THE DEVELOPMENT OF ETHICAL ISSUES FACING BOARDS OF DIRECTORS: A MODEL WITH IMPLICATIONS

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Abstract

This paper outlines a model of how ethical issues develop over time. It does this by outlining the concept of an ethical issue life cycle with three phases characterising increasing degrees of seriousness with which industry responds to a given ethical issue. We illustrate the model with reference to a number of ethical issues currently facing UK boards of directors. We then use the Bible to further develop the model to suggest how company boards might respond to ethical issues as they progress. We conclude by highlighting the consequences of our model for society, the government and corporate governance.

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1. Ethics and Corporate Governance

There is a traditional view that ethics and business do not mix. Modern corporations are increasingly demonstrating that they can combine a sensitivity to ethical issues with commercial success. The key to this combination is seeing that the commercial environment is increasingly effected by the very ethical issues that companies are being expected to deal with. These ethical issues must be addressed by the system of corporate governance in a company. We have recently outlined the elements of the ethical transmission mechanism which promotes the coincidence of profitable and ethical decision making within the company.[1]

First, the increasingly efficient market system which ensures that self regarding economic decision makers - in a market characterised by well informed and well educated buyers and sellers - are persuaded to behave ethically because of their selfish desire to be thought well of.[2] Second, first world governments have continued to strengthen the ethical requirements of companies via such innovations as the 1991 Federal Sentencing Guidelines in the US, which gives a strong fiscal incentive to US corporations to introduce a well defined ethics programme.[3] Third, the increasing activism of consumers and investors in punishing and rewarding unethical and ethical company behaviour.[4] 35% percent of food retail customers in a recent UK survey said they had boycotted a product on ethical grounds[5] and it was estimated that in 1995 around £13bn of UK equities were managed according to ethical criteria.[6] Fourth, recent changes to best practice disclosure requirements on board structure and executive pay have put pressure on companies to change their board policies to be seen to be in line with accepted best practice.[7] Fifth, leading companies have continued a process of incorporating business ethics into their management processes making a requirement to behave ethically part of the employment contract, the performance related pay system and the regular employee review and feedback process.[8] Sixth, transnationals have continued to increase their share of world trade and have been exporting first world business ethics to developing countries.[9]

The purpose of this paper is to develop a model which facilitates an analysis of how corporate responses to ethical issues develop. The model we outline suggests that there is a linked process by which ethical issues mature. Understanding this model and what factors are at work in it facilitates the development of dynamic strategies by boards of directors to respond to ethical issues and gives rise to associated lessons for policy makers and wider society.

The paper proceeds as follows. In section 2 we begin by outlining what we mean by an ethical issue and by corporate governance. Section 3 then observes how ethical issues develop over time with specific reference to some current examples from the UK. Section 4 outlines a way of thinking ethically about how these issues have emerged with reference to the Bible. Section 5 attempts to combine the observations on current ethical issues and the biblical insights in order to offer lessons for society, law makers and company boards in how they should think about ethical issues facing company boards in order to respond to them ethically.

2. Defining Ethics and Corporate Governance

We define ‘business ethics’ as ‘the standards of conduct according to which business decisions are made’.[10] An ethical issue in the context of a business is hence a subject which raises questions about the standards of conduct which are being adhered to by the company as distinct from the financial results of the conduct. By definition some ethical issues may require the company to undertake behaviour which is unprofitable if it adheres to one set of standards or profitable if adheres to another set of standards. Thus while employing women at lower rates of pay than men may have been acceptable according to the business ethics of the 1960s in the UK it was not by the 1970s and indeed the Equal Pay Act was passed in 1970.[11]

Corporate Governance is ‘the system by which companies are directed and controlled’.[12] We take it to mean the way in which the board of directors operates as the highest decision making body within a company. Corporate Governance can be thought of as having three distinct elements: strategic direction, oversight and representation.[13] Boards of Directors have a statutory duty to provide oversight of the management of the company and represent the interests of the shareholders. At a minimum this includes the oversight of the effectiveness of senior management performance and procedures. Recent concern in the UK about corporate governance was largely prompted by the failure of the non-executive members of certain boards of companies where spectacular fraud occurred to monitor senior executives. Non-executive board members tend to be experienced business people in their own right who bring an external perspective to the Board which facilitates important input to the strategic direction of the company. This is particularly the case when the company might be involved in mergers and acquisitions. Boards of companies in continental Europe tend to facilitate the representation of wider stakeholders in the decision making process of the firm. For example German AGs have a two tier board structure (where the supervisory board includes representatives from unions and finance).[14] This has not traditionally been the case in the UK where boards tend to be made up of a majority of executive directors and a small number of non-executive directors whose own careers involved being executive directors of other corporations. This is because in the UK the board has been primarily oriented towards providing strategic direction and to a lesser extent oversight rather than representation. Much recent attention in the UK has been focused on the perceived need to increase the attention that the Board pays to wider society interests in its decision making. Proposed changes to

