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Organizational Ethics Programs and the Need for

Stakeholder Discourse

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Abstract

More than ever, businesses are called upon to manage organizational ethics programs. There are, as of yet, no internationally accepted guidelines for doing so. Some find in the U.S. Federal Sentencing Guidelines a framework that fits this need (Palmer & Zakhem, 2001; Izraeli & Schwartz, 1998; Jackson, 1997). As they stand, the Guidelines offer little insight as to what constitutes "ethical conduct." This in itself is not a problem. Indeed, the question of what business ethics demand is for the most part an "open" question and one that should be regularly revisited to better understand and properly act on changing stakeholder demands (Freeman, 2008). What does constitute a problem, however, is that the Guidelines offer no suggestions as to how an organization ought to work through, in a morally acceptable way, inevitable stakeholder conflict over what is good and right. Following Jürgen Habermas's insights on discourse ethics, this paper states that the lack of a substantive and discursive procedural ethic threatens ethics program effectiveness. This article expands upon these claims and offers some thoughts about the mutually beneficial role that discourse ethics can and ought to play in effective ethics program management.

Keywords

discourse ethics, ethics, business ethics, Jürgen Habermas, ethics programs, legal compliance, stakeholder management, U.S. Federal Sentencing Guidelines

1. Introduction

The U.S. Federal Sentencing Guidelines were enacted in 1991 in order to make the federal sentencing process consistent and to increase the penalties for corporations who engage in "white collar" crimes. Of particular interest for the field of business ethics, Chapter 8 offers a framework for structuring and assessing ethics and compliance program effectiveness, and offers suggestions for promoting "good corporate citizenship" (Ch. 8.2).

The impact of the Federal Sentencing Guidelines of 1991 on corporate ethics and compliance programs has yielded mixed reviews. Many have argued that the 1991 Guidelines provide a compelling and

useful model for introducing and reinforcing ethics in the workplace (Ferrell, LeClair, & Ferrel, 1998; Rafalko, 1994). Some have suggested that the Guidelines' "Seven-Step" approach to ethics program management can serve as a model for standardizing international corporate governance efforts (Palmer & Zakhem, 2001; Izraeli & Schwartz, 1998; Jackson, 1997).

Some critics, however, rightfully point out that the 1991 Guidelines, although beneficial in some respects, unduly conflate legality and ethics. This argument contends that the Guidelines reduce good corporate citizenship to following—or at least appearing to follow—the strict letter of the law, but it offers little incentive for promoting more substantive ethical-organizational change (Michaelson, 2006; Laufer, 2006; Arjoon, 2005; Reynolds & Bowie, 2004; McKendall, DeMarr, & Jones-Rickers, 2002; Trevino, Weaver, Gibson, & Toffler, 1999).

Due in part to these sorts of criticisms, the Federal Sentencing Guidelines' suggestions for ethics programs were significantly revised in 2004. In particular, the revised Guidelines endorse the idea that ethical programs must move beyond the letter of the law and towards the development of an ethical-organizational culture; furthermore, ethics programs should extend up and down the supply chain. As of 2012, good corporate citizenship requires a degree of ethical-organizational "integrity" sufficient to ground organizational values, norms, and codes of conduct in practice, so that even in the absence of codified rules and laws there will be a consistent motivation to act in an ethical manner. Thus, there is some initial optimism that, if understood and properly implemented, ethical programs in line with the revised Guidelines will succeed in meeting desired objectives (Hess, 2007; Hess, McWorter, & Fort, 2006).

The development of the Guidelines are important in their own right and should be discussed. Thus, the second section of this article details the changes and highlights a few of the important advances made since the Guidelines' suggestions for compliance programs were first released.

Yet, despite significant progress, at least one significant philosophical problem remains. As they stand, the Guidelines offer little insight as to what constitutes "ethical conduct." In itself, this is not a problem and, in line with desired Guideline flexibility, is by design. Indeed, the question of what ethics in business demands is for the most part an "open" question and one that should be regularly revisited to better understand and properly act on changing stakeholder demands. As Freeman (2008) explains, "virtually any business decision" is meaningful to the extent that it relates to contestable values, harms and benefits, rights, and questions of personal and organizational identity and character.

What does constitute a problem, however, is that the Guidelines offer no suggestions about how an organization ought to work through, in a morally acceptable way, inevitable stakeholder conflict over what is good and right. The overarching concern is that in the absence of a substantive procedural ethic, especially given the plurality of ethical points of view, ethics programs will degenerate into mere instrumental and strategic vehicles for advancing extant corporate interests. As discussed in section three, this would undercut the sense of ethical integrity and shared normative commitment that ethics programs ought to produce.

