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Some Thoughts on Corporate Ethics Programmes

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James Arthur and Stephen Earl's recent report *Character in the Professions: How Virtue Informs Practice*, published by the Jubilee Centre in March 2020[1], has raised a number of issues that are pertinent to those who are concerned with the promotion of ethics and compliance within professions and business. In recent years, mainly due to a number of corporate scandals, there has been a significant investment in ethics and compliance resources in these two areas. Compliance is seen, broadly speaking, as the task of making sure that an institution, individual or company does not infringe laws or regulations. The separate but related task of ensuring ethical conduct within a corporate entity or professional body, has a less defined shape. There is a constantly developing practice of doing ethics that involves a range of techniques derived, consciously and unconsciously, from different ethical heritages. My own company, for example, uses real life scenarios, promotes role models, and encourages ethical dialogue. But there exists, as yet, no widespread, coherent debate on the intellectual basis for these ethical initiatives. As an ethics and compliance professional, I welcome this report as contributing to the creation of an environment in which the only partially understood philosophical shards which go to make up industry practice, are examined with the requisite academic rigour.

The report has generated two insights that are of particular interest to the application of ethical theory in practice. The first is that 69% of the sample would deviate from instructions or regulations when a potentially more ethical action was available. The second is that 72% said they would not attempt to gain an ethically questionable benefit if instructed to do so. These findings are important for two reasons. Both of the conclusions highlight the use of phronesis by the sample group. They go towards demonstrating that professionals understand that there may well be more to a problem than that which the rule book says about it. But the first of the findings also highlights the complex relationship that exists in corporate settings between deontological ethical techniques and those relating to virtue ethics. I would like to provide a few comments from an ethics and compliance practitioner's perspective on this relationship.

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[1] Arthur, J. and Earl, S. (2020) *Character in the Professions: How Virtue Informs Practice: Research Report,* Birmingham: University of Birmingham, Jubilee Centre for Character and Virtues, [Online], Available at: https://www.jubileecentre.ac.uk/userfiles/jubileecentre/pdf/projects/TransformativeBritain/Professions_Report.pdf [Accessed: 04 June 2020].

Whilst the Report focuses on professional Codes of Conduct, there is another important source of ethical guidance for any professional working within a business. For this constituency of in-house professionals, the dominant source of ethical guidance may well be the corporation's architecture of ethical guidance rather than that of their respective professional bodies. LLPs, companies and other corporate entities all possess their own complex network of ethical and compliance norms. A FTSE 100 Company, for example, will employ lawyers, accountants, tax professionals and other professions in an in-house advisory capacity, as well as other employees, such as engineers, who also belong to professional bodies.

That corporate guidance may consist of a Company's Code of Conduct, individual policies and procedures, statements of values and behaviours, exhortations from senior management, training sessions on ethics and real-life scenarios provided to them in order to influence behaviour. The employees are also subject to internal investigations and subsequent sanction if they have been found to have committed a compliance or ethics breach. These processes, techniques and practices have different ethical roots, including consequentialist and egoist approaches. But the two most prevalent are deontological and virtue ethics.

Ethics and compliance professionals tend to understand an employee's response to ethics issues as being situated at a certain point on a continuum of sophistication. In my role, I frequently see examples of professionals - like the 69% in the sample quoted above - taking a position on an issue that is more ethically developed than the requirements of a particular policy. Ethics and compliance professionals consider these employees as being more advanced in their ethical judgement. It seems to follow from this that the ideal would be the triumph of a purely virtue ethics based approach over 'cruder' ethical techniques. But, in my view, the position is more complex and more interesting than that. One way of looking at a large corporation is as a sophisticated series of related eco-systems, made up of different thematic impulses, conceptual structures that overlap, compete with and complement each other. The realm of corporate ethics is one of these and at the risk of over-simplification, one can imagine two main axes or poles that govern the shape of ethical decision-making – one horizontal that represents the deontological impulse and the other, the virtue ethics impulse, being the vertical. The proper functioning of an ethical system in a corporate, business or professional setting of any

appreciable scale or sophistication depends upon the existence of these impulses, and just as importantly, I would argue, it relies upon a continuing tension between them.