UK Company Law may make it a legal requirement that Directors pay attention to the community effects of corporate decisions.[15]

There are two contrasting views about the handling of ethical issues within corporate governance. The first is that the business ethics that firms employ should only be such as are compatible with shareholder value maximisation. It is the task of government to decide on business ethics beyond this and to legislate accordingly. As Milton Friedman has put it '..there is one and only one social responsibility of business - to use its resources and to engage in activities designed to increase profits..'[16]. The second view is that firms should be socially responsible even if it is not necessarily profitable in the short run, because modern corporations are social constructs given privileges by society, such as limited liability, which should carry some responsibility.

Of course a reconciliation of these views is possible. Corporate Governance requires processes for the delivery of decisions and it is possible to make these processes adhere to particular standards of business ethics such that ethical decisions are taken. The board of a modern corporation must face up to ethical issues in each of its roles. *Strategic direction* must be shaped by a business environment where ethical issues are important factors impinging on current and future commercial success. *Oversight* must be in line with best practice procedures. Boards *representation* should fairly reflect the trust that wider society vests in a large corporation with the power to significantly effect the lives of many individuals within and outside the company.

3. The Development of Ethical Issues - Some observations

A number of authors have noted that there is a continuum of standards of conduct which run from entirely voluntary (and hence only occasionally undertaken) to statutory requirements.[17] Following Zadek (1998) we can represent this continuum as below:

Voluntary Best Practice - Voluntary Codes - Voluntary Association - Non-Mandatory Legislation - Mandatory Legislation

Examples of each of the following as of 1999 is given below:

Inclusion of statement on rights of workers in supplier companies-Centre for Tomorrow's Company Inclusive Approach-Considerate Constructors Scheme - Stock Exchange Membership Rules-Health and Safety Legislation

Thus the Body Shop Values Statement which includes a commitment to helping supplier communities is an example of best practice which is entirely voluntary.[18] The Centre for Tomorrow's Company, the think tank set up to promote more socially responsible business by the Royal Society of Arts in the UK, has a number of firms which illustrate its inclusive approach to management, these companies individually set themselves high standards of ethical conduct.[19] The Considerate Constructors Scheme is run by the Construction Industry Board which requires signatories adhere to its code of best practice on the management and presentation of construction sites, this is a more comprehensive requirement than involvement with the Centre for Tomorrow's Company.[20] Not all constructors have to join the Considerate Constructors Scheme. London Stock Exchange listing is a requirement of all companies who wish to have their stocks traded on the London Stock Exchange, the listing rules of the stock exchange are not 'laws' but are nonetheless mandatory.[21] Finally, laws relating to health and safety at work have legal force and are mandatory requirements for all companies.

The ethical continuum may therefore be roughly characterised as being in three parts: voluntary best practice; voluntary group response and mandatory response. Within each of these parts there is a range so that they run into each other. Thus voluntary best practice can originate with one or a small number of firms and then become extremely widespread as with environmental impact reporting by companies.[22] Voluntary group responses can start with a small group of companies coming together to agree standards e.g. the signatories to the Minnesota Principles for International Business which was drafted by a small number of business people based in Minnesota.[23] These then can take on a sectoral or industry wide dimension. Some can become increasingly formal as with the Cadbury Code which started as a high level industry response to highly publicised corporate failures.[24] Eventually the recommendations were adopted as listing criteria for Stock Exchange companies. Mandatory requirements can be mandated by inclusive trade associations, national governments and supra-national authorities such as the European Commission, the World Trade Organisation. Mandatory requirements such as Stock Exchange rules are not laws since they are not the product of Parliamentary action.[25] If however such mandatory requirements prove to be weak then they may be strengthened via recourse to the law and tougher legal penalties.