Because these claims and conclusions are not obvious, the fourth section of this article draws on Jürgen Habermas's theory of communicative action and discourse ethics to flesh out these issues and provide some direction for its resolution. In light of the theoretical, and decidedly more philosophical, conclusions reached in section four, section five makes three specific, practical recommendations regarding the mutually beneficial role that discourse ethics can and ought to play in the development and management of effective ethics programs.

2. The U.S. Federal Sentencing Guidelines

As noted in the introduction, the Federal Sentencing Guidelines of 1991 were enacted to establish fair standards for corporate sentencing and provide incentives for corporations to develop effective compliance programs. Rather than focusing on individual culpability, the U.S. Sentencing Commission recognized that an organization is "vicariously" liable for the actions of its employees and may be indicted and subsequently fined if a federal crime is committed by those acting on its behalf. Organizations that fail to establish an effective compliance program could face penalties that increase base fines by as much as a factor of four, raising the maximum possible fine to $290 million. This "carrot and stick" approach to corporate sentencing was designed to both encourage proactive, well-structured, and robust ethical and compliance programs as well as severely punishing organizational negligence. To mitigate fines and reduce pecuniary risk, an organization must systematically exercise due diligence in their efforts to prevent and detect criminal conduct. Chapter 8 of the Guidelines recommends the following seven-step approach.

(1) The organization should have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal conduct.

(2) Specific individual(s) within high-level personnel of the organization should have been assigned overall responsibility to oversee compliance with such standards and procedures.

(3) The organization should have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in illegal activities.

(4) The organization should have taken steps to communicate effectively its standards and procedures to all employees and other agents, e.g., by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.

(5) The organization should have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report criminal conduct by others within the organization without fear of retribution.

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(6) The standards should have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement; however, the form of discipline that will be appropriate will be case specific.

(7) After an offense has been detected, the organization should have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses—including any necessary modifications to its program to prevent and detect violations of law.

(U.S. Sentencing Commission, 1991, Ch. 8.2)

As a whole, the 1991 requirements provided a standardized but flexible framework for organizational compliance that could be applied to a variety of organizations. Detractors note, however, that the 1991 Guidelines had a tendency to conflate ethics and legality and there was little incentive for compliance programs to move beyond the letter of the law and enact more meaningful change. With such criticisms in mind, the 2004 Guidelines were revised, at least in part, to address this problem (U.S. Sentencing Commission, 2004). The 2004 suggestions (and the subsequent releases through 2012) for an effective ethics program draw a strong link between ethical organizational culture and lawful conduct. That is, the Guidelines now explicitly recognize that good corporate citizenship and compliance system effectiveness depends in large part on the ethical culture in which employees and agents operate. In order to move beyond the mere appearance of legal conduct and avoid—or at least mitigate—culpability, organizations must now diligently promote an organizational culture that encourages "ethical conduct" (U.S. Sentencing Commission, 2012, ch. 8.b.2). As such, the seven-step approach (ch. 8.b.2.1.b) to an ethics and compliance program first outlined in the 1991 Guidelines has been revised in the following ways to help promote more substantive organizational change.

(1) Although "step 1" still suggests that an organization should have standards and procedures designed to prevent and detect criminal conduct, "standards and procedures" are now defined as "standards of conduct and internal control systems." The implication is that organizational efforts should extend beyond the use of ethical codes and towards a more-or-less formal management system. Although they may vary in application, management systems should in some way utilize organizational processes and programs to define clearly measurable goals, anticipate and prevent misconduct, encourage desired behavior, increase the likelihood of detecting violations, and provide proven methods and means for corrective action.

(2) Although the 1991 Guidelines recommended that high-level personnel should be assigned responsibility for compliance oversight, the revised guidelines now suggest that organizational leadership (presumably executive management) and the board of directors supervise ethics and compliance efforts. Furthermore, the person in charge of compliance

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should be given adequate resources and defined authority to ensure implementation and effectiveness. The underlying assumption is that an effective ethics and compliance program must be periodically reviewed and consistently supported, both in word and deed, at the highest levels of organizational leadership.

(3) Step three now prohibits an organization from delegating substantial discretionary authority to individuals "whom the organization knew, or should have known, engaged in illegal activities," as opposed to individuals who merely had a "propensity" to engage in illegal activities.

(4) Whereas step four in the 1991 Guidelines advised an organization to have effectively communicated of standards and procedures to employees and organizational agents, the 2004 (and subsequent revisions) now specifically calls for compliance training. The underlying assumption is that training programs are necessary for motivating good corporate citizenship.

(5) To comply with step five, the organization should still have taken reasonable steps to achieve compliance with its standards, but it is now explicitly called upon to monitor and audit the ethics and compliance program and provide mechanisms for anonymous reporting.

(6) Per the 1991 Guidelines, an organization should consistently enforce compliance standards vis-à-vis appropriate disciplinary measures. The revised Guidelines require that an organization use both punitive and incentive-based measures when promoting an ethics and compliance program.

