Business ethics: too little, too late

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Abstract

Describes the marginal accommodation of courses in business ethics within the business studies first degree curriculum. Focusing principally on the role of law and economics, argues that introductory subject study within business studies degrees plays a significant role in underpinning free-market principles and undermining ethical concerns. As a result students are encouraged to regard business activity as legitimately distinct from society. Concludes that courses in business ethics are under pressure to conform to a vocational rationale demonstrating the market benefits of ethical behaviour rather than encouraging students to examine fundamentally the assumptions and effects of business practice. Also suggests that, as a final-year option, discrete courses in business ethics do little to disturb the market orthodoxy of business studies students.

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Introduction

The ethics of business practice became the subject of growing social and political debate during the late 1980s. Large scale human and natural disasters, such as Bhopal or the destruction of the Brazilian rainforest, led to a sharper public focus on the activities of business corporations. City-based financial scandals illustrated the darker side of Thatcherite free market philosophy.

As public and academic interest in business ethics has grown, the business studies curriculum has begun to respond slowly to the clamour for an ethical dimension.

Calls for a closer examination of business "values" within the business studies curriculum became a cause for concern in the early 1980s. A Higher Education Foundation conference directly addressed this issue as far back as 1982[1] when several contributors emphasized the need for a critical, sociological analysis of business behaviour as a legitimate part of a business studies education[2,3]. Brown and Harrison[4], in attempting to re-assert the role of sociology in business studies, also demanded a more rigorous and critical treatment of the role of business in society.

Business ethics within the business studies curriculum

However, recent research indicates that there has not been a significant shift in the balance of the business studies curriculum. Smith *et al.*[5] have reported a very limited response of both undergraduate and postgraduate business and management studies in the provision of discrete ethics-based courses. Where courses in business ethics or corporate responsibility do exist they are invariably offered as options remaining firmly confined to the periphery of the curriculum. The core curriculum of business studies is still dominated by subject or functional study which excludes debate on the values of the business system. Tasker and Packham[6] and Wolfe[7] comment that the trend towards ethical awareness has done little to disturb the orthodoxy of the free market within the business curriculum. Trezise[8], in reflecting on his own experiences as a business ethics lecturer, draws on a comment by one of his own students to illustrate the same point:

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> A student made the comment to me after a lecture on business ethics (having reached the final year of her degree) "that is the first time anyone has suggested that business is about anything other than making money!"[8, p. 184].

The shaping of student attitudes: economics

The marginal impact of ethics in business education is predictable given that the basic precepts of competitive capitalism are shaped and reinforced by dominant subject traditions such as economics and law. Both subjects were included within Crick's original formula[9] of a business studies degree and economics, in particular, has played a central role in shaping the modern business curriculum[10]. Indeed, many business and management departments originally emerged out of economics departments[11].

Economics differentiates between "positive" and "normative" elements of study. The distinction was originally made by Keynes and reinforced by Lipsey in his highly influential textbook *Positive Economics*[12]. Positive economics is defined as a study based on facts of what is, consciously excluding value judgements.

'…The standard of living is synonymized with income per head, indicative of the dominance of quantitative analysis and ignoring other economic and social factors contributing to quality of life…'

By contrast, normative economics can be described as a study of what ought to be[13]. This rejection of normative or value issues in economics in favour of a "scientific" and more quantitative approach has led to an in-built bias.

The frictionless perfect competition model, the focus on income generation rather than income distribution and a general preoccupation with the Western free market economy are examples of the ascendancy of positive economics cited by Lee[13]. The ends of economic systems are never really examined within an introductory economics course.

The standard of living is synonymized with income per head, indicative of the dominance of quantitative analysis and ignoring other economic and social factors contributing to quality of life. Acceptance of the central tenets of capitalism such as profit, free competition and minimal government intervention are fostered[7]. Moreover, many business studies undergraduates will have previously studied economics at A-level, where a curriculum based on positive economics also dominates[14].

The shaping of student attitudes: law

The business studies law curriculum, pre-eminently dependent on contract and employment law[15], also plays a significant role in shaping the values of business students. Contract law, which also forms the theoretical basis of employment law, sets out the rules by which business conflict, in the context of the free market, may legitimately take place.

Contract law also provides business students with a moral framework which underscores competitive values. Contracts require the full knowledge and consent of the parties, together with the absence of misrepresentation. These central tenets of contract appear to guarantee a strong moral dimension in business activity, including free will and truth telling. However, far from establishing a genuinely moral framework, contract law reinforces unethical behaviour.

The concept of privity of contract requires the legal effects of a contract to be confined to the parties who enter any agreement. Third parties have no rights to interfere with contracts. The effect of this rule is to underpin the notion that business takes place in a private, separate sphere which cannot be interfered with by society.

In reality, third parties are affected by contracts entered into between other parties which might, in the case of a faulty product, cause death or personal injury to a non-contracting person. The law of torts has developed so that action may be taken by third parties affected in this way.

However, contract law, as the basis of business, is essentially oblivious to such consequences. A similar line of reasoning in economics focuses on the private cost of production while ignoring the full social cost. The wider social costs of economic contracts are excluded by the rule of privity of contract.

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Legislation also underscores the idea that business activity exists separately from private activity. The Sale of Goods Act (1979), for example, protects the interests of consumers with respect to the harsher aspects of contract law. However, this legislation offers a higher level of protection to consumers entering into contracts with businesses, but allows for the exclusion of many of the same safeguards in contracts between businesses. Hence, this implies that inter-business relations take place in a separate zone of conflict requiring considerably less control. This underscores the concept of the business "jungle" where there is less need for protection between rivals.

