

expression of it. In his thinking, ethics is 'a conscious practice of freedom' in which the 'ethical subject' is disclosed 'in relation to (or even against) those social and organizational rules and norms which seek to determine or dictate what a person should or should not be'.⁶⁸ Such 'disclosure' occurs when the possibility of non-compliance is contemplated, and not when the capacity for self-scrutiny is engaged to ensure conforming to 'social and organizational rules'.

Ethical conduct is, according to Foucault, 'the considered form that freedom takes when it is informed by reflection'.⁶⁹ A distinguishing feature of such conduct, Bauman has suggested, is that it is never assured of its ethicality.⁷⁰ It retains the suspicion that the action taken is morally deficient.⁷¹ Actions are ethical only when full personal responsibility is taken for them; and this would include a decision to act in a way that conforms to the requirements of an ethical code. From this it follows that an 'ethical culture' is not one in which employees comply with the letter of an ethical code. Rather, from a Foucauldian perspective, an 'ethical culture' is one in which members are enabled to take responsibility for 'self-scrutiny, weighing up individual obligations and responsibilities, then weighing up professional and organizational responsibilities... before finally applying decision standards and deciding'.⁷² A culture or sub-culture in which 'values and norms become so entrenched that self-inspection is unnecessary' is not, in this sense, ethical.⁷³ It is not ethical because, in such a culture, the sense of self has become so encrusted and self-assured that only the reproduction of cultural norms, or conformity with the code of ethics, counts as ethical. In such cases, employees have become so identified with the dominant norms or values statement that they effectively deny, or refuse, the freedom that, as argued above, is a defining feature of the human condition. To personalize this point, your conduct is ethical when you are no longer narcissistically preoccupied with reproducing or defending your 'self-certainty as an enclosed and isolated subject'.⁷⁴ You abrogate ethical responsibility when you attribute this responsibility to others (or to a code of ethics or a 'boss') who, in effect, do the 'ethical work' for you. And, paradoxically perhaps, in doing so, you become more vulnerable as you become dependent upon transient values and norms to affirm an inherently precarious sense of 'self-certainty' (Box 3.8).

This may strike you as implausible. After all, aren't most people inclined to associate (our) goodness with conformity to the values privileged by authorities and other dominant regimes of truth, such as those encountered in work organizations, and not with how we exercise our freedom to accept or to transgress those values? Foucault, by contrast, invites us to engage in 'ethical work' in which the 'ethical subject' is disclosed through processes of self-scrutiny. This process necessitates engaging with, and interrogating, our (power-invested) accounts of the self, including those that have become integrated into, and colonized by, our involvements in practices of domination. As Faubion notes, Foucault 'never takes the ethical for granted. [He] acknowledges the considered

ongoing involvement is recalled and appreciated, social reality, including the sense of self, is 'apprehended as an inevitable fate, for which the individual may disclaim responsibility'.⁶¹ It is precisely an invitation to disclaim responsibility that is extended when employees are required and coerced into complying with the prescriptions of ethics codes. Or, more precisely, they are urged to limit their responsibility to ensure that their behaviour is congruent with such prescriptions – that is, to 'follow the orders' set out in the code.

Ethics and freedom: Michel Foucault

The absence of determinism in social life or, more positively, the presence of freedom is, as Foucault argues, a crucially important condition of ethics.⁶² That is because freedom – or release from determination – is a condition of the possibility of taking personal responsibility for whatever (social) kinds of closure are established and maintained. Forms of closure are conceived by Foucault as the enactment of 'governmental technologies' that regulate social life and 'often' facilitate 'states of domination'.⁶³ In the absence of an 'openness' that defies and disrupts determinism, ethics makes little sense. When the primacy of 'openness' and associated freedom is posited, then forms and processes of control, including the ethics codes and programmes, are seen to exemplify practices of 'governmentality' through which 'free individuals' mobilize diverse instruments to govern others.⁶⁴

Even the most mundane of actions is understood to be underdetermined by instinctual and institutional forces, and therefore to involve ongoing moments of decision-making – even when these moments may appear to be habitual, unconscious, or contextually determined. At the heart of Foucault's concept of governmentality, then, is freedom: 'the concept of governmentality makes it possible to bring out the freedom of the subject [e.g. the CEO or the employee] and its relationship to others – which constitutes the very stuff of ethics'.⁶⁵ When understood in this way, the human condition is defined by its inherently and profoundly ethical quality. It is a quality that supports the reflexivity and self-scrutiny to which Sinclair points when she describes the process of being ethical as 'taking moral responsibility for a decision', and which is also at the centre of what Foucault calls the 'conduct of conduct'.⁶⁶ In human institutions, forms of self-scrutiny are integrated into, or become resistant to, techniques of control and forms of domination.

This capacity for self-scrutiny is referenced by Ken Lay in his foreword to the Enron code of ethics where he urges employees to 'reflect upon your past actions to make sure that you have complied with the policies'.⁶⁷ However, as this quote indicates, the capacity is reserved for, or restricted to, the 'responsibilization' of employees who are asked to mobilize this capacity to ensure their compliance with Enron policies. For Foucault, this is more a limitation of freedom than an

Skilling's faltering self-certainty

The possibility of what is meaningful to us becoming dislocated and even evaporating is ever-present; and this possibility is terrifying as it threatens to annihilate the reality of the 'encrusted' self. It seems likely that the possibility materialized for Jeffrey Skilling, ex-CEO of Enron, who suffered a nervous breakdown two months after being arrested and charged with fraud, insider trading and other misdemeanours, and for which he subsequently received a twenty-four-year jail sentence.

Seemingly overtaken by paranoia, Skilling reportedly harassed several persons and accused them of being undercover FBI agents before police were called. Skilling's resignation (reportedly in tears) as CEO of Enron for 'personal reasons' had occurred three years prior to this arrest. His resignation coincided with a slide in the Enron stock price from a fifty-two-week high of \$90.56 on 23 August 2000, to \$42.93 on 14 August 2001, the day before he resigned.⁷⁵ The month following his resignation, Skilling sold 500,000 Enron shares and, in total, is reported to have made \$70 million from the sale of Enron stock. By the time of his trial, it seems that Skilling had regained his composure by rebuilding his encrusted self. Indeed, in an interview given to the *Wall Street Journal* (17 June 2006), a month after receiving his sentence, Skilling says that he sought psychiatric help and emerged from a lengthy 'malaise' (he became a recluse, staying in bed and obsessively following media coverage of the scandal) only after his 2004 indictment: 'The indictment, in a lot of ways, that was the turning point', Skilling told the newspaper. 'That's when I started climbing back.' At his trial, Skilling continued to protest his innocence, saying that 'the company's collapse was the work of a small number of rogue staff – not including Lay or himself – and that its implosion was hastened by the feeding frenzy following the earnings restatement in October' (BBC News, 2006).

practice of freedom as a human possibility. Ethical work requires a refusal to conflate moral acts with those that conform to rules, laws, values or codes'.⁷⁶

The dis-closure of the ethical subject is perhaps best conceived as a process of struggle, in which diverse available narratives of self are assessed to enable or inhibit self-scrutiny. Inhibiting narratives include those of business ethics where, as we have seen, self-scrutiny is restricted to monitoring and ensuring conformity with value statements and codes. Conventional wisdom denies, or at best marginalizes, the significance of the practice of freedom as a condition of ethical conduct.

Rethinking Enron and beyond

In returning to the example of Enron, it is possible to appreciate how attentiveness to corporate means of developing 'ethical cultures' can displace and weaken the capacity to act ethically.