I was invited to deliver the keynote lecture at the St Kitts-Nevis-Anguilla National Bank Compliance Conference earlier this month (July 2011) and had the honour to meet the bank's CEO, Sir Edmund Lawrence. I also met several members of his management team, including Donald Thompson, his very able Senior Assistant Managing Director, and Stephen Hector, my fellow alumnus of the University of the West Indies Faculty of Law, and the director that is responsible for the bank's legal affairs. During my visit I was very ably assisted by the Executive Manager of the bank's Compliance department, Mrs Pamela Pogson. This bank is highly regarded in the OECS and having met the executive management team, I can see why. Sir Edmund has brought together an excellent cadre of executive management. The rest of the Caribbean has a lot to learn from this banking group of companies.

On receiving the invitation I had suggested, and I thought it was agreed, that I would say some something on the “responsibility” of the directors and executives. In other words, I assumed that I would be expected to lecture on corporate governance. Corporate governance is an area I am very interested in. It is also a field of study that we do not have good handle on. I was so focused on my original supposition that it never occurred to me that was not what the organizers had intended. It was only later that it became clear that organizers might have instead intended to invite a discussion on “corporate social responsibility.” There is a fundamental distinction between these two areas. The first is concerned with how directors and executives function within the corporation. The second is concerned with how the corporation functions within the society. When I realized that I would have to give two lectures (the keynote address and a later public lecture), I decided to focus the later lecture on the corporation in the broader society and confine the earlier one to issues arising from the internal responsibilities of the directors and executives.

Corporate Governance

We got accustomed in contemporary times to think of corporate governance in formal terms. Indeed, we have got in the habit of thinking of corporate governance as a collection of rules. For most of us, the Corporate Governance relationship is the formal relationship between all the stakeholders in a company. Formal stakeholders' relationships include those between shareholders, directors and management. So the corporate governance methodology is the formal methodology by which a corporation is directed, administered or controlled. This methodology includes the laws that govern the corporation, the social customs affecting the operations of the corporation, and the goals set for the corporation. These rules cover the

applicable regulatory framework, the rules that govern corporations in the relevant state, the internal rules of the particular corporation. The latter may set out the relationship include between the owners, its managers, the directors of the board. These rules may address the relationship with the regulator authorities; indeed, the rules may be required by them. To a lesser extent, the formal corporate governance framework may set out the relationship between the employees in the organization, such as systems and processes deal with delegation of authority, assurance mechanisms, reporting requirements and general accountability. The corporate governance regime sometimes seeks to address the relationship of the corporation with the community at large. Issues of fiduciary duty and accountability are increasingly discussed within the framework of corporate governance.

It is very is very easy to become seduced by this rule oriented approach, and people like me who teach them in business schools are partially to blame for encouraging such an orientation. However, this mechanical approach should distract us from the reality that a corporate governance regime should seek to address and realise some critical operational objectives. Whatever rules we apply, the aim of corporate governance is to align the actions of the individual parts of the organization toward aggregate mutual benefit. The regime should provide the means by which each individual part of the organization can trust that the remainder are each doing their part toward mutual benefit of the organization and that none are unfairly gaining at the expense of others. We know how important information is to the modern corporation and how essential it is that information moves quickly from part of the organization to the next. In a final services organization, speedy dissemination of information may well be a critical success factor. Thus, the corporate governance regime should provide the means by which this information can quickly flow between the various stakeholders of the corporation, to ensure that the corporation and its stakeholders needs are effectively factored into decision making processes. What is regarded as good corporate governance may well send critically important signals outside the company. For example:

Trust, transparency, and integrity are the cornerstones of good governance. For … companies to gain investor's trust worldwide they must make CEO'S accountable for their companies' actions; begin to vigorously enforce tough penalties for breaches of law; disclose of insider trading faster. The … laws concerning governance must be compatible with other countries to ensure outside investment. (Corporate Governance Conference 2003, Toronto, 'Good Governance Is Good Business' (2003) 17 (1) Canadian Speeches 59.)

