Introduction: Public/Private Governance

The confluence of the public and private sectors in the United States and other OECD countries is a settled matter among scholars of government administration and business organization. Not only are a growing number of public functions and services in these countries produced and delivered by both non-profit and for-profit organizations, but prominent attributes of private organization have been adopted by government organizations including performance management, customer orientation, and reduced employment security.

We begin with the premise that governance in these countries encompasses elements of both what are conventionally known as the public and private sectors. The definition of governance proposed by the Institute on Governance (IOG) in Canada captures the intersectionality of market mechanisms and formal government institutions. “Governance determines who has power, who makes decisions, how other players make their voice heard...
and how account is rendered.” (iog.ca) Understanding that governance is a complex mix of corporate and state power leads to important questions about just how “account is rendered”.

This paper proposes a research project that will map the strategies used by market and state organizations to render account within a given organization and between that organization and the larger society. We use the term *ethics management strategy* (EMS) to refer to those administrative mechanisms employed to render account for the value of organizational behavior internally and externally. *Our particular focus is on the degree to which a given EMS includes voice and participation by sub-administrative organizational members in the identification and enforcement of ethical standards that are used to guide behavior within the organization and between the organization and the larger society. Put differently, we are interested in the degree of ethical co-determination in governance institutions.*

**The Truman Committee and the Ethics Control Dichotomy**

The dichotomy made famous by a debate in the 1940s between Carl Friedrich (1935, 1940), who saw ethics management as a matter of individual professionalism and Herman Finer (1936, 1940), who saw it as a matter of administrative control, is of enduring interest, but it must be seen in historical context. The enormous and rapid growth of government employment and spending in the New Deal challenged traditional, small-group norms of public integrity. The faith of Progressive reformers of the previous generation in professional training, recruitment and leadership was in question as the New Deal gave
way to war mobilization, which enmeshed public agencies with private industry from giant
corporations to machine shops. As the findings of the Truman Committee (established in
1941 to examine charges of corruption in defense contracting) indicated, the flood of
money into the economy in the 1940s swept away the Progressives’ rosier view of probity
in either the public or private sector.

Over seven years (1941–1948) the committee heard from 1,798 witnesses during
432 public hearings. It published nearly two thousand pages of documents and
saved perhaps $15 billion and thousands of lives by exposing faulty airplane and

The Truman Committee’s work casts a long shadow over the field of public integrity. The
intensity of the oversight effort and findings of wide-spread, lethal corruption in the midst
of an existential struggle make Friedrich’s appeal to the better angels of professionalism a
hard sell. But the dichotomy survives. Scholarly literature on EMS has elaborated the
dichotomy, but never abandoned it. The next section of this paper will review several,
prominent analyses of EMS. What follows the review is a discussion of current sectoral
trends that indicate the needs for empirical research in this field.

Review of EMS Constructs

In a 1985 update of the Friedrich-Finer debate, Stewart finds that disclosure of interest and
transparency of transactions may bridge the gap between the two perspectives.
While detailed discussion of this framework is not fitting here, the author would argue that this or some other conceptual apparatus is essential to bridge the gap between the equally legitimate values of professionalism and democracy expressed in the Finer-Friedrich debate. (Stewart, 1985:24)

The two parts of Stewart’s conclusion are frequently found in the EMS literature. First, while conceptualizing EMS has attracted a number of researchers, setting out an EMS protocol has not. There are number of reasons for this gap in the literature that will be taken up below. Second, the desire to find some “conceptual apparatus” to encompass both compliance and personal values is widely shared, though the literature makes it clear that it has not yet been found.

Bowman (1983: 73-74) summarized the main components of most post-Watergate EMS: training programs, codes of conduct, and protection of administrative dissent (i.e. whistleblowing). Two international organizations that have played key roles in the definition of EMS, Transparency International (TI) and the Organization for Economic Cooperation and Development (OECD) have elaborated Bowman’s components into frameworks that encompass most institutions of national governance. The “Greek pillars” of the TI model include each branches of government and also the media, civil society, political parties, and business (Figure 1). The OECD framework echoes Bowman’s elements and is similarly broad-scale (Figure 2).
Figure 1. Pillars of Transparency International’s National Integrity System Source: Transparency International (2012:4)
A more recent attempt to conceptualize EMS begins with a critical perspective on what the authors’ call the top-down approach of the OECD and other models. Tremblay, Martineau, and Pauchant (2017) propose a “pluralistic contingency approach” that produces a more complex model, but one that may come closer to the bridge that Stewart is looking for. Figure 3. lays out the contrast between earlier models and their own.