The ethical continuum on which the seriousness with which companies are addressing ethical issues may be placed can also be thought of being associated with phases of the development of the response of society to ethical issues. Thus one can imagine an issue being initially identified either by ethical scandal or by the foresight of leading ethical companies. Recent developments about the environment and business can be thought of as a response to the perceived destruction of the environment by industrial activity. These can be traced back to 1972 *Limits to Growth Report* which first brought the environmental issue to general international attention.[26] While at the beginning of the 20^{th} century one can think of Edward

Cadbury as a leader in seeing improving the working conditions of his workers ahead of his time.[27]

The movement to voluntary group response tends to occur when it becomes possible to standardise ethical behaviour in such a way as to facilitate the formation of a club of like minded companies. There would seem to be two primary routes by which this movement is encouraged. On the one hand, the issue may be gaining so much external momentum in the public media and perhaps in government that companies are under pressure to make some sort of collective response. On the other hand, it may be that best practice companies are beginning to demonstrate that there are merits in taking a particular issue seriously. These companies then encourage others to join a club of like minded companies which observe certain club rules. The club may be formed specially for the purpose of promoting a new set of values or new values may be introduced into the club rules of an existing voluntary association of companies. Thus in the UK the Cadbury and Greenbury Committees represented club responses to the high profile corporate failures and the perceptions of excessive pay rises in the privatised utilities. These Committees were formed by a collection of pre-existing voluntary associations[28] and had their recommendations taken up by these associations. Other associations such as the Institute for Business Ethics and the Centre for Tomorrow's Company have arisen because of the perceived benefits of being ethical for a set of highly successful ethical companies. In both cases the movement towards group response was underpinned by the observation that some leading companies were clearly operating to much higher standards than the average firm.[29]

Mandatory responses to ethical issues usually arise because of the continuing existence of business practices which are publicly and politically unacceptable.[30] Specifically because voluntary responses cannot sufficiently reduce the poor behaviour of ethically lagging firms. Thus while the most ethical firms may have very elaborate policies for the handling of internal complaints by employees of unethical conduct by other employees (whistleblowing) others may systematically discriminate against those who reveal details of unethical behaviour. In many cases mandatory responses may be necessary because the cost of ethical response in presence of free--riding by other firms may mean a serious long run financial loss for the ethical firms. Thus health and safety legislation or environmental clean up by UK water companies may require legislation because of the large external effects associated with ethical behaviour relative to the private internal return. Thus whistleblowing has to date received only limited legal support in the UK but with the 1999 Public Interest Disclosure Act there will be considerably more public support for whistleblowers including mandatory financial compensation for whistleblowing that is deemed ex post to be in the public interest.[31] The UK government is considering amendments to the UK Companies Act which might include strengthening the statutory responsibility of Directors for decisions effecting health and safety and the environment (DTI, 1999). Such changes would increase the likelihood of criminal prosecution in certain cases. The pressure to consider this can be seen to be a public response to the perceived failure of large companies to consider the wider stakeholder implications of managerial decisions, in relation to the relatively small shareholder benefits.[32] In the case of whistleblowers, voluntary enforcement by companies of best practice treatment has been deemed to be inadequate; this may be unsurprising given that it is likely that it is unethical companies that will attract more whistleblowers.[33] In the case of company law with respect to Directors' obligations, social externalities can only reasonably be internalised under the force of law. It seems likely that further legislation on global warming and emissions of greenhouse gases will be required to enforce the degree of response that the public demands.

The phases that we have identified mirror the concept of a product life cycle.[34] This suggests that we might add a final phase in the development of an ethical issue where the issue is overtaken by technological progress and becomes redundant. Thus something like the treatment of children working in UK coal mines was once a significant issue but with developments in the mining industry is now something of a non-issue (at least in the UK).

We characterise the dynamic nature of the ethical continuum in Figure 1 placing the current UK response to a number of key ethical issues along the continuum.