Stake Holding

Earlier, it was suggested that an examination of the responsibilities of directors and executives cover a different field from corporate social responsibilities. While that is true, it also true that the two are also intimately connected. The quality and character of a corporation's corporate

social responsibility, the relationship that the corporation has with the broader society depend intimately on how it organizes itself internally and how it treats all its stakeholder, both those within and well as those outside the organization. The modern corporation is increasingly taking on a more elaborate definition of stakeholder responsibility and entitlement, thus it is desirable in some case and necessary in others to implement systems of corporate governance controls to respond to the needs of the widening list of stakeholders. Legitimate stakeholders include the board, managers, workers, shareholders, regulators, customers, suppliers, and the community. On reflection, a list of stakeholders would not differ from those who must be considered under the corporate governance regime. It is the role of the corporate governance regime to specify the relationships between, and the distribution of rights and responsibilities among these several stakeholders.

What we now describe as stakeholder theory was virtually founded in 1984 by Edward Freeman, and it has become something like religious dogma since. Everyone seems to believe in the utility of it. Who can disagree with the mantra, ‘Corporations should heed the needs, interests, and influence of those affected by their policies and operations’? The challenge, of course, is to properly identify these stakeholders and to determine the proper distribution of their rights and responsibilities, especially when we characterise stakeholders in such broad terms as, ‘… any individual or group who can affect or is affected by the actions, decisions, policies, practices, or goals of the organization.’

When the discussion on stakeholder theory began three decades ago, we regarded stakeholders as those important players who had to be dealt with if an enterprise was to be successful. In other words, stakeholders were seen as the means through which the firm achieved its own ends such as maximizing the value of the firm, and we saw stakeholder theory as something like resource management theory: A question of what resources the enterprise needed to master to achieve success. Today, however, we seem to regard stakeholders seen as persons tied to the identity of the firm, or as persons to whom the firm is accountable for creating value. More importantly, the ‘stakeholder’ has now assumed a central and morally significant connection to the firm; and services to stakeholders and accommodation of their interest are now regarded as ends in themselves, and not merely means to the ends. Ironically, Edward Freeman was among those who led this redefinition of the stakeholder. He suggested:

Re-describing corporations means re-describing ourselves and our communities. We cannot divorce the idea of a moral community or of a moral discourse from the ideas of the value-creation activity of business.

The problem with stakeholder theory, as it has been redefine, is that it cannot tell us with precision who are or should be stakeholders. Where do we draw the line? More importantly, even if we are comfortable with delimiting stake holding we have no clear direction of how to reconcile the conflicting stakeholder interests. It is not difficult to contemplate where the interest of the shareholders and employees of the corporation, on the one hand, may be in conflict with the interests of the wider community. This has led to what an investigator has described as the 'stakeholder paradox', in which directors and officers must see themselves as both trusted servants of the corporation and its shareholders (a kind of partiality) and at the same time representatives of a wider community of many other stakeholder groups. It is a sort of schizophrenia. It should be clear that the executives of corporation cannot pursue both interests. They must pursue one, or the other. A proponent of stakeholder theory must therefore pursue what Goodpaster describes as 'multi-fiduciary stakeholder synthesis', which yields 'ethics without business' and is clearly not sustainable; or must 'strategic stakeholder synthesis', which yields 'business without ethics' and which in current political environment is just not acceptable.

Ethics in Business Management

It is understandable that Freeman and others began looking at stakeholder theory from the moral perspective. Much of the dysfunction in business over the last three decades has been attributed to poor ethics or perverse morality on behalf of business managers, and the belief is that if our managers just had better ethics or higher morals they would not have led their enterprises astray. The current dogma is that there can be no separation thesis; no separation of '…the discourse of business from the discourse of ethics.' It is the same orientation that has driven the discussion on corporate governance. The contemporary perspective is that good corporate governance principles must require, among other things, honesty, trust, integrity, openness, responsibility and accountability. Senior executives are expected to conduct themselves honestly and ethically, especially concerning actual or apparent conflicts of interest, and disclosure in financial reports. And, of course, the responsibility of the directors and management should be to develop a model of governance that aligns and orientate the values of the corporate participants. Organisations should develop a code of conduct for their directors and executives that promotes ethical and responsible decision making. By this token, all we need in our corporations are virtuous executives.