<p>| <strong>Integrity Management and Pluralistic Ethics Management Frameworks Compared</strong> |</p>
<table>
<thead>
<tr>
<th><strong>Integrity management framework</strong></th>
<th><strong>Pluralistic ethics management framework</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aim</strong></td>
<td>Prevent corruption and other integrity violations</td>
</tr>
<tr>
<td><strong>Approaches</strong></td>
<td>Stimulate and enforce integrity</td>
</tr>
<tr>
<td></td>
<td>Compliance (external controls)</td>
</tr>
<tr>
<td></td>
<td>Integrity (internal controls)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Levels covered</strong></td>
<td>Individual</td>
</tr>
<tr>
<td></td>
<td>Collective</td>
</tr>
<tr>
<td></td>
<td>Strategic</td>
</tr>
<tr>
<td><strong>Outcome Basis</strong></td>
<td>Management of unethical behavior</td>
</tr>
<tr>
<td></td>
<td>Perception of management (top-down)</td>
</tr>
</tbody>
</table>

Figure 3. Comparison of integrity frameworks Source: Tremblay et al. (2017, p. 229)
The elaboration of the institutional enforcement vs. personal values argument from the 1940s to 2017 serves to emphasize the centrality of democratic values in the project to develop sound principles for EMS. Not only is EMS necessary to maintain trust in public institutions by rendering account of the way both public and private organizations use governmental power and money, but, in addition, those agencies should be operated in a democratic manner internally—thus, the bottom-up mechanism of the pluralist framework.

Another re-working of the TI and OECD frameworks finds that coordination among the network of ethics agencies and subunits is a defining feature of public integrity (Samford, et.al. 2005). Rather than the Greek pillars of the TI model, an assessment of the Australian national integrity system suggests a “birdsnest” of complex, mutually reinforcing elements. The authors of the Australian assessment find that while some parts of formal accountability systems are moribund or never intended to work, those in less obvious places maybe quite effective.

[T]he Catholic Church played a critical role in the emergence of the Polish integrity system and Islamic faith-based NGOs may be an important part of the emerging Indonesian system. To develop the bird’s nest metaphor, institutional diversity is almost as vital a part of the human condition as biological diversity. (108)

A detailed survey of integrity systems in seven large cities in various parts of the world (Huberts, et.al. 2008) also found a complex system that went beyond formal governance. In framing the issue of local integrity system, Huberts suggests the difficulty of confining the topic.
The institutions within the system have strategies and polices to tackle corruption and to safeguard integrity. But what really is their focus? What is corruption, what is integrity, what is included in and what is excluded from the definition of the scope of involvement: We prefer a definition and interpretation that is broader than corruption as bribing but is specific enough to be limited to relevant violations of moral values, norms and rules. (13)

In sum, the literature leaves us with a model of EMS, national and local, that has expanded to include most instrumentalities of political power in a given jurisdiction, a wide definition of corruption, and a notion of democratic ethics management that includes voice for those inside agencies, as well as those affected by their behavior. However, as we see in the next section, EMS, elaborated or not, is increasingly hard to find.

**Sectoral Trends Influencing EMS**

- **Public and Media Focus on External Monitors**

In the 1970s and 80s federal prosecutors and courts expanded the interpretation of wire fraud, conflict of interest and organized crime statutes which resulted in a dramatic increase in the number of local and state officials, as well as federal employees, prosecuted in federal court for corruption. In the decade 2007 to 2017, the ninety-four U.S. Attorneys and prosecutors in the public integrity unit of the Department of Justice in Washington, D.C. obtained convictions of 7,984 federal officials, 1,938 state officials, 4,722 local officials, and 5,325 private citizens involved in public corruption for a total just short of 20,000. (U.S. Department of Justice, 2016) Maas (1987) pointed out early on that this
massive, centralization of anticorruption effort would become a disincentive to public agencies at all levels to take ethics management seriously. Further, Maas finds a displacement of the process that would formulated anything like the EMS structures posited by scholars in this field:

What we have here, then, is the formulation and execution of public policy in a prosecutorial mode rather than the more typical public policy mode. Instead of a decision-making arena characterized by public policy analysis, specification of objectives, program initiation, review, oversight, and evaluation, we are in another ring dominated by the behavior and mentality of the criminal law profession, in which the purpose is-with a great deal of simplification, to be sure-to lock up bad people as an expression of public morality more than to formulate and implement a public policy. (223)

Of course, local prosecutors, state attorneys general and auditors at all levels are charged with investigating ethics violations. In some jurisdictions these officials will receive referrals of corruption charges from ethics management agencies in the executive an legislative branches. However, a 2018 survey by the International City/County Management Association found that “[f]ew local governments reported having an ethics office/commission/board (12.8%) or ethics/compliance officer (13.2%)” and “80.9% indicated they did not track or measure ethics violations (i.e., in aggregate or beyond the resolution of an individual issue)”. (ICMA, 2018). These statistics indicate that the raw material for EMS at the local level may be insufficient.
• The Fissured Workplace

We have noted the challenge to EMS presented by the deregulatory imperative of the New Public Management, which entailed the reduction of ethics regulations. The antibureaucracy movement of the 1980s and 90s identified a connection between the growth of the anticorruption project and what came to be considered the necessity of hierarchical conduct management. Anechiarico and Jacobs (1996) argued that not only had bureaucratic EMS failed to prevent corruption, it had seriously eroded the efficiency of service delivery and also stunted administrative innovation. However, the deregulation and outsourcing that attended this critique threw out EMS with the bureaucratic bath water.