(7) The revised amendment to step seven is largely inconsequential: the Guidelines no longer require an organization to take "all reasonable steps" to correct cases of misconduct but simply require that an organization take "reasonable steps" to prevent further offenses.
(U.S. Sentencing Commission, 2004, ch. 8.b.2)

As a result, the revised Guidelines include several new suggestions that extend beyond mere legal compliance and demand more than the mere appearance of legal conduct (Michaelson, 2006; Laufer, 2006). The marked improvements over the 1991 Guidelines are significant. First, and of particular importance, the revised Guidelines explicitly mention an "ethics program" and draw a strong connection between ethics and organizational culture, which is deemed necessary to motivate legal conduct (Hess, 2007; Hess et al., 2006).

Second, the Guideline Commentary further suggests that large organizations "should encourage small organizations (especially those that have, or seek to have, a business relationship with the large organization) to implement effective compliance and ethics programs" (U.S. Sentencing Commission, 2004, ch. 8.b.2.c.2). As such, there is a movement to encourage ethical integrity and good corporate citizenship down the supply chain and, in effect, across national and cultural boundaries. Given that many ethical problems require global action (e.g., issues concerning sweatshop labor, environmental

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degradation, pollution, and sustainability), this suggestion should not be underestimated. As we will see, however, this also poses certain difficulties, because what is good, right, and legal differs across cultural and national boundaries.

Third, the revised Guidelines suggest a seemingly more quality management system oriented framework, with the emphasis moving from the mere detection and control of ethical and criminal misconduct to proactively designing integrity-based organizational processes to prevent unethical behavior from occurring in the first place (McKendall et al., 2002). Thus, the Guidelines reflect an organizational approach that matches international standardization efforts, such as the International Organization of Standardization's body of work on quality management systems, e.g., ISO 9000 and SA 8000 (Reynolds & Yuthas, 2008; Rasche & Esser, 2006). The benefit here is that such standards rely on process and quality management system concepts and practices that have been proven effective in practice and merit international recognition. Of these, the "plan, do, study, act" management system model stands out (Deming, 1986). In any event, the hope is that the process of ethics management will become an integral part of an organization's overall management system.

In the end, the 2004 Guideline revisions mark a significant achievement in U.S. jurisprudence and offer important insights into the structure and intent of ethical programs of various forms. The Guidelines' emphasis on culture, supply chain management, and management system processes provides opportunities for teaching and training that may effectively bridge the gap between theory and practice. And although it is too early to fully assess their effectiveness, there is marked optimism that the revised Guidelines' ethical integrity-based focus will prove successful (Hess, 2007; Hess et al., 2006), and perhaps again be regarded as a global standard for ethics program design and implementation.

3. Criticism of the Guidelines Suggestions for Ethics Programs

Despite the revised Guidelines' significant achievements, at least one significant problem remains. To better understand this problem, one should first recognize that, as they stand, the Guidelines offer little insight as to what constitutes "ethical conduct." This raises an immediate question: By what standard(s) ought we to determine what is ethically good or bad and morally right or wrong?

As the Guidelines recognize, compliance with legal standards cannot be the determining factor. Law, at least just law, and ethics ought to overlap but should not be conflated. Neither can cultural or social norms necessarily provide an acceptable standard. Like the law, cultural and social norms owe their legitimacy to a higher standard of normative conduct. Simply put, just because something is law or socially accepted does not make it good or right. As some have already noted, ethical integrity and good corporate citizenship implies more than mere conformance with commonly held legal or societal ethical standards, but requires that an agent actually embody the "right" sorts of normative principles (Maak, 2008). Thus, reference to socio-scientific and empirically grounded norms and values, such as those suggested in the theory of planned behavior (Hess, 2007), can help us understand the psychological motivations that underpin ethical conduct, but nevertheless still require a more

substantial normative framework (Reynolds & Bowie, 2004).

Unfortunately, there is no lasting philosophical or empirical agreement concerning which normative standards we ought to adopt. Conflicts regarding the normative viability of virtue, utilitarian, deontological, and other ethical theories, and disputes between the priority of the right and the good persist in normative theory. Ethical conflict and disagreement also persists in practices. Even with the use of commonly accepted terms, such as "corporate social responsibility," "corporate citizenship," and "human rights," there is no consensus as to what these terms really mean or even imply (Williams & Aguilera, 2008; Weaver, 2001). For example, one could agree with the idea that business persons ought to respect "human rights," but disagree about the specific positive and/or negative duties that respect for human rights generates for businesses. The same can be said for "corporate social responsibility," whose meaning often varies across national boundaries, especially between the United States and Europe. One expects that conflict would be exacerbated if, as per the Guidelines' suggestions, larger, more influential companies began to export ethics programs down their supply chain, as was done in the case of ISO organizational standards, and therefore necessarily across national, social, and economic boundaries.