3.1. The ethical issue life cycle

Currently the treatment of third world suppliers is largely a matter for individual transnational companies with little group response. The issue is however being taken up by NGOs and seems likely to move further along the ethical continuum as a more widely accepted approach emerges.[35] The criteria for the recruitment of directors is currently a matter for individual companies but is being investigated by the Institute of Directors with a view to championing the concept of a Chartered Director, i.e. the creation of a profession of Director who would have specific training and thus attempt to reduce the power of the 'old boy network' in the appointment of Directors.[36] This issue would thus appear to be about to take a serious move into the voluntary group response phase of development. We have already mentioned the development of board structures suggested via the Cadbury and Greenbury reports on executive performance and executive pay. These reports have resulted in most large UK companies adopting a separation of the role of CEO and Chairman of the Board[37] and a requirement for listed companies to publish full details of individual directors' pay[38]. These issues may develop further following the Hampel Report which received a mixed press for not recommending any more radical changes and hence raising the possibility of legislation if there was to be further significant movement on these issues of governance.[39] Reforms to company law regarding stakeholder directors lag a little way behind the response to whistleblowing but they are currently on the legislative agenda of the current UK government.

The process we have outlined is a continuous one. There will always be new ethical issues for firms to address and mature issues passing into Law.[40] This cumulative process reflects the fact of technological progress and the development of ethical tastes. Technological progress in such areas as biotechnology and the internet raises new ethical issues. Technological progress in the corporate governance system itself allows it to handle increasingly sophisticated ethical environments as ethical positions become standardised and incorporated into management processes.[41] Post-materialism ensures that as rich countries get richer they will be increasingly concerned with ethical issues in the way output is produced rather than merely the quantity of output.[42]

4. The Development of Ethical Issues - Biblical Insights

In an attempt to provide an ethical framework for thinking about the development of ethical issues and how companies might ethically respond to them we examine the biblical text for some inspiration. What we suggest is that the biblical parallels bring a further richness to our thinking about the ethical issues which face companies.

We have distinguished three observed phases in the development of company responses to ethical issues. We suggest that these phases closely mirror the pattern of spiritual and ethical challenge which we observe in the Bible as God seeks to call his people to repentance.

In the initial phase of a call to repentance God speaks to one or a very small number of people. Such people are the prophets of the Bible. They receive inspiration from God to give out the call to obey God's word. Thus God spoke to Abraham in Ur, Moses in the desert, David in the field, Paul on the Damascus Road and many others who went on to be the great people of the Bible[43]. The role of the prophet is, initially at least, lonely and dangerous. Of the prophets that are mentioned in the Bible many are the subject of persecution and even death. Prophets however are the intermediaries who educate and train others to do what God requires of them.

The parallel between biblical prophets and some of the leading ethical companies is clear. Many have been ridiculed by the financial community and engage in policies which are widely seen to be unprofitable (at least for others) for many years. However they fulfill a vital role in raising ethical awareness, shaming other companies and demonstrating that ethical approaches to doing business do exist - something that many other companies attempt to deny.

In the Bible prophets do tend to proceed and or to facilitate a positive response to their message from others and to create a faith community. Thus in the Bible, Abraham and his followers founded the nation of Israel, Moses led the Israelites out of Egypt, David was a great King of Israel and Paul founded churches across the Roman world. Such response is initially, at least voluntary and involves a few like-minded people. Abraham had just his family and servants, Moses debated with Pharaoh with only the half-hearted support of his people, David was reduced to 600 followers in his struggle with Saul and Paul could write of how few people around him he could really rely on.[44] The early church is indeed the classic example of this with the church beginning with just 500 seeing Jesus after his resurrection.[45]

Thus the beginning of the voluntary response to ethical issues facing corporations occurs when a few open and like-minded companies or voluntary associations come together to move an ethical issue forward. The group is still initially small but the growth rate may vary. Jeremiah spent forty years preaching to the people of Israel with little positive response whereas Jonah preached a few words to the people of Ninevah and 120,000 repented immediately.[46] This sort of range may exist in corporate ethical issues - thus the rapid adoption of environmental reporting standards contrasts with the rather slow response to the ethical issues raised by third world suppliers.

