Beyond the Manager's Moral Dilemma: Rethinking the 'Ideal Type' Business Ethics Case

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Abstract

Case teaching occupies a central place in the history of business education and in recognition of its significance, the *Journal of Business Ethics* recently created a new section for cases. Typically, business ethics cases are used to teach moral reasoning by exposing students to real-life situations which puts them in the position of a decision-maker faced with a moral dilemma. Drawing on a critical management studies' critique of mainstream business ethics, this paper argues that this 'ideal type' decision-focused case underplays the social, political and economic factors which shape managerial decisions. An alternative 'dark side' case approach is presented, which highlights the structural features of capitalism and the role of government in regulating the market. The 'dark side' approach is illustrated with the case of a New Zealand woman, dependent on an oxygen machine, who died when her power was disconnected by her State-owned electricity supplier because of an unpaid bill. The case considers the actions of both the company and the industry regulator within the context of a 'light-handed' approach to government regulation. The paper concludes with a discussion of how this approach to the case method, which moves beyond managers and their moral dilemmas, can provide students with a deeper understanding of the complexity of business ethics.

Keywords

Business ethics, case teaching, critical management studies, management education, professionalization.

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Introduction: Ethics Teaching in the Spotlight

The crisis which swept financial markets in 2008 has prompted another round of questioning over the role played by business schools. Following the post-Enron introspection over the state of business education (Ghoshal, 2005), this latest bout of soul-searching has intensified concerns about the moral shortcoming of today's business school graduates. Labelled the "academies of the apocalypse" (James, 2009), business schools are blamed for producing "wannabe Gordon Geckos" [1] (Chibber, 2009) who believe that is greed is a virtue which holds the key to economic prosperity (Walker, 2009).

The global financial crisis (GFC) has reignited interest in the idea of management as a profession. The professionalization project was prominent in the founding of business schools in the United States (Khurana, 2007), but it gave way in the 1960s to an emphasis on technical expertise following criticisms of poor quality research and low quality students (Gordon and Howell, 1959; Pierson, 1959) and was further undermined in the 1980s when economic theories, such as agency theory, came to dominate the curriculum, framing the task of management as the narrow pursuit of shareholder interests (Ghoshal, 2005). The idea of the corporate statesperson was in danger of becoming "increasingly obsolete and embarrassingly irrelevant" (Danley, 1998, p.21) - the lofty view of management as a profession with 'higher aims' abandoned in favour of a view which sees managers as 'hired hands' serving shareholder interests (Khurana, 2007). The GFC has led to attempts to resuscitate the figure of the management professional. Khurana and Nohria (2008) outline a Hippocratic Oath for Managers, based on that undertaken by medical professionals, in

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which managers pledge to serve the public's interest. At their own institution, Harvard Business School, half of the graduating class of 2009 pledged to honour the values of the management profession (Economist, 2009) [2].

At the heart of professionalization is the issue of trust. The legitimation of management as a profession rests on an ethos of service where managers serve society's interests, rather than the narrower interest of the corporation. Professionalization offers the promise of a self-disciplinary mechanism, with its shared knowledge, standards and norms of conduct allowing a form of self-regulation to compensate for the imperfections of more formalised regulatory processes (Khurana, 2007). If organisations are run by moral managers, the implication is that they can be trusted to govern themselves, rather than being subjected to heavy oversight from state-based regulatory mechanisms. The stakes are high, with accreditation agency Association to Advance Collegiate Schools of Business (AACSB, 2004, p.7) warning that "at issue is no less than the future of the free market system, which depends on honest and open enterprise to survive and flourish". As the response of governments to the GFC demonstrates, if managers cannot be trusted to act in the interests of society, then the freedoms extended to business will be curtailed.

Where does this leave the teaching of business ethics? It is widely accepted that *more* ethics teaching is needed, but *how* should we teach ethics? A recent meta-analysis of business ethics programmes concluded pessimistically that such programmes have little impact on students' perceptions, behaviour or awareness, although it did note that "the instructional approach that is most fruitful for ethics is a case-based

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approach" (Waples et al, 2009, p.147). The case-based approach has nearly 100 years of history within business schools and has been an integral part of ethics education by endeavouring to assist the development of students' moral reasoning. This paper identifies an 'ideal type' business ethics case, based on analysis of submission requirements to leading case journals, where students encounter managers who are faced with moral dilemmas and must balance the needs of multiple stakeholders in making ethical decisions. Underpinning this approach is an assumption that the moral deficiencies of managers are the solution to the problem of repugnant corporate conduct. This paper explores that assumption by drawing on a critique of mainstream business ethics by critical management studies (CMS), which encourages us to attend to systemic influences. From this perspective, unethical behaviour by corporate managers might alternatively be viewed as the rational pursuit of profit within a capitalist system. In considering ways to improve corporate behaviour, this critique prompts us to look beyond the narrow concern with the ethical character of managers to consider the rules of the system and those who create and administer those rules – government and its agencies.