The reality is that operating in "global stakeholder society" means that normative conflict is inevitable (Stansbury, 2009; Maak, 2008, p. 357). As mentioned earlier, questions concerning what is good and what is right will remain open to interpretation. Again, this in itself is not necessarily a problem. What is a problem, however, is that the Guidelines offer no suggestions as to how an organization ought to establish an integrated ethical-organizational culture in the face of inevitable disagreement. In more philosophical terms, the lack of substantive normative content may not be a problem provided that one has substantive procedural ethic through which what is good and what is right are legitimately determined. The overarching concern is that in the absence of a substantive procedural ethic, ethics programs will degenerate into mere instrumental and strategic vehicles for advancing extant corporate interests. In other words, legitimate ethical and moral claims and disagreements may be overridden, glossed over, or negotiated away in favor of the most powerful stakeholder group(s). The problem here is two-fold. First, some of these claims, on moral grounds, may be substantial, e.g., claims denouncing the exploitation of children. Second, ethical integrity cannot be forced or purchased. In fact, trying to do so may undercut the very sense of integrity the Guidelines ought to foster.

These claims, of course, are not obvious. Thus, section 4 utilizes Jürgen Habermas's theory of communicative action and discourse to better articulate the problems outlined here and provide a framework for their resolution (Habermas 1984, 1987, 1990, 1993, 1996, 2001).

4. Jürgen Habermas's Discourse Ethic

As discussed in more expansive commentaries (Rehg, 1997), Habermas begins his analysis by arguing that "rationality has less to do with the possession of knowledge than with how speaking and acting subjects acquire and use knowledge" (Habermas, 1984, p. 8). Obviously, human beings can acquire a

large degree of empirical and theoretical knowledge and use it many ways. This, perhaps, is most obvious in cases in which a person uses language to advance their own interests. Used in this way, rationality is described as being akin to Kant's description of hypothetical imperatives and measured by the instrumental efficacy of reaching certain discrete and already determined ends. Executive management may, for example, determine that outsourcing is necessary to achieve desired ends, e.g., maintaining a firm's competitive advantage or maximizing organizational value.

Because we are diverse, social creatures, however, we must inevitably contend with others who do not necessarily share our concerns or agree with the means by which we satisfy our preferences. This will be an impediment at times. For example, certain stakeholders may disagree with management on practical or normative grounds and endeavor to block corporate outsourcing.

One option is to try to influence the behavior of dissenters by using force, threats, and/or inducements. Habermas (1990) defines these sorts of options as "strategic actions" (p. 58). Strategically coordinating actions accordingly depends on "the extent to which egocentric utility calculations mesh" (pp. 133–134) and represents a form of rationality that underpins most economic transactions. Disputes over outsourcing with disgruntled union representative may be negotiated away (to some degree) by offering displaced employees severance packages in exchange for calling an end to a strike. In cases of strategic coordination, a deeper understanding and commitment to shared normative claims is not required. Indeed, in this example, questions regarding the normative acceptability of outsourcing are avoided.

On the other hand, we can use language as a medium to coordinate our interactions at a deeper level. Habermas notes that speech involves uttering criticizable validity claims with the illocutionary goal of reaching mutual understanding with another competent speaker. In this sense, "rationality is measured by whether processes of reaching understanding are successful" (Habermas, 1984, p. 14), and not by whether or not our discrete interests are strategically and efficiently served. Habermas further points out that these "processes" of reaching mutual understanding are argumentative in nature as speakers and hearers commit to publically justifying their positions vis-à-vis claims to intersubjectively valid reasons and norms (Habermas, 1984, pp. 15-42). As such, all persons, as competent speakers of a language, appeal to, defend, and can be moved by reasons independent of one's particular concerns and in accordance with universally held normative values, principles, and ideals.

As opposed to strategic action, Habermas reserves the term "communicative action" to refer to speech used to motivate rationally another by reaching mutual understanding and coordinating behavior in terms of the way things ideally "ought to be" (Habermas, 1984, pp. 94–96; Habermas, 1990, pp. 134-135). In this way, values and virtues are leveraged and defended to be truly "good" for persons, norms universally "right" for everyone, and laws and regulations "legitimate" for all citizens. The practical benefit is that when there is conflict we can rationally appeal to and find solidarity in certain communicatively held norms and/or values and, without resorting to violence, threats, or inducements, still argue about the way certain other things ought to be. In this sense, affected union representatives and employees could be persuaded—or already believe—that the values and principles regarding

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corporate outsourcing are good, just, and legitimate, even if jobs are lost. On the other hand, a business's strategic means and ends could change in light of normative reasons championed by unions, employees, or other stakeholders.