In his essay, *The Characteristics of the Modern European State*, Michael Oakeshott provides a useful way for us to explore these two directional impulses a little further, using two terms derived from Roman political thought, *societas* and *universitas*. *Societas* – the horizontal impulse - is a formal relationship understood in terms of rules, "not a substantive relationship in terms of common action". On the other hand, *universitas* – the vertical impulse – operates in respect of an identified common purpose and in promotion of a specified enduring interest. Although they are deployed by Oakeshott in the context of political philosophy, it may be instructive to deploy some of these general structural features of the two concepts to describe the relationship that exists in a corporate setting between the practice of virtue ethics and the deployment of deontological ethical precepts. The ethical techniques that could be said to correlate to the notion of *societas* include corporate policies and procedures, the rules for engagement with third parties, the various compliance controls and the systems that employees are required to follow, including the Code of Practice. They are imposed externally on an employee and may be effective even if they are not internalised. The notion of *universitas*, on the other hand, correlates to the teleological element of doing ethics in the corporation; the statement of Values and Purpose, the CEO's message on Doing The Right Thing or Winning The Right Way, the use of role models and champions, the deployment of real life examples to show how to flourish as a member of the corporate *polis*. In particular, it describes the work that the value of integrity is made to do in a corporate setting. It is employed not just as one of the corporate virtues but as *the* over-arching, co-ordinating value which should be used in order to discern the right path in tricky ethical situations.

It is easy to see the attraction of the horizontal axis when considering how to make ethics and compliance work in a huge multi-national company:

(i)   With a large employee population, rules establish minimum standards that do not require any conceptual adherence on behalf of an individual;

(ii)   They are clear, widely available and understandable;

(iii)   They provide an external support and close guidance to those individuals who lack the ethical maturity to be able to deploy virtue ethics;

(iv)   They satisfy the demands of external regulators who may require a rules – based expression of ethical standards.

But there are some significant disadvantages to relying solely on this polarity, and the authors of the report are right to point out some of the obvious limitations of rules in guiding ethical conduct. Expanding on these, I would suggest that the following limitations apply to the *societas* model in the corporate context:
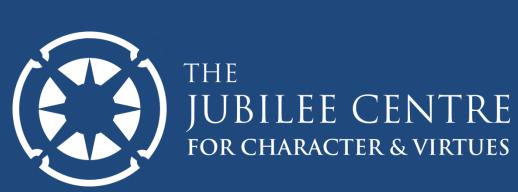
(i)   Strict adherence to ethical rules may inhibit the ability to act in a more sophisticated or more appropriate ethical manner;

(ii)   They may de-contextualise ethical decision making and encourage the notion that ethics decisions are made in the abstract;

(iii)   It follows that they do not equip the employee with the tools to deal with novel and complex situations;

(iv)   They may fail to address the underlying ethical orientation of employees as it is not necessary to internalise values in order to follow rules;

(v)   Mandatory adherence to rules may inhibit the ability to flourish fully, particularly if one has a requisite level of ethical maturity and is able to deploy virtue-based reasoning.

The temptation for the practitioner, as has already been noted, is to privilege the role of virtue ethics over deontology because of the lack of nuance and depth in the latter approach. But the corporation is a very imperfect *polis*, with a strong impulse to standardisation and efficiency at its heart. It is difficult for it to resist the lure of commodification and in many other facets of its existence - in order to achieve this aim, policies, procedures and rules take precedence. In respect of its human resources, it also has vigorously adopted (and now struggles with) the privileging of concepts such as diversity and autonomy and is a proponent of a strongly relativistic epistemology (outside of the strictly financial arena). In this environment, how in the end does one decide upon the meaning of the corporate virtues? Whose definition of integrity should be used? In an entity that at many levels demands standardisation and uniformity of product, the power of deontology cannot be discarded.

In one view, the existence of the poles outlined above could lead one to the conclusion: that the only result is incoherence, a jumbling of ethical language resulting in a tower of Babel. But it is possible to consider the situation in a more positive way. In a political constitution, there is frequently a cultivated and unresolved ambiguity that exists in order to manage the forces that could otherwise create political conflict. In a similar way, a tension may also be necessary in order to ensure that the fabric of a company's approach to ethics and compliance, has enough flexibility, and depth in order to bend without breaking, to stretch without losing its elasticity, to accommodate the wide range of moral actors, to reach an ethical consensus and to be fair.

It may be that one of the most important strategic tasks for the ethics and compliance practitioner is to manage the tension in order appropriately to provide the full panoply of ethical resources to those, including professionals, who work within it. In my view, as well as providing evidence of the importance of virtue-based reasoning, James Arthur and Stephen Earl's report provides an entry point into exploring further the nature and importance of this conceptual tension that lies at the heart of an effective corporate ethics systems as well as providing valuable insight into the way that virtue ethics techniques are deployed in the case of professionals.

Dr Upton is writing in a personal capacity and not on behalf of Rolls-Royce.

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