Instead of suggesting that we abandon the case method, this paper proposes an alternative 'dark side' approach to case writing and teaching, which encourages students to attend to structural constraints on managerial decision-making. To illustrate this alternative approach, a case is presented which tells the story of a New Zealand woman, dependent on an oxygen machine, who died when her power was disconnected by her State-owned electricity supplier because of an unpaid bill. Rather than place students in the position of a manager who is faced with an ethical dilemma, students are encouraged to analyse the interaction between a profit-seeking

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organisation and an industry regulator within a capitalist system. This is not an 'ideal type' business ethics case, but it is argued that the teaching of business ethics would benefit from its expanded definition of business ethics.

The Contribution of CMS to a Critique of Business Ethics

CMS questions the authority of mainstream management thinking. It is a pluralistic movement informed by a diversity of theoretical perspectives, but common to each is a view of management as a pervasive institution within capitalism (Alvesson et al, 2009). Critical management scholars have been active in the field of business ethics, confronting 'taboos' (Kallio, 2007) avoided by mainstream theorists. Whilst a unitary CMS critique of mainstream business ethics does not exist, a recurrent theme is the mainstream's construction of 'business ethics' as the solution to the problem of undesirable corporate behaviour. This illusion is maintained by a focus on the individual as the unit of analysis, underpinned by a view of the manager as an autonomous agent, and by an exclusion of politics which turns attention away from the role of government and the inter-organisational dynamics of the regulatory environment.

Critical management scholars have highlighted the separation of 'ethics' from 'politics' within the mainstream of business ethics (Jones et al, 2005; Parker, 2003; Parker and Pearson, 2005). This has allowed academics within business schools to create a distinct area of inquiry with boundaries which include moral philosophy and exclude politics and ideology. The effect is "a rather tidy affinity between a narrow use of the word 'ethics' and a market managerial ideology that considers questions about persons to be legitimate but questions about political economy to be largely

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settled" (Parker, 2003, p.189). In this way, the construction of 'business ethics' as a field of study or a subject for the curriculum is revealed as a political commitment to particular ideologies (the individual, managerialism) which serves to legitimate the discipline and those academics who identify with it.

Mainstream business ethics has a preference for individualistic explanations, which downplay or avoid completely the social context (Jones et al, 2005). The response that corporate scandals are the result of 'a few bad apples' deflects attention from the systemic influences on such behaviour, bringing managerialism to the fore and relegating theories of political economy to the background (Jones, 1996). Danley (1998) identifies three components of managerialism: the separation of ownership and control which hands power to managers; the associated discretionary powers to pursue goals other than short-term profit maximisation; and professionalism. Taken together,

> the key assumption is that managers have the discretionary power to do good, but they either don't have the will or the knowledge to do good. Hence, the solution is to provide the knowledge through courses in management and ethics. (Danley, 1998, p.25)

Whilst not wanting to "obliterate the micro" (p.28), for Danley the problem is not with immoral managers, but with the structural, enduring features of capitalism. Danley concludes that assumptions of managerial discretion are probably false and that by applying a political lens "we may come to understand that management has little choice" (p.28). Corporate downsizing and outsourcing might be caused by "evil managers" (p.29), but are more likely responses to structural features of the external

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environment, he argues. If managers' moral reasoning is not the problem, teaching them about moral philosophy is not the solution (Danley, 1998).

Critical approaches to business ethics, therefore, highlight how the construction of business ethics as a field of study within the institution of the business school functions ideologically to legitimate the workings of a free market system by promoting a trust in self-regulation by corporations and an associated distrust of government-imposed regulation. As a result, questions about the ethics of business within a capitalist system are silenced (Wray-Bliss, 2009). Later in the paper, an approach to the case method is presented which places the ethics of business in the foreground. First however, I briefly review the literature on the case method of teaching.