What public administration scholars call the “hollow state”--- what is left after outsourcing, downsizing and privatization—results in reduced capacity for ethics training and enforcement. This is evident in both the public and private sectors. The asset stripping that began with the frenzy for mergers and acquisitions in the 1980s is parallel to and part of the hollow state. The organizations with which the state contracts are shaped by late-stage capitalism to respond to shareholder return and quarterly earnings imperatives. Any vestige of public professionalism and social duty that may have survived from the Progressive and New Deal eras is gone.

Weil (2014) details the dissociation of work from administrative authority. Workers encountered in hotels, many retail outlets and in government offices are more often contractors or employees of service vendors at all levels of social and economic organization.
Companies outsourced customer relations to third-party call centers; manufacturers shifted production to networks of subcontractors for subassemblies; and private, public, and nonprofit organizations contracted out everything from cleaning and janitorial services to payroll and human resource functions. (11) Organizational forms like franchising that were once restricted to a few industries (such as fast-food restaurants) have become omnipresent, spanning sectors from janitorial and landscaping services to home health care. (12).

Weil calls this the fissured workplace, and it has had significant, negative effects on wages, job security, gender and race diversity, and the enforcement of labor and workplace safety laws. (“Significant externalities arise from fissuring.” 19) Most importantly for this discussion is the way that account is rendered in such a fractionated system. “[E]mployment has now been split off, shifted to a range of secondary players that function in more competitive markets and are separated from the locus of value creation.” (14) The challenge for this project is to determine the locus of value creation as it sets standards for conduct within governance organizations and between them and their environment.

Method

We will use the EMS typology developed by Maesschalck (2009) (Table 1.) as a guide to mapping in a sample of governance organizations in three related sectors of the political economy.
Table 1. A classification of integrity management instruments

<table>
<thead>
<tr>
<th></th>
<th>Determining &amp; defining integrity</th>
<th>Guiding towards integrity</th>
<th>Monitoring integrity</th>
<th>Enforcing integrity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Core</strong></td>
<td>- Risk analysis - Code of conduct - Conflict of interest policy - Gifts and gratuities policy - Post employment arrangements - Structural measures (e.g. function rotation)</td>
<td>- Rules-based integrity training - Oath, signing an “integrity declaration” - Advice, counselling</td>
<td>- Whistle-blowing policies - complaints policies - Inspections - Integirty testing - Early warning systems - Systematic registration of complaints, investigations, etc. - Survey, measurement of integrity violations and organisational climate</td>
<td>- Formal sanctions - Procedure for handling integrity violations</td>
</tr>
<tr>
<td><strong>Values-based</strong></td>
<td>- Analysis of ethical dilemmas - Consultation of staff and stakeholders - Code of ethics - Non-written standard setting</td>
<td>- Values-based integrity training - Integrating integrity in the regular discourse (e.g., announcing the integrity policy through channels of internal and external communication) - Exemplary behaviour by management - Coaching and counselling for integrity</td>
<td>- Survey measures of integrity dilemmas - Informal probing for ethical dilemmas and issues among staff</td>
<td></td>
</tr>
<tr>
<td><strong>Complementary</strong></td>
<td>- Assessing the fairness of reward and promotion systems - Appropriate procedures for</td>
<td>Internal control and audit,</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The first stage of this project will focus on private sector organizations. Our premise is that the history of public administration has proceeded by adapting management strategies from the private sector, beginning with Taylorism, scientific management and bureaucratic professionalism, up to techno-centrism, fissuring and the co-determination movement. As a preface to data collection in a sample of private sector organizations with varying EMS, the next section of this paper will:

- First, review scholarship on ethics management in business and,
- Second, examine the emerging issue of co-determination of administrative action internally and externally.

**What’s happening today in ethics management in the private sector in the US?**

*Compliance oriented management*

For most private sector companies, managing ethics is about ensuring compliance and minimizing risk (Tams 2018). The goal of compliance and risk management programs is to minimize the chance that the company and its employees will violate external
government laws and regulations and internal corporate rules and policies and work for the benefit of shareholders (Orts 2013). Corporate ethics and compliance programs have mostly been created in response to laws, such as the Foreign Corrupt Practices Act of 1977, Federal Sentencing Guidelines, and Sarbanes-Oxley Act of 2002. These laws generally encourage the adoption of legalistic, procedural, adversarial ethics and compliance plans, whether by requiring companies to adopt formal ethics codes, establish internal controls, or making senior management liable for the accuracy of published financial reports.

