

Ethics Codes, Corporations and the Challenge of Globalization

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9. Three Questions about Corporate Codes: Problematizations, Authorizations and the Public/Private Divide

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INTRODUCTION

In recent years codes of corporate conduct have stirred a great deal of interest and controversy. This is a function, in part, of a growing conviction that many contemporary problems – the environmental crisis, globalization, etc. – increasingly challenge or exceed the capacities of conventional governmental institutions to respond to them effectively. Interest in codes and the accompanying controversy over their place in the governance of business are likely to intensify as the search continues for solutions to the puzzle of how to govern actors and processes that increasingly seem to elude regulation. There are not likely to be any simple solutions to this puzzle. One thing seems clear however: experimentation with and disputation over codes of corporate conduct are likely to continue for the foreseeable future.

This chapter is not an attempt to forecast the future of codes of corporate conduct. Nor is it an attempt to set out a normative vision for the future role of codes in the governance of business, society, environment or state. My goal in this chapter is more limited: to consider the questions we should be asking about codes as their role in the governance of corporate conduct unfolds. While the list of such questions is potentially unlimited, I would like to single out three that have been largely overlooked in scholarly and practical debates. They are:

1. What are the problems for which corporate codes are offered as solutions?
2. How is the authority of codes and the actors who promulgate them

established?

3. Is it useful to think about codes in terms of an opposition between public and private?

If these questions sound odd to those familiar with contemporary debates about corporate codes, it is because they are intended to excavate some of the foundations of these debates rather than entering the debates on their own terms. I believe that asking these questions will help to deepen our understanding of corporate codes at a time when experimentation with their use in the governance of business, state, society and environment is intensifying.

In this chapter I discuss codes of corporate conduct in terms of 'governance'. As I use the term, 'governance' refers broadly to any and all calculated efforts to steer or direct the conduct of the self or others. It also refers to the overall effects that emerge in socio-political systems as a result of these interacting efforts (see generally, Foucault 1991; Burchell, Gordon and Miller 1991; Rose and Miller 1992; Kooiman 1993; Hunt and Wickham 1994; Rhodes 1994, 1996; Rosenau 1997; Dean 1999; Rose 1999). In this view 'governors' include not just state actors but authorities of all kinds, from schoolteachers to psychiatrists, from factory bosses to fashion designers. The targets of governance are equally heterogeneous, ranging from the self, to others, to entire populations, societies, states or international systems (Rutherford 1999). Governance includes what we traditionally think of as 'government' – states, legislatures, government agencies, courts, etc. – but also all the other sites in the world where efforts to exercise authority are undertaken (see Rosenau 2002, p. 71).

There has recently been a massive surge of interest in governance understood in these broad terms. This interest is found in debates about self-organizing networks (for example, Rhodes 1994, 1996), socio-cybernetic systems (for example, Kooiman 1993), 'governmentality' (for example, Foucault 1991), regulatory reform (for example, Osborne and Gaebler 1992), 'governance without government' (for example, Rosenau and Czempiel 1992), 'good governance' (for example, World Bank 1992) and international or global governance (for example, Rosenau and Czempiel 1992; Commission on Global Governance 1995; Hewson and Sinclair 1999; Held and McGrew 2002; Wilkinson and Hughes 2002). It is found in a renewed fascination with decentralized and non-state systems of authority in international studies, law and the social sciences generally. And of course it is found in the widespread contemporary fascination and experimentation with 'corporate social responsibility', of which codes of corporate conduct are a leading example.

Codes of corporate conduct are concerned fundamentally with governance. They seek to govern the conduct not just of corporations and their managers, but – more subtly – a whole range of other actors including investors, workers, customers, suppliers, creditors, insurers, competitors, consumers, citizens, local communities, 'civil society' organizations, legislators, regulators, inspectors, prosecutors, judges and international organizations. Examining codes as instances of governance is a useful way to explore their manifold dimensions and implications.

ILLUSTRATION: ENVIRONMENTAL MANAGEMENT SYSTEMS (EMSs) AND EMS STANDARDS¹

Throughout this essay I will use the example of environmental management systems (EMSs) to illustrate what it might mean to examine codes of corporate conduct as instances of governance. Let me start by introducing EMSs and the ISO 14000 EMS standards.

An environmental management system (EMS) is a structured framework of policies and procedures which enables an organization to identify and manage its environmental impacts in a systematic way. Most EMSs are based on the cyclical 'Plan-Do-Check-Act' (PDCA) model. The PDCA cycle is intended to result in an upward spiral of 'continual improvement' in which the quality of an organization's management system and environmental performance are steadily improved.

