reason for paying attention to compliance and ethics.

The FSGO are used by courts in determining how individual employees and organizations should share the blame when an employee has acted unlawfully in the conduct of his or her job. It is assumed that organizations are blameworthy when their employees commit crimes in the process of performing professional duties. Employee failure is thought to reflect a certain kind of culture in which management endorses, tolerates, fails to interfere, or neglects to notice problematic behavior. Organizations can be sentenced for a wide range of crimes committed by individuals or work groups including "fraud, environmental waste discharge, tax offenses, antitrust offenses, and food and drug violations."[3] The penalties that organizations pay include fines, probation, restitution and public notices of their conviction.

Along with the stick provided by FSGO, there is also a carrot. FSGO describes ways that organizations can avoid or mitigate criminal conviction for their employees' illegal behavior. According to the Sentencing Commission, an effective program includes the following seven criteria:

1. compliance standards and procedures that are reasonably capable of reducing the prospect of criminal activity;
2. effective communication of expectations to all levels of employees;
3. program oversight by high-level personnel;
4. due care in delegating substantial discretionary authority;
5. reasonable steps to achieve compliance, which include systems for monitoring, auditing, and employee reporting of suspected wrongdoing without fear of reprisal;
6. consistent enforcement of compliance standards including disciplinary mechanisms; and
7. reasonable steps to respond to and prevent further similar offenses upon detection of a violation.[4]

In addition, the organization must report the employee's crime promptly upon discovery.

As pointed out by Diane Murphy in her review of a decade of FSGO, "the organizational guidelines have been credited with helping to create an entirely new job description: the Ethics and Compliance Officer."[5]

The Ethics and Compliance Officer Association (ECOA) recently completed a survey indicating that FSGO influenced many organizations to adopt compliance programs. Nearly half of those surveyed responded that the organizational guidelines had "a lot of influence on an organization's commitment to ethics as manifested through adoption of a compliance program." The Association, until 2005 known as Ethics Officer Association, has grown from 12 members in 1991 to more than 1200 members as of February, 2006.[6]

Risk management may provide the basis for the development of ethics programs, but managers need to understand that even minimal employee training will spark potential changes in culture. Acting in ways that meet FSGO guidelines creates the structure for an ethical culture. If the culture is not, in fact, created or supported, attempts to provide "training" to meet FSGO guidelines are likely to add to employee frustration and cynicism.

Ethics and compliance work best together. According to business ethicist Dawn-Marie Driscoll, "A good compliance program must emphasize values and moral responsibility, because this increases the program's effectiveness among employees. A good ethics program must help employees to know and obey the law if it is to have any relevance to the company in its actual environment."[7]

A Culture that Supports Ethics

If employee's agency, and thus ethics, will be stimulated through training, whether labeled compliance or ethics, it is in the organization's interest to focus overtly on the development of an ethical workplace. An ethical workplace includes employees who practice their moral agency — called here ethical employees — and employers who celebrate that agency. Ethical employees are:

1) Self-Aware

   a. These employees know their roles within the organization,

b. recognize themselves as instrumental to organizational ethics,

c. know the organization's mission, policies and rules, and

d. are able to explain their job-related choices in light of the mission, policies and rules.

2) Self-Reflective

e. They recognize that their choices are based on personal ethics as well as organizational policy, and

f. notice when individual moral intuitions and organizational policy clash. And, they are

3) Self-Critical

g. They recognize that there are alternatives to choosing between the false dilemma of personal moral intuitions *or* organizational policy,

h. know where in the organization to go for counsel when they feel in conflict,

i. and are willing to recognize and learn from their mistakes, others' mistakes, organizational misdirection, and other experiences.

An organization that seeks to develop ethical employees must be interested in more than a top-down manner of communicating expectations. Employees are encouraged by organizations to be self-aware, self-reflective and self-critical if they are rewarded for questioning company policy and actions, identifying ethical dilemmas, and for not tolerating inconsistencies between stated policy and observed action. Promoting ethics for employees requires that managers promote an ethical workplace as well as an ethical workforce. Managers act in ways to sustain a culture that supports ethical employees.

The Ethical Employer

Employees can be only as ethical as the environment allows.

As ethical employees feel empowered to raise concerns and to discuss the organization's rules and their own intuitions, managerial processes become transparent. The culture of an ethical organization includes the following characteristics:

1) The employer is clear about mission, policies, rules, regulations and expectations and applies standards fairly and justly.