Ethics programs thus consist of formal ethics codes, manuals, and rules created by ethics officers and compliance personnel that are enforced through top-down monitoring, oversight, and discipline, supported by training, anonymous hotlines, and HR departments (Weber and Wasieleski 2013). Compliance essentially seeks to motivate employees with a carrot-and-stick approach (Weaver 2004). (At higher corporate levels, the compliance approach additionally seeks to reign in self-serving tendencies vis-à-vis shareholders through governance controls and incentives, ranging from bonuses to stock options to shareholder proxy wars and derivative lawsuits (Jensen and Meckling 1976). But in this paper we are concerned, above all, with rank-and-file employees).

But these formal structures don’t always work!

In reality, however, there is often a chasm between what these formal codes and officers say versus actual behavior (Weaver et al. 1999). After all, Uber had a large HR department to which female software engineers duly brought their sexual harassment allegations -- only to find them rebuffed and buried. Enron had a 64-page code of conduct highlighting values like “respect” and “integrity,” -- only to implode in a scandal of
systemic fraud ending in bankruptcy. Wells Fargo had everything an ethics and compliance program could dream of – an anonymous hotline, a team of compliance and risk professionals, whistleblowing instructions, and extensive ethics training for employees, including new hires. Yet, officers in branches across the U.S. created 3.5 million sham accounts and issued 565,443 unauthorized credit cards.

Occasionally, the problem is that executives deliberately undermine their ethics programs in the name of meeting growth objectives and analyst expectations, as with Enron and Wells. Most of the time, however, executives sincerely believe in their ethics initiatives, while employees sincerely experience and perceive them as phony (Weaver 2004). This gap in perception can result in employees’ becoming cynical and losing trust, which then almost invariably leads to conduct that harms the firm (Badaracco and Webb 1995).

**The problem with formal compliance-oriented ethics programs**

The problem with compliance-oriented programs is that they do little to address that gap in perception between executives and employees. Compliance programs and ethics codes are not usually integrated in the formal and informal culture of the organization (Trevino et al. 1999). Over two-thirds of employees say that compliance training is inefficient, irrelevant, and boring (CEB Compliance and Ethics Training Benchmarking Report (Gartner)). Without being integrated in daily routine corporate operations, compliance cannot, in and of itself, reach a company’s internal ethical milieu in a way that meaningfully affects employee attitudes and behaviors (Trevino et al. 1999; Weaver 2004).
Furthermore, compliance-oriented programs rely, not on controls that enable employee moral agency, but on controls that coerce them into behaving in specific, prescribed ways. Yet many of the daily ethical issues presented at work are ambiguous and not covered in the ethics code or manual. Most corporate ethics codes ask employees who face such situations to contact the legal department or some other administrative unit.

Unfortunately, so many ambiguous ethical issues arise, and under such fierce competitive pressures, that it is unrealistic to expect employees to call for help every time. Yet, instead of helping employees think through such problems, ethics and compliance programs regularly remove the exercise of moral judgment away from employees to upper management. The upshot may be to weaken employees’ ability -- and motivation -- to manage moral ambiguity, deal with novel issues, and to preclude a broad debate about what is right and wrong (Stansbury and Barry 2007).

**Research shows that employees want fairness**

Studies, however, find that having “ethical ideals as aspirations” is more effective for employees than a compliance-oriented approach (Weaver 2004, p. 124; Paine 1994). Formal ethics codes and policies have less of an impact on employees than their perceptions of the overall culture and whether it genuinely stands for ethical ideals, and whether supervisors and executives are fair (Trevino et al. 2000; Trevino and Weaver 2003). Employees need to trust the motivations and commitment of people at the top to corporate ideals and values and to doing the right thing in a just manner. They need to see in order to believe that management “values fair treatment and their welfare” (Weaver 2004 p. 122).
If employees are convinced of this, they are more likely to trust, share in this commitment, and to behave ethically and conscientiously (Eisenberger and Davis-Laastro 1990).

Compliance, however, does not encourage corporate citizenship or commitment. It rarely transcends the motivation of wanting employees to follow the rules merely to avoid fines, penalties, and profit losses. As Weaver (2004 p. 122) notes, “if management acts ethically just to obtain the benefits of ethical behavior, other people cannot trust management to always act ethically.” Nor does compliance engage employees with trust.