What is important is that the commitments to social norms and values that are incurred through communicative action are argued to ultimately underpin social order (i.e., strategic actions cannot alone account for social solidarity or cultural integrity) and a lasting sense of individual and group integrity, solidarity, and identity. That is, the ties that bind individuals together at a deeper level are not expressed as mere contractual negotiations between independent egoistic beings, but reflect commitments to lasting values, norms, and laws. To borrow terms popular in organizational management, cultures grounded in rationally supported normative values and norms are "built to last." Especially in a pluralistic society, as previously established normative commitments are questioned or otherwise give way, maintaining without violence the stability and proper functioning of our "lifeworlds," or the shared normative horizons or larger narrative identities necessary for meaningful social action, requires rationalization and legitimation through communicative action (Habermas, 1987, pp. 119-152). That is, social solidarity and integrity requires communicatively held, shared, and warranted commitments to ethical (i.e., what is good for a particular tradition or identity) and moral (i.e., what is just for all persons) points of view.

The alternative would be to try and legitimize social actions and conceptions of "good" and "right" along strategic lines. The problem with this is that the goal turns from establishing solidarity and mutual understanding to individual gain and privately defined conceptions of meaning and value. In other words, the communicative, normative bonds that tie us together erode when strategic action dominates our culture. We are left with threats and inducements to force—not rationally motivate—social coordination.

Unfortunately, this is where we find ourselves. Habermas (1987) argues that our lifeworlds have now been rationalized on strategic, instrumental grounds and opportunities for communicative action have been "colonized" by the systemic influence of money, markets, and bureaucracies (pp. 391–396). As opposed to authentically striving for mutual understanding and social solidarity, the often exploitive, strategic pursuit of self-interest (not even "enlightened"self-interest) has become the operational norm. Because this phenomenon undercuts the communicative basis for individual and group solidarity and integrity, several social pathologies ensue (e.g., identity crises, alienation, anomie, and group and institutional legitimation crises; pp. 140–143). Some commentators have traced these sorts of movements and associated problems to the links among fiduciary capitalism, management control, and the modern corporate form (Brown, 2005).

Per Habermas's analysis, the obvious solution is to reconstruct communicative practices using the rational and discursive resources inherited by all of us as competent speakers of a language. Habermas therefore defines "discourse" as a reflective form of communicative action and "practical discourse" as the argumentative realm in which the rightness of social norms and the goodness of culturally

embedded values are rationally and productively assessed (Habermas, 1984, p. 23; Habermas, 1990, p. 201). It is therefore the practice of discourse, in which parties try to reach a normative consensus through argumentative and rationally inspired processes that provide the basis for Habermas's theory of discourse ethics and promises to restore a lasting sense of ethical and moral integrity. Argumentation, in this sense, does not mean rhetorically trying to change another person's beliefs to gain some sort of advantage or psychological satisfaction, but constitutes a practice through which participants seek to find common communicative ground on which all rational persons could agree is good and/or right.

In general, for discursive processes to work fairly and effectively, certain rules must be presumed. First, there is the principle of universal validity (U) where "all affected can accept the consequences and the side effects (that a norm's) general observance can be anticipated to have for the satisfaction of everyone's interests" (Habermas, 1990, p. 65). In addition, the principle of discourse (D) presumes that normative validity requires the "approval of all affected in their capacity as participants in a practical discourse" (p. 66; emphasis added). Practical discourse is also bound by more specific procedural rules, such as requiring that speakers do not contradict themselves and claim only what they truly believe, eliminating strategic influences, and ensuring freedom of access to information and equal participatory rights, all which are laid out and applied within a corporate context elsewhere (Stansbury, 2009, pp. 39–41; Habermas, 1990, pp. 86–94).

Underscoring the complexity of this project, Habermas further distinguishes among various types of operationalized discourse, the contours of which each depend on the nature of the validity claim in question and the demands of practical reason (Habermas, 1993, pp. 1–17; Habermas, 1996, pp. 107–118). As dialogically and practically primary, moral discourse centers on resolving questions of justice for all and demands a decidedly strict application of (U) and (D). In short, a duty stemming from what is deemed right and just will take priority over commitments for doing what is deemed good. Moral discourses would likely focus on questions and norms of conduct related to human rights. In the inclusive spirit of (U) and (D), ethical discourse focuses on arriving at a mutual understanding as to that which is "good" for a particular person, group, or tradition, and therefore falls short of requiring universal consensus. For example, one may engage in a form of ethical discourse that questions whether or not outsourcing fits with one's desired organizational identity or is really good for a company, industry, or society.