If only it could be so simple. But even the ethical discourse, itself, is open to all types of disagreement. Not the least is the clash between religious morality and secularist orthodoxy. In any event, as much as we might wish to, it would be difficult to reconstruct our business relationships on purely ethical or moral terms. Our modern theories of commerce, including finance and corporate law, for the most part, are based on contracts and as much may wish to criticise them we simply cannot supplant all our contractual obligations by references only to ethics and morality. We can therefore see that ethical considerations become critical contributions to the process of management. John Boatwright suggested that '… the contractual

theory provides a framework for identifying and analysing many business ethics problems and for devising solutions to these problems.' But it is the converse which may be true: Business ethics can provide the framework for identifying and analysing many business problems.

Johnson and Johnson

If we agree that business ethics considerations are important to business management processes, in helping to defining corporate governance structures and in putting definition to our responsibilities to our stakeholders, the question still remains how best to introduce this culture into the organization. One solution is to seek out ethical behaviour in our business leaders. Thus, the argument goes, we should look for virtuous men and women and put them in charge of the organization. Another, which perhaps may be easier to achieve, is that we should seek to create in our organizations a culture of ethical decision-making. If we reflect on the decision-making processes in Johnson and Johnson when they were faced the Tylenol crisis some thirty years ago, we will see the utility of the latter approach.

Johnson & Johnson was founded in 1887 and headquartered in New Jersey in the USA. The company engages in the manufacture and sale of various products in the health care field, primarily in the United States. It operates through three segments: Consumer, Pharmaceutical, and Medical Devices and Diagnostics. The consumer segment manufactures and markets a range of products used in the baby and child care, skin care, oral and wound care, and women's health care fields, as well as over-the-counter pharmaceutical and nutritional products. These products are marketed primarily to the general public; and sold to wholesalers, and directly to independent and chain retail outlets worldwide. The pharmaceutical segment franchises various products in the anti-fungal, anti-infective, cardiovascular, contraceptive, dermatology, gastrointestinal, hematology, immunology, neurology, oncology, pain management, psychotropic, and urology fields. These products are distributed directly, and through wholesalers and health care professionals for use by prescription by the general public. The medical devices and diagnostics segment offers a range of products for wound care, women's health products, minimally invasive surgical products, circulatory disease management products, blood glucose monitoring products, professional diagnostic products, orthopaedic joint reconstruction, spinal, sports medicine products and disposable contact lenses. These products are distributed directly and through surgical suppliers and other dealers for use by or under the direction of physicians, nurses, therapists, hospitals, diagnostic laboratories, and clinics.

In 1982 seven people on Chicago died mysteriously. The authorities determined that these persons had ingested an Extra-Strength Tylenol capsule laced with cyanide. Tylenol is manufactured by McNeil Consumer Products, a subsidiary of Johnson & Johnson. News of the poisoning travelled quickly and there was near nationwide panic. The investigation disclosed that the tainted Tylenol capsules were from four different manufacturing lots and the pills were

taken from different stores over a period of several weeks. The bottles were tampered with and then placed back on the shelves of five different stores.

What is especially interesting is Johnson and Johnson's response to this crisis. The company used the medial to immediately advise consumers not to consume any type of Tylenol product. They directed that customers should not resume using the product until the extent of the tampering could be determined. They stopped the production and advertising of Tylenol and recalled all capsules from the market. This recall covered approximately 31 million bottles of Tylenol, with a retail value of more than US$100 million. The over-all cost of Johnson and Johnson's response to the crisis was somewhere in the region of US$300 million, almost the entire capital base of McNeil Consumer Products. And all of this was done almost immediately. There were no elaborate board meetings, no convoluted discussions. The operational managers simply and quickly acted to ensure that the consumers' interests were protected. Any number of companies in a similar situation would have responded differently, and many have. Why did Johnson and Johnson act in this way? Lawrence G. Foster, a former Corporate Vice President of Johnson & Johnson put it this way: '[In the crisis] Johnson & Johnson simply turned to their corporate business philosophy, which they call "Our Credo," when determining how to handle the Tylenol situation.'