Teaching Business Ethics Using Cases

> *What decision would you make?" It seems to me that this is the entire burden and thrust behind using cases in an ethics course. That is, what would the individual students do if they found themselves in such and such a situation? In effect the instructor wants to force or lead the student into the habit of ethical thinking and ethical decision making. (Gini, 1985, p.352)*

The case method has a long history within management education, associated in particular with Harvard Business School, dating back to the founding of the school in 1908 when the first Dean, Edwin F. Gray, advocated the 'laboratory method' of instruction (Corey, 1998). At this time there was little management theory, with

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teachers either writing cases about their own experiences as managers, or working with managers to prepare cases about the problems they encountered at work (Corey, 1998; Lundberg and Winn, 2005).

Lynn (1999, p.2) defines a teaching case as "a story, describing or based on actual events and circumstances, that is told with a definite teaching purpose in mind and that rewards careful study and analysis". Lynn identifies five types of cases: decision-forcing, policy-making, problem-defining, concept-application and illustrative. Decision-forcing (or decision-focused) cases are the most popular because of "the conviction among teachers in the professions that the essence of professional skill is the ability to make decisions under trying circumstances" (p.107).

Characteristics of high quality teaching cases are presented in Table 1 and highlight the dominance of the decision-focused type. According to these criteria, high quality cases are those which identify an actor or actors who must make decisions and solve problems - irrespective of the type of case deployed.

INSERT TABLE 1 ABOUT HERE

An analysis of the submission guidelines of leading business case journals supports the observation that the decision-focused case represents an 'ideal type'[3]. *Case Research Journal* only publishes decision-focused cases and gives priority to those which are based on field-research, rather than secondary sources. *The Business Case*

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Journal has historically focused on decision-focused cases, though it now also accepts 'descriptive cases' which enable students to analyse how a situation was managed and encourage them to determine if it could have been handled better. *The Case Journal* is the most open of the three, with the submission guidelines explicit that cases do not have to have a decision focus. They also welcome illustrative, descriptive and analytical cases.

Within the field of business ethics, a similar preference for the 'ideal type' decision-focused case is evident, with Gini's (1985, p.185) classification in Table 1 an exemplar. The *Journal of Business Ethics* has recently created a new section for cases on business ethics, in response to the growing presence of ethics in the business school curriculum. In their introduction to the new case section, Falkenberg and Woiceshyn (2008) note that the need for teaching materials is growing, yet available cases are commonly either too short, too long, out of date, or push students towards a 'right' answer and are typically written from the perspective of senior management, thereby neglecting ethical dilemmas faced by middle management and professionals. The title of Falkenberg and Woiceshyn's paper makes clear its focus – "Enhancing business ethics: Using cases to teach moral reasoning" (p.213). The authors argue that a "consensus has started to emerge" (p.213) that the goals of case teaching should be to increase students' awareness of ethics and to improve their reasoning and judgement skills by getting them to identify and apply their own values. For Falkenberg and Woiceshyn, the primary use of cases is to teach moral reasoning by exposing students to real-life situations. Whilst acknowledging that issues such as business-government relationships, the organisation of the economic system and the conflicts of stakeholders are important, the emphasis on teaching moral reasoning

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implies that 'good' cases explore these issues through the nodal point of the manager as decision-maker.

Whilst I applaud *Journal of Business Ethics'* recognition of the importance of case teaching, by taking a narrow view of the uses of ethics cases (to teach moral reasoning), other uses are neglected. For Falkenberg and Woiceshyn, good cases identify problems and encourage students to make decisions in order to solve them. However, there is a danger that in the rush for 'solutions' we may be missing important contributing factors to the 'problems'. Within CMS there exists a small but growing body of case writers who seek to challenge this case writing orthodoxy. The Dark Side Case Competition, organised by the CMS Division of the Academy of Management, began in 2001 following an observation by US critical scholar Paul Adler that cases libraries were dominated by 'best practice' cases or by cases which involved managers facing difficult decisions. Adler wanted the Dark Side Case Competition to focus not on "individual bastards, but on cases that tell us something about the broader system and how it permits, encourages, even forces firms to do terrible things" (Adler, cited in Raufflet and Mills, 2009, p.5). 'Dark side' case writers, therefore, are united in the belief that restricting cases to focus on the moral reasoning of decision-makers tends to downplay the structural features of the capitalist system. This raises the possibility that what is identified as a consciously moral (or immoral) decision by a manager might alternatively be viewed as a rational business decision by profit-seeking organisations within a system based on capital accumulation (Raufflet and Mills, 2009).

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The following section provides an illustration of this alternative approach to case writing[4]. After introducing the case, the analysis focuses on how this approach departs from the 'ideal type' and how this might get students thinking differently about business ethics.