The management systems approach first became popular in business in the 1970s and 1980s as part of the 'total quality management' movement. It spread quickly beyond quality assurance to other management fields, including environment and occupational health and safety. By the early 1990s many business firms, management consultants, consumer groups and standardization bodies were interested in developing uniform standards for environmental management systems. National standardization bodies in several countries began to develop voluntary EMS standards. The European Communities followed shortly with their own voluntary Eco-Management and Audit Scheme (EMAS) which took effect in 1995 (Council of the European Communities 1993).

Even before any of these initiatives were finalized, the International Organization for Standardization (ISO),² the premier source of global technical standards for business, got into the game. Established in 1946, the ISO's mandate is to promote the development of standards with the goal of facilitating international trade and fostering intellectual, scientific, technological and economic cooperation. It is a federation of approximately

one hundred national standards-setting bodies, representing virtually all the advanced industrial countries, the principal countries of the former Soviet bloc and the larger or more advanced developing countries. The majority of participants in ISO standards development are drawn from the industries that make use of the standards. The expense of participating in this work makes it difficult for many developing country, consumer and environmental representatives to participate effectively.

Standards quietly permeate every aspect of our everyday lives. They govern everything from screw thread sizes to bicycle helmet design. For all their pervasiveness, however, standardization bodies and their standards keep a remarkably low profile. Many people have heard of ISO photographic film speed ratings. Some have been momentarily curious when passing a highway billboard declaring a factory to be 'ISO 9001 Certified'. Some consumers may recognize and feel vaguely reassured by standardization bodies' symbols on consumer products. But this is the extent of most people's knowledge of ISO or other standardization bodies. These influential yet little-known bodies have gone almost entirely unnoticed in the recent wave of public controversy and grassroots protest regarding globalization and corporate power that has engulfed the major intergovernmental trade and financial institutions. Nonetheless voluntary standards and the organizations that develop them have significant implications for corporate conduct, environmental protection, economic development, politics and governance.

In the early 1990s, responding to requests from consumer groups, industry and the organizers of the 1992 Earth Summit, ISO decided to take a leadership role in the development of global standards for corporate environmental management. In 1993 it established a new Technical Committee, TC 207, for this purpose. From the beginning ISO's work in this field was characterized as an important part of global industry's contribution to the goal of 'sustainable development'. The approximately twenty-five standards so far developed by TC 207, known as the ISO 14000 series, address various subjects including environmental management systems, environmental performance evaluation, life cycle analysis and ecolabelling.

Two EMS standards, ISO 14001 and 14004, form the core of the ISO 14000 series. ISO 14001 is a 'specification standard', prescribing, in concise terms, EMS requirements that may be audited for purposes of third party certification or self-declaration (ISO 1996a). ISO 14004 provides more detailed guidance on the design and implementation of EMSs (ISO 1996b). Both are voluntary in the sense that individual organizations choose for themselves whether or not to implement them. Revisions of ISO 14001

and 14004 were launched in 2000, but are not supposed to result in fundamental changes to either standard.

From the beginning the scope of the ISO 14000 series was defined to exclude environmental performance standards. As a result, unlike many other voluntary environmental codes, ISO 14001 and 14004 do not require or encourage any particular level of environmental performance. Rather they provide a procedural framework within which organizations can set and achieve whatever environmental performance goals they decide.

An EMS based on ISO 14001 or 14004 has five main elements. First, an organization's top management must define an environmental policy and make it available to the public. The policy should include commitments to 'continual improvement', 'prevention of pollution' and compliance with relevant environmental laws and 'other requirements' to which the organization subscribes, such as voluntary codes of conduct or trade association membership rules. While 'continual improvement' is understood outside ISO as involving improvement of environmental performance, ISO 14001 and 14004 define it primarily in terms of improvement of the management system. While 'prevention of pollution' is usually understood as the reduction of pollution or waste at source, ISO 14001 and 14004 define it to include end-of-pipe pollution control. Finally some EMS professionals interpret the 'commitment to compliance' to require actual compliance with all applicable laws while others understand it only as requiring the organization to have in place an effective system for dealing with noncompliance.

The second element of an ISO EMS is a planning process. An organization must put in place procedures to identify all the environmental aspects of its activities, products or services that it can control and influence; to determine which of those aspects have or can have significant environmental impacts; and to identify the legal and 'other' requirements that apply to its environmental aspects. It must set environmental objectives and targets, taking into consideration, among other things, the views of 'interested parties'.³ Finally it must develop management programmes which specify how, when and by whom objectives and targets are to be achieved.

Implementation and operation make up the third main element of an ISO EMS. The organization must define roles and responsibilities required for the operation of the EMS and communicate them to the relevant people. It must appoint a management representative to oversee the EMS and report to top management on its performance. It must ensure that the EMS has adequate resources. It must ensure that any environmentally significant operations are carried out under controlled conditions to avoid deviations