The movement from a voluntary group response to a mandatory response has interesting biblical parallels. The Bible recognises that the world is a sinful place where there is a way of the world - a dominant logic which is fundamentally evil.[47] This is in a world where the basic structure is good - being good should pay and indeed often does. The reality of sin, however, means that it is often the case that being good does not pay because the world (in this case represented by the economic system) does not reward good behaviour.[48] In these circumstances it is only through the imposition of a law that incentives to be good will be created. Legal measures also reflect the achievement of sufficient civil support for particular ethics such that society will support the use of the legal system in enforcing them. In the Bible good prophets and Kings were able to enforce high ethical standards among the general population as in the expulsion of ritual prostitutes in the reign of Asa or the rediscovery of the Book of the law in the reign of Josiah.[49] Indeed the history of the early church as a missionary movement which became the state religion of the Roman Empire is an example of this. The Bible's attitude to Law is complex. Law is necessary in the sense that it makes clear what is wrong. Incomplete in the sense that it cannot of itself redeem the soul - being a redeemed person is not something that comes about by obedience to the Law.[50] Thus Law will never be sufficient to end the ethical issues that face companies - some ethical issues will always remain outside the remit of law. Mandatory law itself reflects human failing: if we were spiritually and morally perfect there would be no need for a judicial system to enforce right behaviour.

In the Bible each of the elements of the previous stages of ethical development continue to exist and have an important role. Thus prophets continue to be important even if there is a community of like-minded believers. Even in the final phase prophets and the really committed continue to be important in a context of the general acceptance of certain values. Thus when things are going well for the nation of Israel there are still prophets and particularly faithful people.

The same is true with ethical issues facing companies. There will still be a need for voluntary best practice ethical innovation even as issues mature. Groups will be slow to act and develop relative to innovative ethical leaders. Even when certain issues get taken up by the law - the law can only set minimum standards and will only be as good as its enforcement and framing.

If the parallels between the biblical and the civil development of values are accepted then we can develop the biblical insights still further in suggesting some of the peculiar features of each stage of the ethical issue development process.

At phase one there are likely to be false as well as true prophets. Thus there will be companies and individuals who will champion particular ethical issues from false motives. The danger of this is that issues will be highlighted which are not relevant at the particular time or the initial leaders will subsequently be shown up to be frauds and will bring the issue itself into disrepute. Thus many of ethical movements of the 1960s fell by the way side. In recent times there have been notable examples where campaigning NGOs have targeted companies in a partial and untrue way. For instance, Greenpeace's campaign against Shell's dumping of the Brent Spar oil platform in the North Sea was subsequently shown to have been at least partly based on wrong information.[51]

Some are called to be prophets and the Bible makes it clear that there are consequences to not accepting a prophet role when offered[52]. This suggests that some leading companies, such as Coca Cola, should accept a prophetic role because if they did not there would be serious consequences for the rate and quality of progress of ethical behaviour by business. However not all are called to be prophets in the Bible.[53] Prophets have a role but they exist not to promote themselves primarily but the cause they represent. The success of an ethical issue is not in the number of prophets who champion it but in the size of the follower group who respond to the prophetic leadership of the few.

There is no shame in being a follower, only in not responding to the genuinely prophetic call to make a response. Thus firms are under an ethical obligation to do what best practice firms are doing when it has become clear that what they are doing is reasonable and reproducible. Failure to adopt emerging standards of ethical excellence is unethical.

Firms must obey the mandatory. Following the biblical framework this means not just obedience to the letter of the law but also in the spirit.[54] In the context of ethical behaviour those who tick boxes are condemned in Bible. Thus firms have a duty to continue to work with the legal authorities to ensure good implementation of laws and their continual development in line with the wishes of society. This suggests that attempts by firms to repeal, manipulate or frustrate the implementation of laws clearly designed to extend ethical practices to recalcitrant firms are wrong. The efforts of US healthcare firms in lobbying against privacy legislation protecting patient medical records may be an example of this.[55]

Wrong motives are pervasive in the area of ethics. Law can be imposed rashly or vindictively without reference to what is best for society. Thus it is possible for laws to be framed which address ethical issues at great cost. A particular issue is the idea that ‘quick law is bad law’ - knee jerk political reactions to public ethical issues which do not follow the biblical pattern of development: prophet to faith community to society are likely to result in badly worked out laws. The role of the first two stages is to highlight which issues are important at the present time given bounded rationality and limited resources (hence the need for a prophet to provide focus and leadership) and to allow the development of workable ethical responses (via the community of like minded companies). Failures to correctly filter issues at phase one or to listen to recommendations from phase two are likely to be extremely costly. The law on Insider Trading in the UK is cited as an example of a rapidly introduced law in response to some of the scandals in the City in the 1980s which has proved unworkable since.[56]