The Dark Side of 'Light-Handed' Regulation: The Death of Folole Muliaga[5]

Folole Muliaga, a 45 year old Samoan woman, and her son Ietitaia were in their Auckland home on 29 May 2007[6]. Mrs Muliaga was in the dining room and Ietitaia was seated at the computer in the living room. At 10.25am, Ietitaia answered a knock on the door. "Good morning, I'm from Mercury Energy and Mercury Energy is disconnecting your power for arrears," said the man, an employee of VirCom Energy Management Services (hereafter 'the contractor') which was contracted to perform Mercury Energy's disconnections[7]. He handed Ietitaia a disconnection notice which he took to his mother, who told him to invite the man in to speak with her. By this time the contractor had cut the power supply to the house. Ietitaia asked him to come inside, and the man followed him to the dining room, stepping over a tube running from a machine in Mrs Muliaga's bedroom to the prongs attached to her nose.

Mrs Muliaga was not a well woman. Since migrating to New Zealand in 2000 with her husband, Lopaavea and four children in search of a better life, her health had deteriorated. She first received hospital treatment on 5 April, 2007 for breathing difficulties associated with her weight, which had risen to 212 kilograms. She was diagnosed with obesity hyperventilation syndrome, an illness which prevented her from breathing adequately to remove carbon dioxide from her body. Mrs Muliaga was treated with drugs and a ventilator and by the time of her discharge from hospital on

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11 May, 2007, her weight had fallen to 184 kilograms. She was given two machines to continue oxygen treatment at home.

The contractor explained to Mrs Muliaga that he had disconnected the power on instruction from Mercury Energy, as the account was NZ$168.40 (US$120) in arrears. Mrs Muliaga asked "So how do I get my power on?" to which the contractor replied, "You either pay or ring Mercury Energy." Ietitaia did not hear all of the conversation, but heard his mother say "Please give us a chance" to which the contractor replied "I'm just doing my job." The contractor could see the plastic tubes coming from Mrs Muliaga's nose, but he did not know what they were for and did not feel it was his business to ask about them. He did not see any oxygen machines, or any tubes on the floor. He also did not hear the alarm which was triggered when power supply to the oxygen machine was cut.

Once the contractor left the house, Mrs Muliaga's health deteriorated rapidly. She took some pills, but Ietitaia and his brother Ruatesi, who had arrived home, were concerned. She asked Ietitaia to play a song on the guitar but halfway through the song she was struggling to breathe. Ietitaia went to the dining room to call an ambulance but their phone was disconnected. He returned to find his mother unconscious and Ruatesi attempting resuscitation. Ietitaia went to the neighbours' house and an ambulance was called. Two ambulance staff arrived and continued attempts to resuscitate her but it was too late. Folole Muliaga was dead.

The blame game begins

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Mercury Energy was the third largest energy retailer in New Zealand, providing electricity and gas services to 315,000 residential business customers throughout New Zealand. It was a profitable business - between 2003 and 2007 its earnings nearly doubled, though its return on shareholders' equity had fallen by more than half during this time to less than 6 percent. Mercury Energy had a strong presence in Auckland, with more than 50 years of history supplying customers in the region. Mercury Energy was active in community initiatives to support the company's goal of "bringing together the Company and surrounding communities so that the needs of each are mutually understood" (Mighty River Power, 2007, p.28). In 2007 Mercury Energy insulated, free of charge, the homes of 50 patients of Auckland's children's hospital who were suffering from respiratory illnesses, to make their houses warmer and drier.

The day following Mrs Muliaga's death news reports began to surface in New Zealand. These were soon picked up by international news outlets, including the BBC and CNN, their attention drawn by the apparent death of a woman over an unpaid electricity bill. Mercury Energy initially insisted it had done nothing wrong, but it softened its stance as further details of the case were revealed. Senior management visited the family's home, dressed in traditional Samoan lava-lavas wrapped around their suits, to offer their condolences and money to cover funeral expenses. Politicians from New Zealand's government and opposition parties were quick to start pointing the finger of blame. Prime Minister Helen Clark accused Mercury Energy of a "hard-nosed commercial attitude" and said it was unbelievable that the contractor had gone ahead with the disconnection even though he saw a tube coming out of Mrs Muliaga's nose (Eaton, 2007). Former State Owned Enterprises

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Minister Richard Prebble said it was ironic Prime Minister Clark was attacking Mercury Energy, given that her government owned it (Prebble, 2007).

