

LAW AND MORALITY OF BUSINESS

Professor PhD **Dan CRĂCIUN**

The Bucharest Academy of Economic Studies, Romania

Faculty of Management, Department of Philosophy, Sociology and Political Science

ABSTRACT

This scientific paper intends to analyze the legalist approach of business activities, trying to argue that, beside the conformity with the law, successful companies are expected to take on ethical responsibilities. The first part rejects two schools of thought which dominate the legalist approach: one claims that law prevails in public life, whereas ethics is a private matter; the second claims that the law embodies the whole ethics of business. The second part develops the notion that the individual and collective attitude towards legality is not a legal matter, but an ethical commitment. The third part present five arguments proving that strict legality cannot solve all of the ethical issues in business. The final part presents three case studies, as empirical evidence that legal regulations and ethical standards of business do not always get along.

KEYWORDS: law, morality, ethical standards, freedom, responsibility

Some people believe that the whole morality of business could be summed up in one single principle: “Obey the law”. What else could be asked for a businessperson? Why should he or she keep more and different rules than anybody else? “Some have said that corporate concern about business ethics can be reduced or eliminated by turning problems over to the legal department. The operative idea is ‘let the lawyers decide; if it’s legal, it’s moral.’ Although this tactic would simplify matters, moral evaluation needs to be distinguished from legal evaluation.” [Beauchamp, Bowie & Arnold, 2009, p. 4]

1. Why some people believe that law, not ethics is the only relevant guide of business

The reasons that lead people to hold a legalist view of the ethics of business are varied, but two predominate. John Boatright defines two schools of thought on this matter.

One perspective considers that law and ethics govern two different realms. “Law prevails in public life, whereas ethics is a private matter. The law is a clearly defined set of enforceable rules that applies to everyone, whereas ethics is a matter of personal opinion that reflects how we choose to lead our own lives.” [Boatright, 2009, p. 15] Consequently, it would be a mistake to apply ethical rules in business, just as it would be a mistake to apply rules of poker to tennis. A variant of this position holds that the law represents a minimal level of expected conduct that everyone should observe. Ethics, on the other hand, is a more demanding, optional level. It’s highly honorable to act ethically, but everyone’s behaviour has to be legal.

Both versions of this first legalist perspective are mistaken. Although ethics does guide us in our private lives, it is also applicable to matters in the public realm, where

different individuals compete or cooperate, generating social, economic and political processes and their effects, that influence in a desirable or negative way everybody's private life. It is not at all absurd to judge business practices as ethical or unethical, as, for example, when we say that discrimination or consumer fraud is wrong. Moral judgments are also made about economic systems. Thus, most people believe that capitalism is morally justified, although it has many critics who raise moral objections.

The other school of thought is that the law embodies the ethics of business. There are ethical rules that apply to business, according to this position, and they have been enacted by legislators into laws, which are enforceable by judges in a court. "As a form of social control, law has many advantages over ethics. Law provides more precise and detailed rules than ethics, and the courts not only enforce these rules with state power but also are available to interpret them when the wording is unclear." [*idem*] A common set of rules known to all also provides a level playing field, creating the premises of a fair competition. For these reasons, some people hold that it is morally sufficient in business merely to observe the law. Their motto is "If it's legal, then it's morally okay." And yet, it is not so difficult to distinguish between *law* and *morality* in modern business activities.

2. Legality and ethical commitment

To the surprise of common-sense, conformity with the law is not, in itself, a legal matter, but a *moral obligation*. According to Manuel Velasquez, "most ethicists agree that all citizens have a moral obligation to obey the law so long as the law does not require clearly unjust behavior. This means that in most cases, it is immoral to break the law. Tragically, the obligation to obey the law can create terrible conflicts when the law requires something that the businessperson believes is immoral. In such cases, a person will be faced with a conflict between the obligation to obey the law, and the obligation to obey one's conscience." [Velasquez, 2006, p. 38] The way people treat the law depends on their ethical commitment to take legal regulations seriously or, on the contrary, to ignore and break the law any time they can do that unpunished. A recent study reported in *Why People Obey the Law* by Tom R. Tyler shows that "obedience to the law is strongly influenced by a belief in its legitimacy and its moral correctness." [cf. Dienhart, 2000, p. 31] On the other hand, almost every legal system enshrines much moral teaching, and moral considerations have an important influence on the interpretation and development of the law. The legal system would break down unless most people obeyed most laws most of the time, and unless witnesses told the truth, and judges reached honest verdicts, without being made to by the threat of coercion. A legal system fails to do its job when laws are ambiguous and contradict each other, when the lawyers and policemen are corrupted, and when a significant number of people get in the habit of breaking the law, without even the slightest feeling of guilt, shame or remorse. Consequently, morality is not second to legal justice, like an idealistic, but unnecessary jewel or make-up put on the rough, but strong body of the law. On the contrary, the morality of a nation is the back-bone of the legal system, and if the back-bone is not upright and strong, the whole body of the legal system would be slanting, ugly and impotent, vicious and pervert. When corruption, bribery, and political pressure tend to distort the fair competition in the market, and to destroy the natural mechanisms of a free-market economy, to obey or to break the law might become a critical moral decision, as long as more and more businesses come to be forced to choose between legality or bankruptcy.