Johnson and Johnson's Credo was written some 40 years earlier by General Robert Wood Johnson, who let the company for 50 years. Johnson outlined his company's responsibilities to "consumers and medical professionals using its products, employees, the communities where its people work and live, and its stockholders." He firmly believed that his Credo was both moral and profitable and that if his company stayed true to these responsibilities, it would flourish. This credo has come to define the company. It is prominently displayed in all its corporate offices, and well worth repeating here. This is Johnson and Johnson's Credo:

We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services. In meeting their needs everything we do must be of high quality. We must constantly strive to reduce our costs in order to maintain reasonable prices. Customers' orders must be serviced promptly and accurately. Our suppliers and distributors must have an opportunity to make a fair profit.

We are responsible to our employees, the men and women who work with us throughout the world. Everyone must be considered as an individual. We must respect their dignity and recognize their merit. They must have a sense of security in their jobs. Compensation must be fair and adequate, and working conditions clean, orderly and safe. We must be mindful of ways to help our employees fulfill their family responsibilities. Employees must feel free to make suggestions and complaints. There must be equal opportunity for employment, development and advancement for those qualified. We must provide competent management, and their

actions must be just and ethical.

We are responsible to the communities in which we live and work and to the world community as well. We must be good citizens - support good works and charities and bear our fair share of taxes. We must encourage civic improvements and better health and education. We must maintain in good order the property we are privileged to use, protecting the environment and natural resources.

Our final responsibility is to our stockholders. Business must make a sound profit. We must experiment with new ideas. Research must be carried on, innovative programs developed and mistakes paid for. New equipment must be purchased, new facilities provided and new products launched. Reserves must be created to provide for adverse times. When we operate according to these principles, the stockholders should realize a fair return.

Maximising Consumer Value

There is something fundamentally important about the Johnson and Johnson Credo and it is not only that it defines the culture of the company and provides a standard and guide for managerial action. It also does something else that many companies are unwilling or on able to do. The credo also set out a hierarchy of the company's stake holding. It itemises that the first responsibility is the customers, there are responsibilities to the employees and the community, and the final responsibility is to the shareholders who have a right to a fair profit.

Last semester I discussed the Johnson and Johnson case in my MBA class. I had two objectives. One objective was to invite a discussion on the strengths and weaknesses of hanging a corporation's hopes and aspirations on the virtuous manager, and contrasting that approach with building an institutional culture as is exemplified by the Johnson and Johnson organization. The second objective was to demonstrate the weaknesses and challenges of stakeholder theory, which seem incapable of allocating a ranking of stakeholder needs, by discussing the operations of successful company that very definitively ranks its stake holding. Soon after the seminar, one of my students sent me an article by Daniel Pink with the interesting title, 'Forget shareholders, maximise consumer value instead.' Pink's thesis is that, contrary to the natural expectation, an approach that sets to maximise value to the shareholder does not in effect succeed in maximising value. Indeed, it achieves the exact opposite. In support of this, Pink relies on two recent pieces of research. The first study showed that between 1933 and 1976, before what we could call the 'value creation' era, the Standard and Poor 500 returned a compound value of 7.5%. One the other hand, since 1977 to end of 2010, the same index returned a compound value of 6.5%.

It may be a little bit of stretch to say, as Martin seem to be suggesting, that the reduction in the Standard and Poor's rate of return is necessarily attributable to the popularity of theories that promote increasing shareholder value. On the other hand, the Cooper, Gulen and Rau's study seems more definitive. This study examine about 1,500 companies and compared those whose CEOs' compensation were in the bottom 10% with the companies whose CEOs' compensation were in the top 10%. They found that share values in the group with the higher paid CEOs declined and those companies fare worse than those companies in the group with the lower paid CEOs.   They conclude, 'Our results imply that managerial compensation such as restricted stock, options and long-term incentive payouts, that are meant to align managerial interests with shareholder value, do not necessarily translate into higher future returns for shareholders.'

Martin suggests that shareholders should no longer be the 'centre of the corporate form.' Instead, corporations should focus on serving and delighting their customers. If we are to adopt this, it takes some sound argument that is not necessarily to be found in Martin's work. On the other hand, we cannot so easily dismiss the Cooper, Gulen and Rau's study.

Conclusion

I would like to think that our successes and our failures are never completely out of our hands. In whatever circumstance we find ourselves, we always have some capacity to search for and to find a level of accomplishment. However, much depends on whether we are receptive to the opportunities.

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