Two weeks after Folole Muliaga's death, Police announced there was no evidence to justify any charge against either Mercury Energy or their contractors. Following an inquest, Coroner Gordon Matenga concluded that Mrs Muliaga died of an arrhythmia caused by morbid obesity and that "the cessation of oxygen therapy and stress arising from the fact of the disconnection (as opposed to the way in which the power was disconnected) have contributed to her death" (Matenga, 2008, p.33). The VirCom contractor escaped blame, with the Coroner accepting that he knew nothing of Mrs Muliaga's medical condition, the oxygen machine or the need for power to keep it operating. The Coroner accepted that had the contractor been aware of the situation, he would have followed the standard procedure and telephoned Mercury Energy to advise them that the power should not be cut off. The contractor had given two examples when he had done this in the past, one case involving children with intellectual disabilities and the other a newborn child.

New Zealand's electricity industry reforms since 1984

While the focus of the media's attention was the actions of the contractor and of Mercury Energy, Mrs Muliaga's death can also be examined in the broader context of a radical transformation of New Zealand's electricity sector which had begun 25 years earlier. Prior to 1984, electricity generation and transmission had been the responsibility of the Ministry of Energy, a government department, which was also responsible for policy advice and regulatory functions. The Ministry of Energy operated New Zealand's hydro-electricity network and its gas and coal-fired stations,

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as well as maintaining the transmission system that distributed electricity to local power board and councils, which sold it to consumers. In 1984, the newly-elected Labour government faced a foreign exchange crisis which provided the catalyst for a series of wide ranging neo-liberal economic reforms which transformed New Zealand from one of the most regulated economies in the OECD to arguably the least regulated (Chapman and Duncan, 2007). Treasury, the department which advised the government on economic policy, argued the Ministry of Energy was over-staffed and inefficient and suggested a number of market reforms for the sector.

In 1987, the Electricity Corporation of New Zealand (ECNZ) was set up as a company under the State Owned Enterprises Act to own and operate New Zealand's generating stations and the transmission system. Policy and regulatory activities were separated out and largely retained within the Ministry of Energy. Section 4 of the State Owned Enterprises Act 1986 stated that

> [1] The principal objective of every State Enterprise shall be to operate as a successful business and, to this end, to be –
>
> [a] as profitable and efficient as comparable businesses that are not owned by the Crown;
>
> [b] A good employer; and
>
> [c] An organisation that exhibits the sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so. (State Owned Enterprises Act, 1986).

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In 1989 an Electricity Task Force recommended the development of a 'light-handed' regulatory regime, which involved the use of the existing competition policy regime to deal with anti-competitive behaviour, together with extensive information disclosure and the threat of further regulation if dominant market players abused their natural monopoly position. 'Light-handed' regulation was seen as preferable to 'heavy-handed' regulation, such as price controls, which were considered complex, costly to administer and not always capable of producing the desired result. By maintaining a 'light-handed' approach, regulations could be kept to a minimum, with additional measures introduced to overcome any weaknesses in the regulatory framework that arose over time (Ministry of Economic Development, 2006).

In 1999, the newly-elected Labour government inherited an electricity industry that was largely self-regulating, with market participants subject to few legislative and government restrictions. Whilst it was Labour that had begun the neo-liberal reforms in 1984, its electoral success in 1999 was based on a pledge to curb the excesses of the free market, especially in the provision of essential services, such as electricity. The government stated that it favoured industry solutions where possible, but signalled its intention to regulate if the industry failed to self-regulate responsibly. In 2000 it announced a new governance structure for the industry, including a self-governance board. However, by 2003 industry participants had failed to reach agreement on self-governance arrangements, prompting government to establish an Electricity Commission (EC) to take over governance of the industry.

The Electricity Commission and its guidelines for low-income customers

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The EC, funded by a levy on electricity companies, was responsible for overseeing the governance and operations of New Zealand's electricity market. Consistent with New Zealand's 'light-handed' regulatory approach, the EC had extensive powers to regulate but was expected to meet its objectives through persuasion rather than regulation. In 2005 the EC announced it was considering implementing a set of guidelines to assist low-income domestic consumers to ensure that minimal disconnections occurred, and to establish standards for these disconnections. It was hoped that by introducing guidelines all parties would benefit – retailers' bad debts would be reduced as well as the costs that resulted from enforcing them, social agencies would reduce the money they were advancing to customers struggling to pay their bills and consumers would benefit from a continuous supply of electricity. The EC noted that some retailers made more strenuous efforts than others before making disconnecting low-income customers. Following the hearing of submissions from power companies, community groups and other interested parties, the EC released a final set of guidelines which were "advisory, in line with its objective to encourage rather than regulate" (Electricity Commission, 2005, p.5).