Assumptions of compliance-oriented ethics

On the contrary, the assumption inherent in the compliance model is that employees cannot be trusted (Manville and Ober 2003). This concept is anchored in the economic theory of the firm and agency theory, which hold that the interests of principals (shareholders) inherently conflict with those of agents (managers and their subordinates), and that, because of the “the gap between ownership and control” in companies (Berle and Means 1931), agents need comprehensive monitoring in order to protect the firm from their opportunism (Orts 2013).

The compliance perspective assumes a *quid-pro-quo* relationship between management and labor, where the former has little reason to invest in the latter except if it ameliorates productivity and reduces financial losses (Manville and Ober 2003). Since employees are seen as unlikely to embrace the company’s interests as their own, there is scant cause for management to respect, honor the dignity of, or desire to elicit labor’s full
potential for its own sake. There is little reason for managers to empower employees beyond their immediate tasks, jobs, or units (Manville and Ober 2003) -- despite their proclamations to support full employee empowerment. And, by the same token, there is little reason for labor to fully trust and commit to management and the higher interests of the firm.

In fact, decisions in most firms continue to be made behind closed doors by a small insular cadre of executives (Manville and Ober 2003). There is little free-thinking; little honest debate in the rest of the firm. There is little sense of community, of “us in this together.” Instead, there is a sense of “us versus them,” of “tension between employee’s individual will and the will of the organization.” (Manville and Ober 2003, p. 4). Employees are considered separate from the interests of the firm – as just another stakeholder group with selfish, annoying demands.

**Industrial model v.s. knowledge economy**

The economic theory of the firm and its concomitant compliance-oriented governance constraints have been challenged by scholars who see modern companies as bound by contract and ethical obligation to a network of varied stakeholders, not just to shareholders, and who see non-agency behaviors like organizational citizenship and stewardship as not only possible, but also compatible with corporate success (e.g. Orts 2013; Smith and Rönnegard 2014. See also McGregor’s (1967) Theory Y positing that most employees are self-motivated and responsible). Despite these voices, however, the compliance model prevails.
The compliance model may have been an appropriate model for the industrial era and for firms where workers did rote, repetitive, circumscribed tasks on the factory floor and could be adequately managed according to the principles of Frederick Taylor’s scientific management.

Today, however, in the knowledge economy, the nature of work is quite different. Employees in the knowledge economy are widely considered — including by management — a font of knowledge, skills, and intelligence. Many business projects today depend on cross-functional collaboration between employees with expertise in various disciplines who are culled from different departments and brought together to work as a team for a finite time (Gardner 2016). These employees’ willingness to collaborate is entirely a function of their trust in and commitment to the mission of their firm, as collaboration cannot be easily dictated by rules or governance structures. There are simply too many ways to game it.

So one of the primary challenges of management today is figuring out how to get employees to trust in and commit to their company so that it can harness their knowledge and skills (Manville and Ober 2003). Successful firms find ways to encourage employees to embrace the company’s interests as their own and go that extra mile to fulfill them. In this world, employee trust, authenticity, respect, and dignity are of paramount importance.

A more trusting, participatory model of ethical management
A more trusting, participatory EMS than the compliance model would assume that employees want to behave ethically. Contrary to the industrial era’s assumptions that worker interests are confined only to their immediate jobs and units, the assumption in the knowledge economy would be that employees care about the fate of the firm and its larger ethical decisions (Manville and Ober 2003). Employees would be seen as capable, not only of aligning their own behavior with social and corporate norms, but also of contributing to the maintenance and development of these norms at the corporate level (Tams 2018).

This understanding is far more compatible with employees today, who have access to real-time information. In many fields, workers have the education and sophistication to be able to understand and interpret that information in a way where they can assess and disagree with high level decision-making. Labor’s access to information and social media has lowered the power asymmetry between labor and management, as employees can leak documents and mobilize large groups of people through social media. With greater knowledge and power comes a greater ability to engage dynamically at an ethical level.

So, the participatory model of EMS posits more of a partnership than a top-down relationship between management and labor. Building on Deci and Ryan’s (1985) self-determination theory, it would seek to motivate employees by supporting them with broad ethical ideals, offering them tools to self-govern and do their jobs ethically -- e.g. advice, guidance, support, customized training – and giving them a voice in steering the company ethically at a strategic level (Manville and Ober 2003). The goal would be to actualize labor’s potential for moral agency (Tams 2018).
The example of tech (and other sectors) ethically activist employees today

We already see activist employees in the technology sector agitating about strategic ethical decisions of their companies and banding together to force executives to stay true to corporate values – issues that go far beyond the parochial interests of their immediate job or unit.

Indeed, the growth of this kind of activist employee has been a hallmark of 2018. Employees have landed punches on companies’ finances and reputations, and in many cases brought about change, making them a powerful voice for ethics that executives ignore at their peril.