Companies may actively seek to frustrate the development of ethical issues. They can do this by making use of their considerable lobbying potential and by manipulating public opinion. This may result in unethical or inadequate group responses to ethical problems and the failure of the development of necessary mandatory responses. The example of tobacco companies misrepresenting the results of research into the affects of smoking in the 1950s undoubtedly slowed the development of appropriate ethical responses - such as bans on tobacco advertising.[57]

5. Combining theory and practice

We conclude by highlighting a number of lessons from the above analysis. We do this by examining the lessons for society, law makers and corporate governance. We begin by looking at the implications for wider society which raises and pushes ethical issues to be addressed by boards. We go on to look at the lessons for the law makers who frame legislation aimed at providing mandatory solutions to ethical problems. Finally we outline the implications for companies as they seek to develop an ethical response to ethical issues in the context of societal pressure and government action.

Lessons for Society

1. Society needs to watch for false prophets in the area of ethical issues and not be too quick to jump on ethical bandwagons. This implies that there will be and should be a process of negotiation between business and society over the implications and complex interactions involved in particular ethical issues.

2. Public opinion, reinforced by ethical consumerism and ethical investors, is a powerful agent for getting business to address issues of concern. A classic case of successful consumer pressure was the campaign against Nestle via a boycott of its Nescafe coffee brand

because of its policies on the distribution of milk powder for babies in the third world.[58]

3. Legislation to address an ethical issue is a blunt instrument which is likely to be costly and therefore needs to be considered carefully before being undertaken. In particular addressing one issue comes at the neglect of another. Rapid action may be disproportionately more expensive than a slower path to tackling an issue e.g. banning tobacco sponsorship overnight will come at a huge cost relative to a planned phase out over a number of years.

Lessons for Government

1. The ethical development process should be carefully considered otherwise it may lead to expensive delays in the enactment of legislation (as in the recent Competition Act 1998 which was at least 10 years in the making)[59] or hasty legislation which causes ongoing problems.

2. The law is an imperfect substitute for the development of a genuine commitment to ethical behaviour on the part of companies. Governments should seek to encourage voluntary responses where possible for their own sake and because of the risk of stifling prophetic insight by making the ethical behaviour solely dependent on the law, e.g. the UK law on insider trading.

3. Law is usually less quick to change than the ethical issues which concern the public.[60] Law makers should not neglect the process of allowing best practice responses to ethical issues to flourish at individual companies and in associations even when law exists in the area. Arguably deregulation has encouraged innovation in the ethical behaviour of leading companies in recent years where previously government control had stifled it.

Lessons for Corporate Governance

1. Firms should obey the spirit and not just the letter of the law.

2. There is no ethical imperative to be a visionary company unless called to be so by particular circumstance, i.e. not all companies are called to be like the Body Shop.

3. There is an ethical imperative to respond appropriately to organised ethical initiatives promoted by leading companies and organisations. Thus why, in 1999, are there still some large UK companies that have not fully implemented the recommendations of the Cadbury Report?

4. Given the likely development of an ethical issue it would pay a company to stay just ahead of the development of an issue in order to anticipate changes in the phase of development of the issue. A primary way of doing this would be to stay in open communication with those who are changing opinion on the issue.

Notes

1. Jones and Pollitt (1998, pp.5-12).

2. This idea was first explained by Adam Smith (1759, III.4.6-8, pp.156-7). See Eatwell (1998, pp.24-27) for a discussion.

3. See Jones and Pollitt (1999, p.193).

4. See Cohen (1998) on the rise of ethical consumerism and Sparkes (1998) on the growth of ethical investment.

5. See Cooperative Wholesale Society (1995) cited in Zadek (1998).

6. Sparkes (1998, p.147-148).

7. See Cadbury (1998).

8. See Jones and Pollitt (1999) for a case study illustrating this.

9. See Hood (1998).

10. Jones and Pollitt (1998, p.5).

11. See for example Hunt (1988, p.1-22).

12. Cadbury Report (1992, para 2.5, p.15). To many commentators this is a narrow definition which does not give sufficient emphasis to the role of other stakeholders in corporate governance (see Zingales, 1998).

13. Oxford Analytica (1992, pp.5-7).

14. See Jenkinson and Mayer (1992, pp.1-10).

15. See Kelly, J. ‘Survey - Financial Times Director: An era of broader interests: Directors’ Liability’, *Financial Times* 19 March 1999, p.S3.