Distinct from normative (i.e., ethical and moral) discourse, pragmatic discourse seeks consensus on the "best" and most "efficient" paths for reaching already established ends, preferences, or goals. The question of how best to carry through with outsourcing (one hopes that, on the back of discursive consensus, outsourcing is right and good) is therefore a pragmatic issue. Finally, the type of discourse required for citizens to fairly resolve disputes among the just, good, and pragmatic as well as generate sufficient communicative "power" to counteract strategic influences, focuses on the formulation of legitimate law. Here the discourse principle takes the form of a principle of democracy requiring that "only those statues may claim legitimacy that can meet with the assent of all citizens in a discursive

process of legislation" (Habermas, 1996, p. 110).

All of this does not mean, however, that we ought to refrain from strategic action and stop trying to satisfy our own, discrete interests. It does mean, however, that strategic actions alone are insufficient for a lasting and integrated sense of individual/associative identity. As such, strategic action against the backdrop of communicatively warranted normative identities and social practices is ideal. It also means that what is right/fair for all, as determined in practical discourse, ought to take priority over that which is good/valuable for a particular tradition. For example, one would not have the moral right to unjustly exploit the vulnerable and dependent in order to satisfy his or her conception of what is good.

Although this a merely a brief sketch of Habermas's theory of discourse ethics, it is through engaging in various levels of operationalized discursive processes that individual and group integrity can be nonviolently and substantively maintained. In other words, engaging in a discursive process concerning what is good for us and what is fair and just for everyone, even those who do not share our views or have a strong voice, is a critical step for establishing and restoring normative solidarity and integrity. It is important to understand that a "discursive process" is not simply all talk and no action. Indeed, discursive processes include the aforementioned pragmatic discourses and also include "discourses of application," which look at how values and norms should be followed in a particular context or situation (Habermas, 1993, p. 37; Habermas, 1996, p. 109).

Habermas's theory of discourse ethics is therefore procedurally substantive and pragmatic. In other words, it offers a fair procedure for establishing or restoring normative consensus (beholden to principles [U] and [D] and the other rules of practical discourse) and includes other specific normative commitments shared by all discursive participants, regardless of divergent perspectives. These specific normative commitments are cosmopolitan in nature. These typically include commitments to communication, diversity, education, reason and critical thinking, cooperation across cultural and national boundaries, respect for differing opinions and perspectives, and a deep and, at times, overriding respect for human dignity, over and above cultural differences (Nussbaum, 2002, pp. 11–15).

5. Suggestions for Ethics Programs

Those administering an ethics program will confront a variety of competing ethical claims. What we learned from the last section is that relying on the Guidelines' suggestions for promoting ethical conduct through punitive and incentive-based measures may be necessary, but is insufficient for promoting meaningful and lasting organizational change. Furthermore, simply using threats, inducements, or other "strategic" actions may undercut the very integrity that ethics and compliance programs are designed to engender. The solution is not, however, to reject strategic motivations, but to ground such strategic appeals in an overarching sense of communicative agreement.

Of course, one cannot expect communicative agreement on all normative issues in business or other social practices. Although the content of specific claims may remain contentious, one can make a

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commitment to the legitimacy and value of discursive processes as a whole. For example, stakeholders may continue to disagree on the topic of executive compensation or strategically negotiate an agreement on fair wages, but at the same time share the cosmopolitan values and principles upon which procedurally oriented discourses are based. The following suggestions are offered as a complement to those already provided in the Federal Sentencing Guidelines.

The first, and perhaps most obvious, suggestion is to set up practical discourses (not just lines of communication in the form of passing along information) at various levels and with various stakeholders. Some of the ongoing questions upon which the discourses should focus are:

- What is truly good for our company?
- What values define us as an organization?
- What is good for our industry?
- What values ought to define our industry?
- What is good for society?
- What role should corporate social responsibility play in our business and in our industry?
- What is right, just, and fair for those affected by our decisions, regardless of their position?
- What is legitimate with regard to business, industry, and governmental laws, regulations, and ethics requirements?

Of course, the context of particular businesses and social interactions will vary. But, implementing discursive processes within the Guidelines already flexible framework permits ethical solidary across a variety of diverse and at times conflicting stakeholder perspectives.

Despite the level of discourse and differences in implementation strategies, discourses should be aimed at reaching mutual understanding and, as suggested by principles (U) and (D), include or at least represent—by proxy, ombudspersons, or champions—everyone affected by the values, norms, and regulations being considered. Additional discursive rules include, but are not limited to, the following (Stansbury, 2009):

- Discourses must be inclusive.
- All arguments should be up for consideration.
- Speakers may not contradict themselves.
- Each speaker shall only state what he or she believes to be true.
- Anyone may express his or her opinion.
- Each speaker must justify what he or she asserts upon request.
- Anyone may render an assertion problematic.
- The values or norms must withstand rational communicative scrutiny.
- Power, threats, inducements, and strategic influences should be limited.
- Speakers should reverse roles in an attempt to understand differing viewpoints.
- The values or norms agreed upon must be openly and universally teachable.