Consider that it was employees who drove turnover in the upper echelons at Nike over how they handled sexual discrimination cases. (Tams 2018). It was Amazon employees who pooled stock to submit a shareholder proposal asking for more transparency on climate change mitigation policies (Frost 2019). It was Microsoft and Google employees who demanded – and got – their executives to publicly speak out against government policies separating illegal immigrant families at the U.S. southern border.

Executives knew that some of these decisions would hurt the bottom line. However, they proceeded anyway because their employees, using today’s hyper-transparent technology, including circulating petitions and leaking emails, essentially shamed leaders into action by demanding action consistent with corporate values (Taylor 2018).

Lofty corporate values are a leitmotif today, especially in tech. (e.g. YouTube aims “to give everyone a voice and show them the world.”) Snapchat aims to “contribute
to human progress by empowering people to express themselves.”) And contrary to the compliance ethics model where employees are seen as disinterested in and cynical about the firm’s stated values, today’s employees seem to want these values to be taken seriously.

**We also see an uptick in employee participatory structures in companies’ transparency and participatory initiatives.**

At the same time, we see corporate executives establishing transparency and participatory governance structures to enable employees to see into and have a voice in some aspects of corporate ethics. Thus executives, particularly in tech, regularly hold “Ask Me Anything” or “Town Hall” meetings, where they commit to answer any questions that employees may have about any subject (e.g. Guynn 2018). While these meetings are constrained by privacy and confidentiality issues, they represent a major crack in the traditional opacity of elite decision-making that marks the top-down compliance models.

**Intranet.** Tech executives in particular have also established an intranet that hosts forums where Google’s 80,000 employees are encouraged to talk openly amongst themselves about anything they wish, no matter how critical of the company (see e.g. Google). One tool enables them to broadcast their opinions; another, allows anyone to nominate a question for “TGIF” meetings and vote on what questions to ask of top executives (Shellenbarger 2018).

**Use of communications technology.** Companies have also made it possible for employees to use company communications technology to agitate against company policies—which they are doing with frequency. Thus Google employees used internal communications network to organize a 3,000-strong employee global walk-out in April
2018 to protest the company’s renewing a contract with the Pentagon in which Google’s artificial intelligence (A.I.) technology would be used to analyze drone video footage, enabling the military to identify and kill targets. Employees viewed this as an unethical use of A.I. As a result, Google executives let the contract expire two months later without renewing it, and promised never to use A.I. to make weapons (Shane and Wakabayashi 2018). Indeed, Google is considering “a new ethical review process before taking on government contracts” that would give voice to rank-and-file employees (Shellenbarger 2018).

A few months later, when employees found out that Google was quietly developing a censored search engine for use in China that would enable its officials to monitor users, they used their company network to corral over 1,400 employee signatures demanding greater transparency, accountability, and consideration of the impact of the project on human rights. Employees charged that the search engine would contravene the human rights values that executives had touted when Google left China in 2010 (Gallagher 2018).

And in November 2018, a record 20,000 Google employees across the globe walked out to protest the company’s payment of $90 million to a high-ranking executive accused of sexual harassment. Employees charged management with protecting their friend and demanded, among other things, an end to forced arbitration, to which Google agreed.

Employees aren’t always successful. Thus Microsoft employees staged protests via company networks, demanding a voice on the ethical impact of the technology that Microsoft develops and that the company drop military contracts to create technology that could be used to injure people. Microsoft didn’t agree. And 450 Amazon employees
unsuccessfully petitioned CEO Jeff Bezos to stop selling its facial recognition software, Rekognition, to law enforcement agencies and to stop hosting a software firm that helps ICE track and deport immigrants (Staff 2018).

**Creating new employee roles with a voice in larger ethical issues.**

Some tech companies such as Google have made employees “design ethicists,” and given them a voice on the ethics of a product’s design, including whether it is habit-forming and harmful to consumers. Heeding such concerns would obviously be detrimental to a company’s business model, in that there is money to be made when consumers can’t easily quit the product (Ovide 2018).

Google also has allowed employees to voluntarily take on the role of “diversity advocates” to organize lobbying campaigns and petitions to enhance colleague respect for each other (Guynn 2018). They successfully got Google to implement rules about how employees treat each other.

**Creation of “ethics ambassadors”** To help counter the knee-jerk corporate tendency to refuse to invest in ethics without a proven return on investment (ROI), which substantially limits the scope of ethics programs, some companies have established “ethics ambassadors” embedded in business units to ensure that “the performance of that area meets the organization’s ethical standards.” While there are some cases where there is no way to make the business case for the right thing to do, these ambassadors can ensure the company stays invested in an ethics program by arguing, for instance, that it is the interests of customers, clients, or some other stakeholder group (Mohlenkamp and Kronk 2015).