Critical to the Coroner's investigation into Mrs Muliaga's death was Mercury Energy's actions leading up to the disconnection being ordered, in relation to the EC's guidelines. The guidelines involved a two-step process: first, the electricity retailer would inform its customers on how to identify themselves as a vulnerable customer who would face hardship if the electricity was disconnected. The obligation was then on those customers to follow those instructions. At the time of Mrs Muliaga's death, Mercury Energy did have a 'Do Not Disconnect List' which included 59 customers with medical conditions, but Mrs Muliaga was not on the list. Following her death,

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Mercury Energy accepted they had not fully complied with the EC guidelines. Whilst they did assist vulnerable customers who identified themselves, they did not provide information on the process of self identifying as a vulnerable customer. The Coroner concluded that:

> It is perhaps no surprise that the Muliaga family did not advise Mercury Energy of Mrs Muliaga's medical condition. There is no evidence before me that the Muliaga family was aware that help was available to them. (Matenga, 2008, p.16)

Why did Mercury Energy not implement the EC guidelines? There is no definitive answer to this question, but in 2005 a submission was made by Mercury Energy's parent company, Mighty River Power, to the EC on the proposed guidelines. In its submission, Mighty River Power supported the objectives of the guidelines but said that retailers already had processes around disconnection and the EC had failed to demonstrate there was a problem with them. Mighty River Power (2005) said that while disconnection was considered a "last resort" (p.14), the ability to disconnect was needed to ensure bad debts did not grow too big and to provide an incentive for bad debtors to pay their bills. Any actions which delayed disconnection would

> distort the current prioritisation process by sending a very clear signal to low income and vulnerable individuals that electricity should be the last obligation that they should be concerned about. (Mighty River Power, 2005, p.5)

While the tragedy of Mrs Muliaga's death has many contributing factors, it is not unreasonable to suggest that her death might have been avoided if Mercury Energy had chosen to implement the EC's voluntary guidelines. We need also to consider the

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actions of the industry regulator itself. The EC could have chosen to regulate the way in which electricity suppliers disconnect low-income customers, rather than preferring voluntary guidelines consistent with a 'light-handed' regulatory approach. Grey Power, a lobby group for those aged over 50, warned in its submission on the draft guidelines that electricity retailers might ignore guidelines they found difficult or costly to implement. The only way for the EC to ensure low-income consumers would be protected, they argued, was to regulate (Grey Power, 2005).

In June 2007, as a direct result of the death of Mrs Muliaga, the EC put out a revised set of guidelines for assisting low-income consumers. Whereas the 2005 guidelines were "advisory" (Electricity Commission, 2005, p.5), the 2007 guidelines stated that "retailers must report annually on their level of compliance with the guidelines, and where the guidelines have been deviated from, provide reasons for each type of deviation" (Electricity Commission, 2007, p.3). This compliance information would be publicly available on the EC's website. Despite this tougher stance, the EC stopped short of imposing regulations, preferring once again to threaten regulation if the response from retailers was unsatisfactory.

Beyond the Manager's Moral Dilemma

Based on the criteria of high quality cases presented in Table 1, the case presented above is not an 'ideal type' business ethics case, in two respects. First, while it does retrospectively describe decision-making at multiple levels (the decision by Mercury Energy not to implement the voluntary guidelines, the decision by the Electricity Commission to create guidelines rather the regulations), it does not ask students to

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"step figuratively into the position of a particular decision maker" (Leenders et al 2001, p.3). Rather, students are encouraged to analyse the interplay of political and economic factors and organisational relationships and to suggest how this tragedy might have been prevented.

Second, it does not fit the 'ideal type' ethics case because there is no apparent ethical dilemma. There is no evidence that any of the decision-makers in the case were conscious that the choices they made involved moral choices. Mercury Energy's decision not to implement the guidelines could be interpreted, retrospectively, as a moral dilemma, but it is unlikely to have presented itself as such at the time, since Mercury Energy appeared to believe its' processes were sufficient. In addition, their concerns about providing a disincentive for people to pay their electricity bills can be interpreted as a rational pursuit of the primary objective of their governing legislation, the State Owned Enterprises Act, which requires such entities to be as profitable as their private-sector competitors.