16. Friedman (1970, p.12).

17. For instance Jones and Pollitt (1997, p.1) and Zadek (1998).

18. Body Shop (1997, p.121).

19. See Goyder (1998).

20. See http://www.ciboard.org.uk/ccs001.htm.

21. See http://www.listing.co.uk/.

22. In 1988 environmental reporting by companies was extremely rare, by 1998 it was widespread among leading companies (Zadek, 1998).

23. See Minnesota Centre for Corporate Responsibility (1992).

24. Cadbury Report (1992, para 2.2, p.14).

25. Stock exchange listing rules are mandatory in the sense that they must be complied if a company is to be listed. Some listing rules merely require companies to report their behaviour, they do not specify what the behaviour should be. Thus many of the recommended best practices in the Cadbury and Greenbury codes do not have to be complied with, companies must merely report whether they comply with them or not. Rules of this nature have value in that they may invite tougher enforcement should bad behaviour be revealed and thus may cheaply enforce good behaviour (see Ayres and Braithwaite, 1992).

26. Meadows, D.H. et al. (1972).

27. See Daunton (1990, pp.221-2).

28. The Committee on the Financial Aspects of Corporate Governance (the Cadbury Committee) notes that it was set up by the Financial Reporting Council, the London Stock Exchange and the accountancy profession (1992, para 2.1, p.14). The Greenbury Committee (or Study Group on Directors' Remuneration) was set up by the Confederation of British Industry (1995, para 1.1, p.9).

29. See Goyder (1998) and Wright (1998, p.173) for some details.

30. There are several forms this stage of response to an ethical issue can take. The government may delegate the response to a specialised regulatory authority with discretionary powers. This may be a more effective way of dealing with the issue than having a set of laws enforced by the criminal justice system. See Ayres and Braithwaite (1992) for more on this idea.

31. Taylor, R., 'Clampdown on cover-ups: Management Whistleblowing: The aim is to protect those who expose wrongdoing at work', *Financial Times* 2 July 1999, p.12.

32. See Kelly, J. op.cit. Pressure to require Directors to consider the community implications of mergers is part of this, however it now (November 1999) looks unlikely that company law reform will include further obligations in this area.

33. A 1996 survey of top 500 UK firms found that only 10% of respondents had a written procedure on whistleblowing, in spite of the fact that the Public Interest Disclosure Bill appeared in 1996 (Lewis, 1996, p.2).

34. See for instance Vernon (1966) who identifies three stages of product development: new product, maturing product and standardised product.

35. Much of the efforts of NGOs seem directed at specific campaigns against individual companies aimed at highlighting the problem. For one recent effort see Dunne, N., ‘Wal-Mart attacked for supplier labour standards: Worker Rights Campaigners Target World’s Biggest Retailer’, *Financial Times* 31 July 1998, p.4.

36. See http://www.iod.co.uk/profdev/cd_about.html for details.

37. Cadbury Report (1992, para 4.9, p.21).

38. Greenbury Report (1995, para 5, p.26-33).

39. Kelly, J., Wighton, D. and Bolger, A., ‘The Hampel Report: DTI gives guarded welcome ahead of review’, *Financial Times* January 29 1998, p.11.

40. Content analysis of the FTProfile Database searching in UKNEWS illustrates the development of the whistleblowing issue. From 1986-1999 (July 26), the annual number of UK newspaper articles mentioning the words whistleblowing, whistleblower or whistleblowers was as follows: 7, 7, 20, 21, 11, 16, 48, 53, 58, 132, 174, 219, 437, 369. This illustrates the growing public profile of the issue as it passed from voluntary best practice response to mandatory response.

41. The seems to reflect the Penrose Effect (Penrose, 1959).

42. See Cohen (1998).

43. Genesis 12, Exodus 3, 1 Samuel 16 and Acts 9.

44. Genesis 12:5, Exodus 4:29-31 and 6:9, 1 Samuel 27:2, 2 Timothy 4:9-18.

45. 1 Corinthians 15:6.

46. See in particular Jeremiah 1:1-3 and Jonah 3:4-5 and 4:11.

47. Romans 1:18-32.

48. See Jones and Pollitt (1996, p.32) for a discussion of these points.

49. 1 Kings 15:9-24 and 2 Chronicles 34.