Many sceptics about business ethics would probably submit that keeping the law is primarily a moral commitment, but some of them would make a second claim, perhaps

more difficult to reject. They would say that, beyond the moral decision of a honest businessperson to keep the law, there is no room left for any other kind of ethical commitment. Following Milton Friedman, many economists still deny the possibility of business people having social responsibilities or ethical obligations. A businessman has no alternative, in view of the competition of the marketplace, to do anything other than buy at the cheapest and sell at the dearest price he can. In any case, it would be irrational – if, indeed, it were possible – not to do so. Admittedly, there is a framework of law within which he has to operate, but that is all, and so long as he keeps the law he is free to maximise his profits without being constrained by any moral or social considerations, or any further sense of responsibility for what he does. But this is not true, for several reasons.

3. Why strict legality does not solve all of the ethical issues in business

First, each and every law can and should be evaluated from a moral viewpoint. Certain legal regulations, enforced by a certain state in a specific period of time could be judged as immoral by individuals or social groups. In a democratic society, when a consistent majority comes to believe that a specific law is immoral, normally the law-makers – Parliament and government – modify more or less substantially the law to satisfy the ethical requirements of the people. Most often, the law is reactive, responding to problems that people in the business world can anticipate and deal with long before they come to public attention, as it is the case with discrimination or child labour. But as long as the law stays as it is, whereas the public discontent is growing, acting legally does not guarantee the ethical correctness of one's decisions and actions.

Second, the legal norms that regulate business activities are most often influenced by various *extra-economic factors*, such as social ideals, political interests or religious faith, which entail consequences in the field of economy. Sometimes these consequences conflict with the intrinsic logic and specific morality of business. For instance, an inefficient company, loaded up with large debts, and which has no real good prospects, must be penalized; economically speaking, its bankruptcy is the only ethical solution. If, for social or political reasons, the government decides to keep in business such a company, legally spending taxpayers' money, it might be socially or politically convenient but, from the standpoint of market economy, it is not ethical. The morality of business requires equal rules for all the players in the economic game, otherwise competition would not be fair. Sometimes, specific social or political circumstances force the government to favour, by legal regulations, certain economic activities, certain forms of property, social classes, professional categories and so on, and this kind of *legal* discrimination violates the *moral* rules of business. To sum up, business has its own intrinsic moral rules, meant to guarantee a fair competition, aiming at a maximum profit which can be obtained by means of efficiency, and not by stealing, lying, cheating, etc. The legal system must satisfy not only the economic necessities, but also many extra-economic requirements, and that is why so often the law conflicts with the morality of business, creating unequal terms of the economic competition.

Third, the law cannot and must not regulate every aspect and each moment of our lives. The legal system enforces only a general normative framework of the economic life, that traces the limits of the individual freedom, whose diversity generates a lot of unpredictable evolutions and irregular circumstances, which it would be quite impossible to anticipate and freeze in some inflexible patterns of legally correct behaviour. But when the law has nothing to say, morality is the only available guide of our actions. For example, from a legal point of view every person is free to choose his or her inheritors. Morally, it is

not indifferent if somebody gives his assets after his death to his relatives or close friends, to a scientific research fund, to a religious cult, or to his dog. Legally, one is free to spend her money in any way she likes it, except a number of explicitly forbidden activities; morally, it is a significant difference between spending your money on gambling, drinking or shooting lions in Africa, and making a good investment. Legally, a good investment is one which makes a profit, without breaking the law; morally, an investment in a casino or a peep show bar is not equal to investing in a hospital or a waterplant.

Fourth, most often the law tells us *how* to proceed, but not *what* we should do. The law is concerned with the available *means* of our actions, but not with our *purposes*, *decisions* and *choices*. The legal system cannot answer questions like these: Which is better, retrench the work force so that a company confronted with financial difficulties, can recover and perhaps rehire these people later, or keep full employment with possible dire consequences for the company, including bankruptcy? Should a business allow itself to be the object of a hostile takeover, which could result in the loss of many jobs of those currently employed? Or should it resist the takeover by paying „greenmail“, buying the stock of a corporate raider at higher than market price so the raider will go away? Or should the company load itself up with debt to decrease its attractiveness to a raider, even though this may reduce the company's profits? If we cannot clearly see all the ethical ramifications of our actions, we are often unable to isolate all the morally relevant aspects of a given situation and choices become difficult, since “in virtually every relationship with stakeholders, there are issues that are ethical dilemmas, even though they're legally clear.” [Sorell and Hendry, 1994, p. 9] It would be a very serious mistake to think that the legal system could ever prescribe the most efficient business plans, marketing strategies or personnel policies.