It was noted earlier how, from the perspective of CMS, mainstream approaches to business ethics foreclose the ethical with their preoccupation with ethical dilemmas, which has the effect of counting out of a consideration of 'ethics' anything that does not engage the moral character of individuals (Jones et al, 2005). In analysing the case, students are encouraged to consider the government's preference for light-handed regulation, the EC's preference for voluntary guidelines regarding the treatment of low-income customers by electricity suppliers and the choice by Mercury Energy not to implement those guidelines, as politico-ethical choices which fall within an expanded definition of ethics. These are choices by powerful institutions

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either entrusted with social responsibility obligations or which claim social responsibility as a guiding value. These are ethical choices about the rules of capitalism and the role of the State within the capitalist system, but are not ethical dilemmas faced by managers.

It is noteworthy that media coverage of Mrs Muliaga's death was dominated by the search for a villain. Early coverage focused on the actions of the contractor in continuing the disconnection despite apparently obvious signs that Mrs Muliaga was in poor health. When it emerged that Mercury Energy's processes had been deficient, attention shifted to the company's CEO and chairperson. The Coroner concluded that no individual was to blame for Mrs Muliaga's death. Instead, he told a relatively mundane but no less important story about the creation of voluntary guidelines by the industry regulator for the protection of vulnerable customers which an electricity supplier chose not to implement. In contrast to the comprehensive media coverage of Mrs Muliaga's death, the release of the Coroner's findings generated relatively little reportage.

It is also noteworthy that the Coroner concluded his investigation by congratulating Mercury Energy for acknowledging that their previous practices were not compliant with the 2005 guidelines and for voluntarily making changes to their disconnection practices following Mrs Muliaga's death. The changes include treating all customers as vulnerable to ensure no one was missed and producing information brochures in six different languages (including Samoan). In addition, it was now routine that customers calling Mercury Energy were asked whether anyone in the household was

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either vulnerable or medically dependent on electricity. The faith in self-regulation appears unshaken by this tragedy.

Conclusion: Business Ethics and the Management Professional

A frequent response to corporate scandals has been for greater coverage of ethics in the business school curriculum, a response underpinned by continued faith in the possibility of moral managers who serve not just their organisation's shareholders but some wider civic purpose. Implicit in this call is the belief that the key to securing improved standards of corporate conduct is to raise the moral character of individual managers.

The financial and economic turmoil of recent times has breathed new life into efforts to make management a profession. As recently as 2007, Khurana, one the professionalism's strongest advocates, accepted it was a dead project within the contemporary business school. Khurana lamented the fact that the theories which dominate today's curriculum question the relevance of ethics itself, giving reassurances from business school deans that ethics will be taken more seriously a hollow tone. Now, just three years later, the professionalization of management is firmly back on the agenda. It can be expected that a renewed interest in teaching business ethics will follow this revival of the management professional.

While the use of teaching cases in management education has a rich history, the case method has been criticised for reducing management to the tasks of collecting information and making decisions (Stonham, 1995), and for providing students with a false confidence by increasing their tolerance for ambiguity and encouraging risk-

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taking (Shugan, 2006). This paper argues that it not the case method per se that is the problem, but the 'ideal-type' decision-focused case which dominates the teaching of business ethics, in which students are presented with a manager needing to make decisions in the face of an ethical dilemma. An alternative 'dark side' approach to case writing has been presented, which reveals the mainstream's blind spot concerning the legitimate role of government in regulating economic activity. The blind spot exists because of the ideological commitments of mainstream business ethics to the free market, whereby considerations of how to conduct business within the rules of free market capitalism are legitimate, but discussions about the merits of changing the rules are considered illegitimate. The former is business; the latter is politics.

An anticipated criticism of the increased attention given to the structural features of capitalism encouraged by this and other 'dark side' cases is that they present a deterministic view of the world which leaves no place for individual morality. By downplaying the importance of developing moral character within future managers, does this not mean that so long as managers pursue their economic responsibilities within the law, then that is all that can, and should, be expected of them? Within some CMS writing on business ethics traces of determinism are evident. For example, Banerjee (2008), in his critique of mainstream CSR, concludes that "in the political economy we live in today, corporate strategies will always be made in the interests of enhancing shareholder value and return on capital, not social justice or morality" (p.74). Whilst it might be idealistic and naïve to assume that corporate executives will act in the interest of social justice and morality, the GFC shows us that they sometimes pursue strategies which enhance their own financial interests at the

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expense of shareholder value. The political economy thesis therefore goes too far in denying managerial agency and as Parker (2003) notes, there is little to be gained from replacing a single-minded concern with agents with that of structures. It is possible however, to acknowledge the influence that structures have on action, through creating conditions of possibility, without falling into a determinist position.