**Focusing on letting employees evaluate whether leadership is inspirational (or not).** We also see some companies trying to change their culture to allow rank-and-file
employees weigh in on whether leaders are inspirational or not. An example is McKinsey, which tried to change the culture of the firm after an insider trading scandal from an honor-driven, values-based system where managers were encouraged to openly express their views on issues -- to one that utilized behavior techniques and technologies, including a “Survey of Inspirational Leadership” where rank-and-file employees could confidentially weigh in on whether leaders were inspirational (Raghavan 2014). It was a tough sell to some of the senior partners, but it eventually went through.

These examples illustrate the deep changes in the knowledge economy’s workforce: employees’ ethical activism, their interest in matters that go far beyond their narrow jobs and personal interests. Indeed, many employee protests result in changes that can be viewed as detrimental to the company’s bottom line and therefore to employees’ potential bonus, raise, or even job security at that company. When Google did not renew its contract with the Pentagon for instance, it left a lot of money on the table.

But simply creating participatory forums may not go far enough for the modern workforce.

**Fairness involves giving voice**

Corporate fairness is critical to employee trust in management and commitment to the firm. “[E]mployees’ fairness perceptions play a major role in their reactions to corporate ethics initiatives.” (Weaver 2004, p. 122). When there is no fairness, when there is no consistency, people lose trust and can act to “remedy” the unfairness. (Greenberg
When management is inconsistent or unfair in applying ethical policies, employees are less likely to behave ethically and to report problems. (Trevino and Weaver 2001).

Yet fairness demands, not only constistency and outcomes and having just procedures, but also giving people a voice in the procedures that touch them. (Weaver 2004, 123; Weaver and Trevino 2001; Carucci 2019).

Many ways to ensure participation by employees in an ethics programs. One that bears revisiting is co-determination.

There are many employee participation programs (EPPs) that give workers a collective voice in their company’s affairs. A number originated in, or were inspired by, Japanese companies, which have long used EPPs to flatten bureaucracy and motivate employees. All of the following have been tried in the US, particularly in the auto manufacturing.

Quality circles are small groups of employees (usually 5 to 10) from the same work area with a voice in how to resolve product quality and production problems, including job design issues, in their area. Although quality circles need managerial approval to implement their solutions, they can give employees an increased sense of responsibility (Munchus 1983; Moe 1993, p. 1158).

Joint Labor-Management Committees (JLMCs) are panels of mostly about equal numbers of workers and managers that address various departmental or plant-level issues
and set their own agenda. JLMCs were widespread during World War II as a way to improve employee productivity and morale (Moe 1993, p. 1157).

Quality of work-life programs (QWLPs) focus on making workers' jobs more satisfying, including by addressing reward systems, communications with management, and selection and training decision-making. This is expected to increase productivity (Moe 1993, p. 1158-59).

Self-directed work teams (SDWTs), among the most popular EPPs, SDWTs are groups of employees who have quasi-managerial responsibilities for “some well-defined segment of production”, such as task assignments, work methods, and sometimes their own personnel decisions (Moe 1993, p. 159).

Total Quality Management (TQM) calls for teamwork and employee involvement at multiple levels of companies so that they can continuously improve their ability to provide products and services.

All these EPPs are employer initiated efforts to improve employee morale and productivity through “cooperative dialogue” with management (Befort 2004, p. 624-250) and a “voice” in the decisions that most affect their work (Moe 1993, p. 1160).

When employees feel that EPPs are used by management merely as instruments to gather information from them in order to squeeze more work out of them, they tend to fail (Bainbridge 1996; Harper 1998). In such cases, workers don’t think it worthwhile “to trade
their independent knowledge for some feeling of participation” (Harper 1998, p. 2361-2362). However, when EPPs are used more constructively, they may lead to improved productivity and morale.

**Co-determination**

Germany has a different EPP model, known as co-determination, in which employees are entitled not only to a substantial voice in and advance information about corporate matters that affect them, but also to be co-decision-makers with management in certain areas. Employees enjoy these rights through the dual structure of 50% board level employee representation and a 100% employee-run and elected “works councils” (Hodge 2010).

These two structures are legally mandated at firms of a certain size.

The EU has also passed laws that mandate some form of employee co-determination (Fox 2018B; Befort 2004, p. 609). However, since co-determination is oldest and most established and advanced in Germany, which had been debating co-determination since 1848 and which has had permanent work councils since 1952, we will focus on Germany here.

**Works Councils**

German works councils have many legal rights vis-à-vis their companies. They have the right to receive information and express their views to management on their company’s compliance with laws and on general business matters (Befort 2004, p. 640).
They have the right to be consulted before management takes any decision to hire, transfer, lay off, or fire employees. Most significantly, work councils have the right to co-determine – to decide together with management – matters such as “work scheduling, safety measures, and the restructuring of jobs” (Befort 2004, p. 640). If the two cannot agree, the issue goes to arbitration for final, binding resolution.