Second, as mentioned earlier, it is critical to understand that a "discursive process" is not simply about

talking, discussing, and argumentation. There should also be "discourses of application" that seek to determine whether and how values and norms should be followed in a *particular context*. As such, discourses of application would effectively move from the criterion of universality to appropriateness (Habermas, 1993, p. 37; Habermas, 1996, p. 109). As such, the "appropriate" responses for particular applications will likely differ according to organizational size, type, industry, existing culture, and other variables. Despite these variables, ethics programs should in some way strive to reflect and implement discursive agreements about what is good, right, and legitimate, or at least the values and norms associated with a cosmopolitan style of discourse, throughout the organization.

Although it is impractical to subject every decision to formal discursive analysis, one can envision practical discourses of application situated within each and every key organizational process. Studies on how exactly to implement a discourse ethical approach within specific business processes are available. This research includes areas of discourse ethics and corporate social responsibility (Scherer & Palazzo, 2007; Palazzo & Scherer, 2006; Reed, 1999b), operations management (Mingers, 2011), stakeholder prioritization (Van der Linden, 2012; Zakhem, 2008; Reed 1999a), information technology and information systems (De Bakker, Boonstra, & Wortmann, 2012), financial and social auditing and reporting (Reynolds & Yuthus, 2008; Gilbert & Rasche, 2007; Rasche & Esser, 2006; Yuthas. Rogers, & Dillard, 2002), marketing and brand management (Kernstock & Brexendorf, 2009), advanced resource planning (Dillard & Yuthus, 2006), and project management (Foster & Jonker, 2005).

While ethics programs may benefit by adopting a discourse ethical approach, specific discourse ethical initiatives would also benefit by integrating them in a supportive ethics and compliance system. As reflected in the Guidelines and recognized in the organizational ethics literature, the lack of a systematic approach to ethics/ethical decision making or a failure to bring ethics into an organization's management system, comprises the effectiveness of individual actions (Werhane, 2002). The Guidelines' quality management suggestions for systematic organizational change could help to overcome barriers (e.g., lack of diversity and moral imagination, intransigent power relations, stakeholder dissonance) to establishing communicative agreement and action.

Thus, in the quality management style for ethics programs suggested by the Guidelines, discourse ethical processes could reflect the following general flow. Practical stakeholder discourses could identify shared values and norms that ought to govern business conduct. The outputs of these discourses, along with enduring cosmopolitan-inspired values and principles, could be documented in mission statements, value statements, ethical codes of conduct, or similar documents. Again, even if normative consensus is not achieved, the cosmopolitan-inspired values and principles at the heart of discourse ethical processes can ground an ethical-organizational culture. Discourses of application within organizational processes (e.g., at the level of enterprise planning, sales and marketing, design and development, production, purchasing, information management, auditing and reporting) could be used to translate these documents or other discursive inputs into more specific action plans, tangible and measurable goals, and standard operating procedures or work instructions. Ethics program

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assessment efforts (e.g., performance reviews, ethics and compliance audits, established metrics) could then identify things gone right and things gone wrong and assess management capability relative to discursive success (Zakhem, 2008). The outputs of these assessments could serve as inputs for continual improvement processes and for subsequent discourses.

The third suggestion concerns properly motivating ethical conduct. The Guidelines suggest that motivation should include disciplinary measures and positive inducements, training, and support from organizational leaders. As previously argued, relying on threats and inducements will not promote an ethical or well-integrated culture and may undercut the attempt at creating one. Thus, one expects that suggestions regarding training and leadership would reflect the values and principles that inform discourse ethics.

Specifically concerning training, the Guidelines suggest communicating programmatic requirements and engaging in more formal ethics and compliance training initiatives. From a discourse ethical perspective, training programs should also try to produce more competent and critically engaged discursive *participants*. Employees, suppliers, shareholders, and perhaps other stakeholder groups should be helped to effectively and productively engage in normative discourse by learning to, for example, identify moral problems and cooperatively seek solutions, form and defend sound arguments, revise one's position in light of good reasons, engage in and accept constructive criticism, and apply role reversal techniques to learn from diverse perspectives (Stansbury, 2009; Brookfield, 2005). In short, stakeholders ought to not just receive ethics communications or be driven by "carrot or stick"/inducement or threat motivational mentality, but should receive training sufficient to help them actively take part in and become more responsible for the shaping of one's organizational identity.