This paper has not been an argument against the possibility of the moral manager. Whatever intentions lie behind the student pledge undertaken by graduate MBAs at Harvard Business School, at the very least it encourages students to consider the difficulties of undertaking to act ethically and responsibly whilst working within the structural constraints of capitalism. However, it is to be hoped that rather than relying naively on this mechanism of self-regulation, serious consideration can also be given to the role of government in delivering desirable societal outcomes from business activity. We should include this examination of the ethics of business in our construction of the field of 'business ethics'.

The 'ideal type' business ethics case, with its focus on the management professional as a decision-maker faced with a moral dilemma, works against this. Khurana (2007) states that in teaching business ethics we should examine the pull of three institutional forces - the market, government regulations and the self-regulation of managers on some agreed upon set of values. The decision-focused case, grounded upon the ideological assumptions of managerialism and self-regulation, does not deliver this. By looking to managers and their morality, it takes as given the virtues of the market and excludes from its possible range of 'solutions' that of greater government intervention. The GFC provides us with recent evidence that while abhorrent conduct

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by corporations can be conveniently blamed on 'a few bad apples', a deeper appreciation emerges when we consider the systemic influences of the make-up of the financial markets and of the role played by States in regulating (or choosing not to regulate) those markets. This paper has argued that a 'dark side' approach to case-writing gives greater prominence to these economic and political factors, providing students with a more complex understanding of business ethics and the constraints on managerial decision making.

Notes

[1] Gordon Gecko was the character played by Michael Douglas in Oliver Stone's 1987 film *Wall Street*, whose catchphrase 'greed is good' typified the recklessness of Wall Street in the 1980s. The 2010 sequel, *Wall Street: Money Never Sleeps* is based on Gordon Gecko's release from prison just before the onset of the GFC.

[2] A group of graduates of Harvard's Class of 2009 went on to form MBA Oath, a coalition representing more than 250 business schools worldwide. The Oath contains a pledge to "create value responsibly and ethically" (www.MBAOath.org). Opponents argue the Oath violates the fiduciary responsibility of managers to maximise wealth for shareholders.

[3] While case journals lack status in today's higher education environment which privileges research over teaching, they provide case writers with an opportunity to gain a published output for their work.

[4] It is acknowledged that there is no singular 'dark side' approach – the case presented here is intended to be illustrative rather than definitive.

[5] This paper presents a shortened version of the full case, entitled '*The Dark Side of Light Handed Regulation: Mercury Energy and the Death of Folole Muliaga'*, which won the 2009 Dark Side Case Competition. The case was written entirely from secondary sources, including the finding of the Coroner's Inquest and submissions to the Electricity Commission on the introduction of guidelines on arrangements to assist low-income consumers in 2005, before Mrs Muliaga's death, and a revision of the guidelines in 2007 following her death.

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[6] The events described in this section are based on the findings of Coroner Gordon Matenga released in September 2008 on the inquest into the death of Folole Muliaga (Matenga, 2008).

[7] The name of the contractor was permanently suppressed by the Coroner because of possible threats to his own safety and that of his family.

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Table 1: Characteristics of High Quality Teaching Cases

Gini (1985)	**Lynn (1999)**	**Lundberg et al (2001)**
Identifies the problem or what is at stake	Poses a problem that has no obvious answer	Describes a real situation
Requires the reader to identify the non-normative or factual issues involved	Identifies actor(s) who must solve the problem, make decisions	Is reasonably complex
Requires the reader to identify the normative or ethical issues involved	Requires the reader to use the information in the case to address the problem	Is decision focused
Requires the reader to consider the available alternatives	Requires the reader to think critically and analytically in order to evaluate the problem and potential solutions	
Requires the reader to make a decision	Has enough information for a good analysis	

Source: Gini, A.R.: (1985) 'The Case Method: A Perspective', *Journal of Business Ethics*, **4**, 351-352; Lynn, L.: (1999) *Teaching and Learning with Cases: A Guidebook* (Chatham House, New York); Lundberg, C.C., P. Rainsford., J. P. Shay, and C.A.Young.: (2001) 'Case Writing Reconsidered', *Journal of Management Education*, **25(4)**, 450-463.

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