One final reason why, beyond the strict conformity with the law, ethics could be sometimes useful, is the national character of legislation. Indeed, there are international or multinational legislations, like those already adopted by the European Union, but still a good deal of legal regulations are specific to each national state. For instance, some medications are forbidden in the USA, but they can be produced in America and sold to other countries, especially from the Third World. Therefore, it is legal to protect the health of the Americans, and to jeopardize the health of other nations. But is it ethical? De George presents us a clear example of legal, but unethical behaviour in international business. Many countries are unable to fund the extensive testing operations conducted by the United States government or required by it. These countries have passed laws, however, which prohibit a drug company from marketing a drug which has been prohibited for sale in the country of its origin. Some drug companies, wishing to market their drugs but also wishing to abide by the law, have adopted a number of practices for which they have been morally condemned. “Some have added an inert substance to a drug so that technically it is not the same item, even though it has all the same effects. Then the drug has been marketed under a different name in the foreign country. Other countries have produced the drug that has been outlawed in the United States in a third country where it is not outlawed, and then they have shipped it elsewhere. Both of these practices are within the letter of the law in the countries where the drugs are finally sold, even if they are clearly outside the spirit of those laws”. [De George, 1982, p. 247] To sum up: “Obey the law” is indeed a fundamental principle of any free market economy and of any democratic society, but it does not resolve all the problems of the economic life, and cannot be a panaceum for all the practical dilemmas that an economic agent has to confront. Consequently, business ethics cannot be reduced to the respect of the legal system and can prove that it has its irreducible object of investigation.

4. Differences between legal and ethical behaviour in business

The above mentioned reasons given in support of the idea that modern management cannot be reduced to strict legality, but also implies an ethical approach, are strengthened by the empirical evidence offered by today practice of business. A considerable number of case studies lead us to distinguish several possible relationships between the legal requirements that one company must keep and the ethical responsibilities that the same company should take on.

Sometimes, there are no legal regulations demanding a specific decision or behaviour; and yet, judging from an ethical viewpoint, the managers and investors feel they have the obligation to do certain things, which are not legally enforced, or not do other things, even though they are not legally forbidden. The classical case of Merck and Co. and river blindness perfectly illustrates this situation. River blindness is a tropical disease that, according to World Health Organization, in the 1970's affected some 18 million impoverished people living in remote villages along the banks of rivers in tropical regions of Africa and Latin America. The disease is caused by a tiny parasitic worm that is passed from person to person by the bite of the black fly which breeds in river waters. Eventually, millions offsprings of the parasitic worm, called microfilaria, invade the eyes and gradually blind the victim.

At that time, there was practically no efficient medical treatment available for the destitute victims of the terrible disease. In 1979, a research scientist working for Merck & Co. discovered evidence that one of the company's best-selling animal drugs, Ivermectin, might provide a low cost, safe, and simple cure for river blindness. Analysing the possibility of funding a research program meant to find the cure of the tropical disease, Merck's leaders quickly realized that if the company succeeded in developing a human version of the drug, after spending more than \$100 million, the victims of the disease were too poor to afford it. It was unlikely the company could recover these costs or that a viable market could develop in the poverty-stricken regions where the disease was rampant. From a strictly business perspective, Merck's managers were reluctant to undertake expensive projects that showed little economic promise, such as the suggested development of a drug for river blindness. Yet without the drug, millions would be condemned to intense suffering, and partial or total blindness.

In the end, the management team came to the conclusion that the potential human benefits of a drug for river blindness were too significant to ignore. Many of the managers felt, in fact, that because of these human benefits the company was *morally* obligated to proceed in spite of the costs and the slim chance of economic reward. In late 1980s, after seven years of expensive research and numerous clinical trials, Merck succeeded in developing a human version of Ivermectin, named Mectizan: A single pill of the new drug taken once a year would eradicate from the human body all traces of the parasite that caused river blindness and would prevent new infections. By 2004, working with WHO, government and private voluntary organizations in Africa, Latin America, and the Middle East, Merck was providing the drug for free to 40 million people a year, effectively transforming their lives and at long last relieving the intense sufferings and potential blindness of the tropical disease. [Velasquez, 2006, p. 5] Merck also expanded the program to include the treatment of elephantiasis, another parasitic disease that often coexists with river blindness and that Merck researchers discovered in the 1990s could also be treated effectively with Mectizan. "In total, about 30 million people in 32 countries are now treated annually with Mectizan. Merck reports that it has no idea how much the entire program has cost, but estimates that each pill is worth \$1.50". [Beauchamp, 2009, p. 102]