As for leadership, the Guidelines offer little guidance except for suggesting that organizational leaders "support," "supervise," "review," and "improve" ethics program effectiveness, and that those in positions of authority should show no propensity for improper conduct. This, of course, says nothing about the requisite normative values and principles of good leaders. As mentioned earlier, discourse ethics is predicated on traditional cosmopolitan ideas. These ideas, normative in nature, include the aforementioned importance of diversity, education and learning, correct reasoning and critical thinking, cooperation across cultural and national boundaries, a sense of hospitality and openness, the courage to share and publically defend one's views, a high degree of creativity and imagination, and deep respect for human dignity (Nussbaum, 2002, pp. 11–15; Appiah, 2006). Leadership styles in line with the "cosmopolitan mindset" are therefore favored (Pless & Maak, 2008).

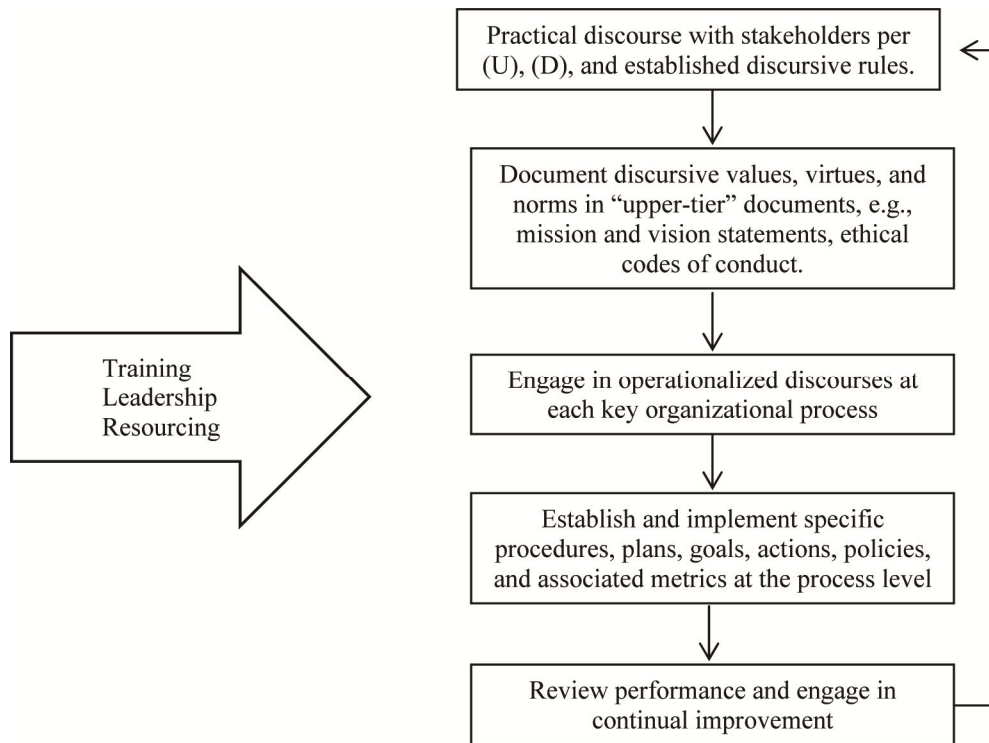The discursive process as envisioned here is represented in Figure 1.

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┌─────────────────────────────────────┐
│ Practical discourse with stakeholders per │ ◄─┐
│ (U), (D), and established discursive rules. │  │
└─────────────────────────────────────┘   │
                   │                        │
                   ▼                        │
┌─────────────────────────────────────┐   │
│ Document discursive values, virtues, and │  │
│ norms in "upper-tier" documents, e.g.,  │  │
│ mission and vision statements, ethical  │  │
│ codes of conduct.                       │  │
└─────────────────────────────────────┘   │
                   │                        │
                   ▼                        │
┌─────────────────────────────────────┐   │
│ Engage in operationalized discourses at │  │
│ each key organizational process         │  │
└─────────────────────────────────────┘   │
                   │                        │
                   ▼                        │
┌─────────────────────────────────────┐   │
│ Establish and implement specific        │  │
│ procedures, plans, goals, actions, policies, │ │
│ and associated metrics at the process level │ │
└─────────────────────────────────────┘   │
                   │                        │
                   ▼                        │
┌─────────────────────────────────────┐   │
│ Review performance and engage in        │ ─┘
│ continual improvement                   │
└─────────────────────────────────────┘
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Training
Leadership
Resourcing

Figure 1. Discourse within an Ethics Program

6. Concluding Remarks

The importance of an effective ethics program in promoting an ethical and well-integrated culture should not be understated. The U.S. Federal Sentencing Guideline suggestions go a long way in providing a flexible framework designed work in global and pluralistic business environments. Adopting a discourse ethical approach to ground this framework will help to establish and maintain ethical-organizational integrity in the face of inevitable stakeholder conflict regarding what is good and right. In addition, the process-oriented approach suggested by the Guidelines promises to provide particular discourse ethical initiatives with needed structure and management system support. I hope this article will provide a basis for further examination of the proposed (mutually beneficial) relationship between ethics programs and discourse ethics.

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