Communication and consistency are essential. The ethical organization includes written policies that all are expected to follow. While this step is a method of bringing about compliance, in that it requires acceptance of external rules, the employer, in this case, demonstrates ethics in that the expectations are justifiable and applied consistently. The employer has and uses clear consequences for violations, regardless of the job position of the violator. The culture has known limits for behavior.

2) The employer gives employees voice in matters of ethics.

This requires that employees have opportunities for discussions of the organization's ethics, and know the process for relaying ethics concerns. Employees need to know that their input is sought and that management is listening. The culture encourages active participation and protects employees who raise concerns.

3) The employer provides opportunities for all to know and analyze decision-making.

Diane Murphy cites an example of transparency from the top: "William George, the former chief executive of Medtronic, cultivated a company-wide emphasis on values and ethics and frequently talked about his termination of a key sales employee for violating company standards by making payments to foreign officials to ensure sales. Making such an example and communicating it widely can ensure that a corporation may not be subject to prosecution for the acts of an agent who believed he was acting in the corporation's best and most profitable interest."[8]

While this example illustrates the organization's response to wrongdoing, it is equally important that employers provide examples of exemplary decision-making, and provide time for discussion of controversial decisions. Stories told in the culture of the effects of good and bad actions help employees predict about how the employer is likely to act in similar situations. It is also important that the culture includes stories of how employees' legitimate concerns changed manager's minds or company policy. There is no reason to engage employees in discussion if employee input never makes a difference in the final outcome.

4) Finally, the ethical organization will have a culture inclusive of a range of permissible actions and one that encourages employees to think about alternative solutions.

Incorporating language that underscores a range of ethically permitted alternative solutions encourages everyone to be creative in their problem solving.

To return to the case described at the beginning of this paper, where the bank and ethics consultant went wrong is relatively easy to see.

The company and the consultant did not share an understanding of the goals for employees' ethics training. Messages regarding the ethics program were fragmented. The designated ethics officer communicated with managers. The ethics consultant communicated with employees. There was no effort made to coordinate activities into a cohesive message. Whatever Tim Jackson might have believed about the importance of empowering employees, the company had not yet worked to create a culture that encouraged employees to be ethical.

However, no company or consultant has the power to turn back the clock, so, after his first difficult training seminar, Tim focused on what he and the company should do now.

First, he decided that they should suspend "ethics training" until he understood more about the company's initiative. Tim determined that he needed to work with management to clarify the organizational goals before he tried to engage unmotivated employees. He needed to work with the firm's ethics officer to help create a program that would integrate compliance and ethics. He put on the agenda for his meeting with Marianne a discussion of ways to generate company-wide interest in the ethics initiative.

Tim realized that his training needed to begin at the top. If the ethics officer was not interested in having more than a paper ethics program, employee ethics training would never do more than raise frustrations and it was unethical, he decided, for his firm to be involved in that.

If management was seriously interested in creating an ethical culture, Tim recognized from his seminar that employees were ready to share their concerns. Before any training of employees could take place, the ethics officer needed to introduce herself and the ethics initiative. Representative employees could be asked to participate in disseminating information about the ethics office throughout the company. Tim was convinced that ethics training would be worthless if it weren't accompanied by corporate commitment to the development of a culture to support it. The list of frustrations brought to Tim's attention by employees at the initial seminar provided a rich set of topics that could be used for discussions with management as well as for future employee seminars.

Tim now had a better understanding of the expertise he had to offer the bank. More importantly, he realized that he needed to educate his own consulting firm about the appropriate role for an ethics consultant.

NOTES

[1] Organizational ethics training is used here to mean employee seminars in corporations, governmental agencies, newsrooms and other non-traditional post-secondary learning environments.

[2] Name and identifying characteristics have been changed at the request of the scenario's subject.

[3] United States Sentencing Commission, http://www.ussc.gov/TRAINING/. Retrieved June 16, 2004.

[4] An Overview of the United States Sentencing Commission and the Federal Sentencing Guidelines, http://www.ussc.gov/TRAINING/corpover04.pdf, p. 3. Retrieved Feb. 25, 2006.

[5] Murphy, D. (2002). The Federal Sentencing Guidelines for Organizations: A Decade of Promoting Compliance and Ethics. http://www.ussc.gov/Murphy1.pdf; p. 710.

[6] http://www.theecoa.org/. Retrieved February 20, 2006.

[7] Driscoll, D., et. al. (1998). "Business Ethics and Compliance: What Management is Doing and Why." *Business and Society Review*, 35.

[8] Murphy, p. 716.