50. Romans 2, 4, 7 and 8.

51. See Boulton, L. and Corzine, R. 'Greenpeace admits Brent Spar blunder: Environment - Pressure group apologises to Shell after publicising incorrect oil data', *Financial Times* 6 September 1995, p.8 and Houlder, V., 'Ecowarriors make peace', *Financial Times* 13 April 1999, p.14.

52. Eg. the story of Jonah and the relationship between Moses and Aaron in Exodus following Exodus 4:13.

53. 1 Corinthians 12:29.

54. See Mark 7:1-13.
55. See 'They'll pay a bundle to invade your privacy', *Seattle Post*, 28 July 1998, p.A3 which notes that healthcare firms spent $45m dollars in congressional campaign contributions to resist privacy legislation in 1995 and 1996.

56. The law was introduced in 1993. For a critical view of its impact see Barry (1998, p.99-104). This view is not universial as it can be argued that some of the worst insider trading scandals happened after the law was first proposed.

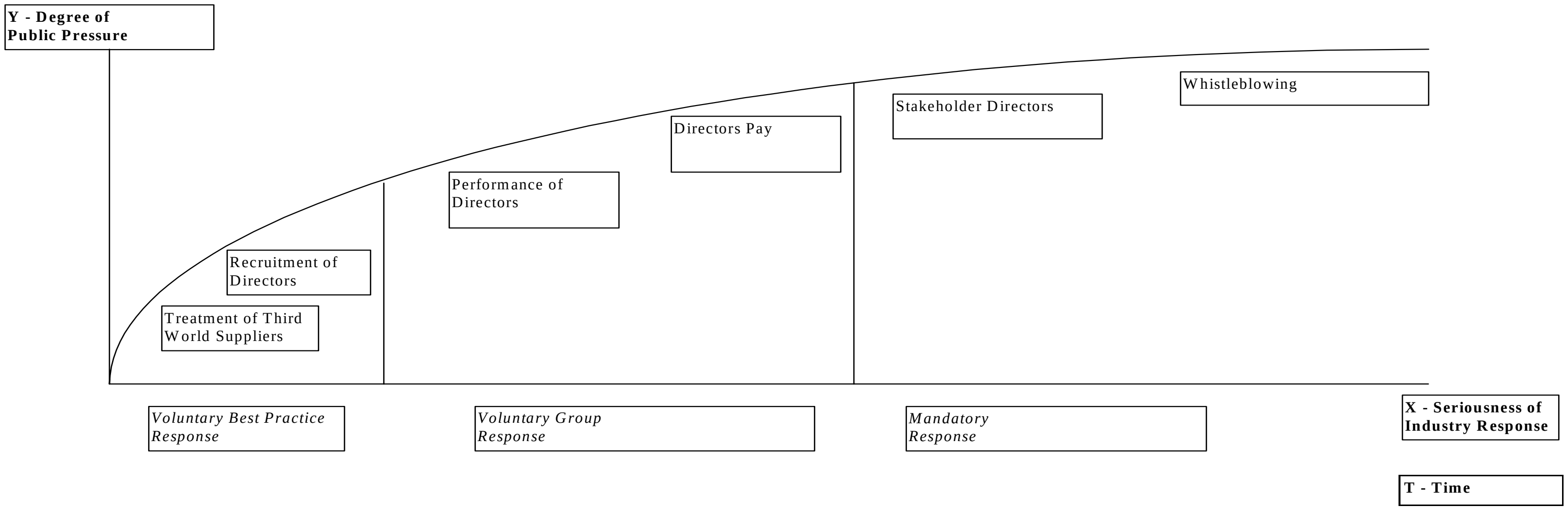
57. See for example Edgecliffe-Johnson, A. and Suzman, M. ‘US jury rules against tobacco giants in landmark class action’, *Financial Times*, 8 July 1999, p.12.

58. See Williams (1984).

59. Green papers on Competition Law reform first appeared in 1988 with DTI (1988).

60. This would seem to be true with respect to business law where effective lobbying by business often seems to slow down the speed of introduction and eventual scope of laws designed to address ethical issues (e.g. with respect to tobacco advertising). However this may not be true of law in general. Laws can be very effective in changing deep rooted but ethically dubious social norms. Thus laws on sex and race discrimination clearly led rather than lagged public attitudes to the ethical issues which they addressed.

Figure 1 - The Ethical Issue Life Cycle



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