Mostly, works councils deal with daily workplace conditions and routinely meet with management (Fox 2018B; Younger 2018). They are somewhat like union stewards in the US. Works councils may not, however, organize strikes or engage in collective bargaining over wages and hours, as this is the purview of independent labor unions (Befort 2004, p. 640-41).

Every company with 50 or more employees must set up a works councils (Fox 2018B). But even a company with as few as five employees must establish one if three or more employees request it. Works councils size vary depending on the company’s size (Befort 2004, p. 639-40).

**Supervisory board representation**

German publicly traded companies have two boards: supervisory (Aufsichtsrat), on which employees have 50% of the seats, and managerial (Vorstand), on which they have none. Membership on these two boards is mutually exclusive at the same company (Owen 2003; Fox 2018A).
The supervisory board oversees the managerial board, which is the primary strategic decision-maker and runs the company day-to-day. The management board reports to the supervisory board its strategic plans and firm profitability (Owen 2003). But the supervisory board cannot tell the management board what to do.

The way in which supervisory board employees exercise power over their company is indirect and through negotiation and persuasion (Fox 2018B). Although employees and shareholders split board seats 50-50, the chair, who is the tie-breaker, is a shareholder representative in most companies. Further, although “[i]n theory, the management board is somewhat dependant on the supervisory board, . . . in reality, the supervisory board is also dependant on the management board for the flow of information” (Owen 2003, p. 178). Yet it is the supervisory board that appoints managerial board’s members (Waldman 2004).

**Employee Voice has Precedent in U.S. Companies**

The US has experimented with shared employee governance and its own form of co-determination in the past. Back in the 1890s, when most US firms were hostile to any worker organization, the CEO of Filenes in Boston, for example, encouraged employees to form a “Cooperative Association” that had a voice in, among other things, the company’s ethics. The Association hired an accountant to ensure that Filenes’ books were clean (Fox 2018A).

However, concerned about the prospect of independent labor unions and high employee turnover in factories, US companies from 1915 to 1935 tried variations of
employee participation program such as “employment representation plans,” “company unions,” and “industrial democracy” (Fox 2018A). Mechanization brought growth in factory size and production pace, while foremen pressured workers to operate at breakneck speed, often through intimidation and brutality (Fairris 1995). Worker health and safety was subject to hazards ranging from exposed machine belts to fine dust particles that caused respiratory diseases (Fairris 1995). And so many workers quit.

At first, in the early 1910s, employers tried to reduce turnover through welfare benefits in (Fairris 1995, p. 501). However, from 1910 to 1920, as work stoppages continued and employees demanded independent unions, employers formed company unions that gave employees various degrees of voice in decisions that affected them. By 1926, 432 US companies had employee representation plans (ERP’s), covering nearly 1.4 million employees (Patmore 2016, p. 92). Some were merely advisory bodies. Others had seats on the board of directors and had final say over employee firings (Patmore 2016, p. 95).

However, in 1935, under the leadership of NY Senator Robert Wagner, Congress crafted the NLRA that banned EPP structures, or “company unions,” because independent trade unions objected. They saw company unions as employer dominated, and a tool to deflect the formation of independent unions (Fox 2018A) and allow employers “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it” (28 U.S.C. §158(a)(2)).

Conclusion

We have set out a framework for thinking about the ways that EMS develops and how it operates in different settings in governance organizations. The long tradition of
public administration following innovations in the private sector persuades us to look first at the variety of EMS models in for-profit organizations and second, and more specifically, at the way that co-determination, transparency and bottom-up ethics have emerged in the tech industry.

Before scholars can recommend new methods of ethics management to administrators, a survey of practices old and new is required. Our goal is to use the standard of democratic accountability—within organizations and between organizations and society-- as the basis for a critical perspective on the next generation of EMS in public administration.
References


Fox, J. 2018B “Why German Corporate Boards Include Workers” Bloomberg August 24.


Gardner, H. K. 2016. Smart Collaboration: How Professionals and Their Firms Succeed by Breaking Down Silos


Report To Congress On The Activities And Operations Of The Public Integrity Section For 2016, p. 22


Statt, N. 2018. “Amazon told employees it would continue to sell facial recognition software to law enforcement” The Verge, November 8.


Trevino, L. K., Weaver, G. R., & Brown, M. 2000. It's lovely at the top; Comparing senior managers' and employees' perceptions of organizational ethics. Academy of Management Best Papers Proceedings

U.S. Prosecution of State and Local Officials for Political Corruption: Is the Bureaucracy out of Control in a High-Stakes Operation Involving the Constitutional System, Publius, 17(3).


1 Governing the Hollow State H. Brinton Milward Keith G. Provan