E-Kolb-45345.qxd 9/8/2007 12:42 PM Page 799

cases tobacco companies have come to invite regulators such as the FDA in rather than continuing the fight to keep them out. Long engaged in active lobbying of politicians, big tobacco now manages its reputation through corporate support for the arts, education, and other community-building initiatives. Not wanting to shed the heritage of foreign royalty and American presidents, who were active in the tobacco business, and unable to deny a history of nonparticipation in constructive debate about health and the public interest, tobacco companies have increasingly sought to refresh their image with a balanced approach to perpetuating the industry. This approach recognizes that (addiction aside) there are still and may always be individuals who enjoy smoking and have a right to do so, while it appears to accept accountability for creating a framework for compliance and social responsibility that encourages open dialogue to put the decision to smoke in the hands of the consumer. While there continue to be skeptics regarding the sincerity of this approach, in theory it addresses the fundamental ethical questions challenging the tobacco industry and other consumer goods manufacturers and marketers. It remains to be seen whether the tobacco industry is sustainable in the broad sense of the term—socially, since its products are harmful to the health of its target consumer; environmentally, as its products originate from the soil and subsequently pollute the air with carcinogens; and economically, while the verdict on its financial performance remains in doubt.

What is beyond reasonable doubt is that there are many lessons to be learned by all industries from the experience of the tobacco industry: first, that economic questions cannot be wholly emptied of ethical content; second, that the accelerating pace of information availability and regulatory sophistication will inevitably catch up with attempts to restrict adequate disclosure; and third, and a consequence of the other lessons, that the decision about what consumer goods are good for social well-being is not exclusively up to the manufacturer or its business partners, government regulators, or the individual consumer. What is good is not a simple question of right or wrong but must rather emerge as an outcome of constructive debate and continuing dialogue among all parties in pursuit of an elusive, uncertain conclusion.

—Christopher Michaelson

See also Advertising Ethics; Commerce and the Arts; Consumer Goods; Consumer Rights; Disclosure; Enron Corporation; Product Liability; Public Interest; Reputation Management; Self-Regulation; Socially Responsible Investing (SRI); Sustainability; Truth Telling; WorldCom; World Health Organization (WHO)

Further Readings

Carlyle, J., Collin, J., Muggli, M., & Hurt, R. (2004). British American Tobacco and Formula One. *British Medical Journal, 329*(7457), 104–106.

Collin, J., LeGresley, E., MacKenzie, R., Lawrence, S., & Lee, K. (2004). Complicity in contraband: British American Tobacco and cigarette smuggling in Asia. *Tobacco Control, 13*(Suppl. 2), ii96–ii111.

Feldman, E., & Bayer, R. (Eds.). (2004). *Unfiltered: Conflicts over tobacco policy and public health.* Cambridge, MA: Harvard University Press.

Gilmore, A., & McKee, M. (2004). Moving East: How the transnational tobacco companies gained entry to the emerging markets of the former Soviet Union—Part I: Establishing cigarette imports. *Tobacco Control*, *13,* 143–150.

Kluger, R. (1996). *Ashes to ashes.* New York: Alfred A. Knopf.

Legacy Tobacco Documents Library, University of California, San Francisco [Web site]. Retrieved from http://legacy.library.ucsf.edu

MacKenzie, R., Collin, J., & Lee, K. (2003). *The tobacco industry documents: An introductory handbook and resource guide for researchers*. London: London School of Hygiene and Tropical Medicine.

Palazzo, G., & Richter, U. (2005). CSR business as usual? The case of the tobacco industry. *Journal of Business Ethics, 61,* 387–401.

Sloan, F., Ostermann, J., Picone, G., Conover, C., & Taylor, D. (2004). *The price of smoking*. Cambridge: MIT Press.

Smith, E., & Malone, R. (2003). Altria means tobacco: Philip Morris' identity crisis. *American Journal of Public Health*, *93*(4), 553–556.