'…The seller is only under the limited obligation to tell the truth but is unlikely to choose to disclose adverse information unless prompted…'

In a bona fide contract both parties to the contract should have full knowledge of the agreement they are entering. However, the rule of *caveat emptor* (let the buyer beware) which applies to the vast bulk of contracts (the rule of *uberrimae fidei* (utmost good faith) applies in certain exceptional contracts such as partnership or insurance) means that it is the buyer's responsibility to pursue full knowledge. The seller is only under the limited obligation to tell the truth but is unlikely to choose to disclose adverse information unless prompted.

Obtaining full knowledge will often involve the buyer in additional costs, especially where the purchase involves complex goods. The rule of *caveat emptor* thus places an onus on the buyer to pursue full knowledge actively without the seller's obligation to co-operate through disclosure. A seller is not obliged to reveal that there is rust under the floor of his motor car or that company profits have dipped. The duty to disclose is strictly limited to truth telling if prompted, with no wider duty to disclose facts[16].

Thus, non-disclosure of information by a seller does not constitute misrepresentation in all but a small minority of contracts. Although sellers must tell the truth the reality is that the duty not to misrepresent is a partial rule. The rule of *caveat emptor* underscores business activity as a zero-sum game in which the gain of one participant is the loss of another.

Therefore, omitting to volunteer information which may be highly relevant to the true consent and interests of a buyer does not normally invalidate the legality of an agreement.

Rules of consideration also affect the true consent of the buyer. A fundamental rule of contract law is that consideration (i.e. money, goods or services exchanged) need not be adequate. In other words, the law is not concerned with whether parties have struck a fair price or not as long as there has been full consent. This means that employees may be legitimately exploited with low wages, and these employees, although possessing the theoretical right to negotiate and enter into a contract with free will, are in reality subject to market forces. Rules of contract further eliminate any right to strike which remains a fundamental breach of contract by the employee.

Contract law makes an assumption that there is equality of bargaining power between the parties based on the presumption that the marketplace consists of competing individuals. The reality of monopolistic production, in which individuals must negotiate from unequal positions of strength, is conveniently swept aside by such an assumption. The effect of these basic principles of contract on the practical understanding of students is indicated in Table I.

Table I The impact of contract theory on practical understanding

Theoretical concept	Practical understanding
Privity of contract	Business is a separate domain without external obligations
Caveat emptor (let the buyer beware)	No obligation to reveal the whole truth Business is about game playing
Consideration need not be adequate	It is legitimate to take advantage of the gullible and economically disadvantaged

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Contract theory essentially underwrites the game theory view of business life as expressed by Carr[17]. This means that individuals participating in business activity enjoy a distinct, market identity based on the mutual recognition that deceit is part and parcel of the context of business. While Carr acknowledges that a respect for truth is the basis of private morality, the participants in business understand that the game works on the basis of a different set of rules within which deception and concealment are expected and respected.

Stealing a march on a competitor by revealing only part of the truth is legitimized by contract theory. It is part and parcel of the "game". Contracts are honoured in the hope of securing future business, the penalties incurred for non-compliance or to preserve the mutually beneficial system of contract compliance; all reasons which form part of a prudential code of business practice which has more to do with expediency than ethics.

Conclusion

Other areas of the business curriculum also tend to emphasize the technical and operational detail of business at the expense of moral and legal considerations. Marketing and accountancy fall particularly into this category. Within both the law and economics curriculum, balancing concepts to the underlying free market message do exist. Legislation to protect consumers and employees set out the rudimentary responsibilities of business. In economics the concepts of market failure and sustainability as an alternative environmental measure of economic growth fulfil similar functions. However, the breadth of business studies programmes acts as a guillotine on detailed analysis of subject areas. As a consequence the responsibilities of business and problems with the business system remain an afterthought.

The restriction of the curriculum to basic precepts in both economics and law results both in a superficial understanding of the relationship between business and society and an implicit justification for ethical relativism. This means that business is perceived as a separate ethical zone to the concerns of private life or wider society.

The practical effect of this ethical relativism is twofold. First, courses in business ethics within business programmes are under pressure to conform to a narrow, prudential rationale helping students to understand ethics as an important manipulative marketing tool rather than as a fundamental examination of business practice. This "good ethics means good business" approach is little more than a sophisticated updating of corporate strategy. The attitude of Lloyd[18, p. 51] typifies this approach:

> The thrust of a business ethics programme should be to explain why unethical behaviour is bad for business, and suggest how a company can encourage employees from behaving in ways likely to damage its reputation for integrity.

By contrast, teachers of business ethics are concerned that the focus of courses in business ethics should be a fundamental examination "of" business in relation to key issues[8] rather than simply a "training" in politic behaviour as Lloyd suggests. This does not mean that business ethics should be an excuse for tutors to attempt some form of moral conversion. However, courses in business ethics should help students reflect on their own assumptions and those of the business system.

'…Until a balancing ethical dimension is included within all subject study rather than as a final year option, it is likely that discrete courses in business ethics will fail to disturb the market orthodoxy of business studies students…'

The second practical effect of ethical relativism, shaped and reinforced by the curriculum, is to confine business ethics to the periphery of the business studies curriculum. Until a balancing ethical dimension is included within all subject study rather than as a final year option, it is likely that discrete courses in business ethics will fail to disturb the market orthodoxy of business studies students.

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