WHO Framework Convention on Tobacco Control. (2003). Retrieved November 25, 2006, from www.who.int

ETHICS IN GOVERNMENT ACT OF 1978

Why the Act Was Enacted

The 1970s was a decade of tumultuous social upheaval and political chicanery. Watergate precipitated the resignation of President Richard Nixon. The

E-Kolb-45345.qxd 9/8/2007 12:42 PM Page 800

newspapers reported a litany of overseas bribery incidents. In response to what was perceived as prevalent, insidious corruption at the very highest level of government, Congress responded with a number of ethics-based legislative measures. Among the many acts and amendments were provisions for Independent Counsel (28 U.S.C. 591, *et seq.*) and the Ethics in Government Act of 1978 (5 U.S.C. App. 4 § 101, *et seq.*), hereinafter referred to as the Act.

The essential purpose of the Act was to require disclosure of the finances and financial interests of high-level federal employees, provide report formats and procedures, and give notice to all what the penalties would be for failing to make the requisite reports and disclosures. Congress's goal was to provide an objective means of determining possible areas of conflict of interest.

The General Provisions

The original Act consisted of five sections: Title I—Financial Disclosure Requirements of Federal Personnel, Title II—Executive Personnel Financial Disclosure, Title III—Judicial Personnel Financial Disclosure, Title IV—Office of Government Ethics, and Title V—Government-Wide Limitations on Outside Earned Income and Employment.

Section II, which related to executive personnel financial disclosure requirements, and Section III, relating to judicial personnel financial disclosure requirements, were repealed in 1989, effective January 1, 1991. The spirit of the prohibitions was generally incorporated in 18 U.S.C. § 203, coming under the heading of Crimes, Bribery, Graft, and Conflicts of Interest and titled "Compensation to Members of Congress, officers, and others in matters affecting the Government." The section is more general than the Act. It eliminates the detailed reporting procedures and substitutes an expansive scope of governmental investigative powers and prosecutorial powers. The portions of the Act that remain in force pertain to other federal government personnel who are not covered under Section 203.

Title I: Financial Disclosure

Sections 101 to 111 addressed financial disclosure by federal personnel. The goal of Congress was to discourage bribery and other acts of mischief associated with people in a governmental position of power by requiring them to disclose their sources of income.

Generally, the designated government officials and employees must file itemized reports within 30 days of assuming their new jobs. The Act requires the disclosure to include, but not be limited to, the source, type, and amount or value of income, honoraria, or payments made to a charity on behalf or in the name of the employee in lieu of an honorarium of more than $200 in value; the source and type of income from dividends, rents, interest, and capital gains in excess of $200, identifying the amounts involved within certain prescribed categories of value; the source, description, and category of value of all gifts of more than $250 received from nonrelatives; the source and description (including a travel itinerary, dates, and the nature of expenses provided) of reimbursements received from any source of more than $250; the identity and category of value of any interest in property in a trade or business or for investment or the production of income with a fair market value in excess of $1,000, excluding family members or savings of less than $5,000; the identity and category of value of liabilities owed to any nonrelative creditor, including revolving charge accounts, that exceeds $10,000, except for mortgages on personal residences, motor vehicles, and small household items; and the description, date, and category of value of any purchase, sale, or exchange in excess of $1,000 in real property (other than a personal residence) or stocks, bonds, and other securities (except for transactions with a spouse or dependent children). Although it is not exhaustive, this list gives a sense of the breadth of the report requirements. It also shows that the dollar amounts triggering the disclosure requirement, in some cases, is *de minimus* in comparison with the reporter's income or personal wealth.

An officer or employee covered by the Act who fails to make timely reports or files false reports (5 U.S.C. App. 4 § 104) will be reported to the attorney general of the United States. If the offender is charged, tried, and found liable, the sanction may be up to $10,000. In addition, the offender may be referred to the Judicial Council, a body of judicial officers and their appointees charged with disciplining persons within the federal court's jurisdiction. Although not specifically addressed in the Title, if an official misleads Congress, he or she can also be charged with contempt of Congress, perjury, or other criminal sanctions.

It was apparent with the destruction of Enron and Arthur Andersen that the problem of dishonesty and ethical lapses was not limited to the governmental sector. Regulation of the civilian sector is relegated to

E-Kolb-45345.qxd 9/8/2007 12:42 PM Page 801

agencies such as the Securities and Exchange Commission and other industry regulatory bodies. The civil and criminal justice systems provide additional checks on civilian abuses.

Title IV: Office of Government Ethics

Title IV creates the Office of Government Ethics (OGE). The OGE director is appointed by the president and confirmed by the Senate for a term of 5 years. The director is responsible for providing the direction of executive branch policies relating to the prevention of conflicts of interest involving the officials and employees covered by Title I. In addition to whatever action or sanction the director may take, he or she can also recommend other governmental agencies for taking action. For example, the director might refer an offender to the Justice Department for prosecution on tax evasion charges. Title IV requires any action taken or any rule made by the director to be subject to judicial review.

In 2003, the OGE took the unusual position of petitioning Vice President Cheney, among others, before submitting their proposed legislation to Congress. Their goal was "to modernize the financial disclosure process for federal personnel, and for other purposes." Their proposal was titled the "Ethics in Government Act Amendments of 2003." The legislative stated purpose was to create a "single, Government wide system of public financial disclosure" that "preserves the equanimity of the current [governmental] system" (OGE's letter to Richard B. Cheney, July 16, 2003).

The hope was to streamline and simplify the public financial disclosure requirements applicable to the reporting persons. The OGE reported that the original Act, in place for 25 years, was working well. Their revisions were intended to encourage qualified persons to enter into government service but "not sacrifice the goal of public financial disclosure or deny necessary information to those responsible for determining whether a conflict of interests exists." They did not want to jeopardize public confidence in the disclosure process.

Title V: Limitations on Income and Employment

As a practical matter, many of the personnel serving at the highest level of government are independently wealthy and/or have outside income far exceeding their governmental pay. Title V addresses this situation. The Title uses a number of complicated formulae to address income, gifts, and honoraria.

Generally, members of Congress and senior officers and employees of the federal government are limited to an outside income in any calendar year not exceeding 15% of their annual government pay. Persons regulated by the Title may not personally receive an honorarium while a government official or employee. The idea is to thwart a miscreant from disguising an improper payment as an honorarium. All honoraria must be refused or directed to a charitable organization. No honorarium can exceed $2,000. No person regulated by this Title may accept a gift from an organization from which a close relative of a federal employee derives any financial benefit.

If a person within the regulated class violates any of the Title V provisions, the attorney general may bring a civil action in federal court. If found liable, the individual may be subject either to a civil penalty of not more than $10,000 or disgorgement of the compensation, whichever is greater.

Has the Ethics in Government Act Worked?

The question of whether the Act has worked as intended is difficult to evaluate objectively. Generally, the Act only addresses specific financial disclosures. In the ensuing postenactment years, we have seen a litany of prosecutions and convictions of elected officials, private individuals, and lobbyists for bribery, influence peddling, and tax evasion. Some of these convictions were a result of the Act. Some can be attributed to better investigation and prosecutorial competence.

Clearly the disclosure requirement has had some impact. It mandates transparency. The public and media can evaluate the disclosures for accuracy and for effect. We see the disclosures required by the Act all over the Internet. It seems that those required to make disclosures have, to some degree, taken the requirements of the Act seriously. However, we have no evidence as to the accuracy of any of the disclosures.

At best, we can speculate that the Act gave a reason to those who had nothing to hide to disclose their sources of income and, indirectly, their possible conflicts of interest with their public duty. The specter of sanctions may have scared some of those public officials who were ethically "on the line" to opt for honesty. However, it is fair to say the Act had little or no

E-Kolb-45345.qxd 9/8/2007 12:42 PM Page 802

effect on those bent on mischief, as cases of conflict of interest have persisted in the years since the Act was established. These individuals took bribes and other income and failed to make the proper disclosures. This lapse does not indicate that the law is a failure, just that those who are going to be dishonest most likely will not be deterred by legislation.

Conclusion

Some regard the influence of money on politics to be inevitable. Others believe that the extensive revisions in our political system can substantially reduce the influence of money. A senior governmental official or employee prone to mischief will not be thwarted by legislated ethics. However, the hope, from its inception and throughout the various modifications and amendments, is that the Ethics in Government Act will give a potential miscreant cause to consider the ramifications and sanctions that will arise from his or her misbehavior. The Act also gives the attorney general's office numerous means to punish offenders. On balance, when a senior official fails the ethical test, the people have at least a soupçon of a possibility of holding him or her accountable.

Perhaps the more important issue, of which the Act is a small facet, is how we establish and then maintain a general trust by the public in our government. Requiring key, influential governmental employees and officials to disclose and publish their sources of income is important. However, until there is a more pervasive trust in those who work for and lead us, even the required disclosures will be looked on with mistrust.

—Michael B. Rainey and Linnea McCord

See also Accounting, Ethics of; Advertising Ethics; Amorality; Antitrust Laws; Arthur Andersen; Bankruptcy, Ethical Issues in; Christian Ethics; Communications Decency Act; Conflict of Interest; Corporate Moral Agency; Economics and Ethics; Ethics, Theories of; Legal Ethics; Marketing, Ethics of; Natural Law Ethical Theory; Neo-Kantian Ethics; Price-Fixing; Pricing, Ethical Issues in; Sarbanes-Oxley Act of 2002; Teaching Business Ethics; Virtue Ethics

Further Readings

Ethics in Government Act, 5 U.S.C. App. 4 100, *et seq*. (1978).
Independent Counsel Act, 28 U.S.C. 591, *et seq.* (1978).
Office of Governmental Ethics. (2003, July 16). Ethics in Government Act Amendments of 2003 [Letter to Richard B. Cheney].
Stark, A. (2003). *Conflict of interest in American public life.* Cambridge, MA: Harvard University Press

Ethics of Care

The term *ethics of care* refers to ideas concerning both the nature of morality and normative ethical theory. Over the past two decades or more, a discussion has arisen regarding these ideas. The caring perspective is distinctive in that it uses a relational and context-bound approach toward morality and decision making. In doing so, this perspective stands in stark contrast to ethical theories that rely on principles to highlight moral actions—such as Kantian deontology, utilitarianism, and justice theory. Importantly, such principles are meant to be absolute and incontrovertible.

Nel Noddings has provided one of the first comprehensive theories of care. Arguing that caring is the foundation of morality, she sees the dyadic relationship as ontologically basic to our very humanity. Identity is defined by the set of relationships individuals have with other humans, and as such without relationships we would not be human. In suggesting that caring is a universal human attribute, caring relation (a relationship in which people act in a caring manner) is seen to be ethically basic to humans. Since the impulse to care (in a specific way) is universal, caring ethics is freed from the charge of moral relativism to the same degree as is virtue theory.

The particularity of relations is fundamental to the ethics of care. Each relation consists of at least two people, the one-caring and the cared-for. Such a relation can certainly be more than merely dyadic as the one-caring and the cared-for come to exhibit reciprocal commitment to each other's well-being. However, what is distinctive in all such relations is that the one-caring acts in response to a perceived need on the part of the cared-for. The act is motivated by an apprehension of the cared-for's reality, a receiving of the cared-for into the one-caring such that the one-caring feels and senses what the cared-for is experiencing. The one-caring responds to the well-being of the cared-for by initiating a commitment to help the cared-for. Authentic care provides the motivation for such assistance. This does not mean that the one-caring does exactly what the