Merck didn't have any legal obligation to fund the research program that produced the new drug, but its top managers felt it was their moral duty to use a small part of the huge resources of the company to save the lives of so many poor people in the Third World, deprived of any other chance to be cured. This ethical responsibility, taken by the leaders of Merck, proved eventually to be also a profitable decision, because the company got a high reputation for corporate social responsibility and a very favourable public image, that offered Merck a considerable competitive advantage, which helped the company to change in a relatively short while charity spendings into a profitable investment.

On occasions, there might be an open conflict between the legal regulations and the ethical standards. The legislators or the courts of law can enforce laws or verdicts that generate serious ethical quandaries or even immoral consequences – as the Johnson Controls case demonstrates. Johnson Controls, Inc. [JC] made batteries whose primary ingredient, lead, can harm a fetus but not a pregnant woman. The company therefore required female employees to sign a statement warning them about the risks of lead exposure that pregnant women run for their babies. During the four years this policy was in effect, eight employees became pregnant while maintaining blood lead levels in excess for pregnant women. The company then announced a new policy: Women who are pregnant or who are capable of bearing children will not be placed into jobs involving lead exposure. Two years later, three JC employees sued the company, claiming that the fetal protection policy was a form of sex discrimination because it applied to fertile women, but not fertile men. “JC stated that it had no intent to discriminate, but merely wanted to protect the health of unborn children and avoid the possibility of being sued by an employee for the injury or death of her fetus.” [Velasquez, 2006, p. 310]

The feminist organizations incriminated this new policy, apauling the public opinion when they mentioned several cases of women who decided to undergo voluntary sterilization rather than give up high-paying jobs involving exposure to chemicals that are potentially harmful to a developing fetus. Under the pressure of mass-media outcry, The Supreme Court of the USA made an apparently wise decision: the employers are legally bound to hire any fertile woman, on one condition: the woman employee should sign a legally valid waiver, taking full responsibility for her decision to run the risks of lead exposure. Unfortunately, this decision of the Court creates a new situation, putting the employers at uncontrollable risk: The waiver of subsequent claims by the female worker would be of no legal significance because the deformed fetus, if born, may have its own rights as a person which could not be waived in any way by the mother! [Beauchamp, 1998, p. 21]

Finally, quite often a legal regulation is incapable of solving an ethical issue. On the contrary, instead of making things right, the law might create additional problems, letting the ethical problem unsolved or even making it more difficult than it was initially – as the Resistol case dramatically shows. Resistol is manufactured by Kativo Chemical Industries, a subsidiary of H. B. Fuller Company of St. Paul, Minnesota. Kativo sells more than a dozen different adhesives under the Resistol brand name in several countries in Latin America for a variety of industrial and commercial applications. In Honduras the Resistol products have a strong market position. Three of these products are solvent-based adhesives designed with certain properties that are not possible to attain with a water-based formula. These properties include rapid set, strong adhesion, and water resistance – qualities required in shoe manufacturing and repair, leatherwork, and carpentry. Due to the extreme poverty of their families, many street children in Honduras are addicted to sniffing the hallucinogenic fumes of Resistol, and that is doing them irreversible brain damage. Even though the street children of each Central American country may have a different choice of

a drug for substance abuse, and even though Resistol is not the only glue that Honduran street children use as an inhalant, the term *Resistolero* stuck and became synonymous with all street children, whether they use inhalants or not.

In 1983, Honduran newspapers carried articles about police arrests of Resistoleros – street children drugging themselves by sniffing glue. The fuss made by the press on this issue of Resistoleros worried and even outraged the public opinion in the USA. A certain number of shareholders sent letters of protest to Elmer Andersen, the Chairman of the Board and CEO of H. B. Fuller, demanding that the company should take steps to solve this problem. At the same time, some humanitarian organizations suggested that oil of mustard could be added to the product to prevent the abuse. They argued that a person attempting to sniff glue with oil of mustard added would find it too powerful to tolerate. Under the pressure of the press and humanitarian NGOs, the Honduran Parliament enforced a law making the addition of oil of mustard mandatory. But additional research, asked by Humberto Larach, the head of the Central American division of Kativo, proved that oil of mustard was a carcinogenic agent. Mr. Larach was confronted with a difficult dilemma: either to keep the new legal regulation, jeopardizing even worse the health of the street children, or to ignore, on ethical grounds, this too superficial legislation, producing hazardous consequences, contrary to the good intentions of legislators. Besides, the dramatic condition of the street children in Honduras and glue sniffing is not caused by the fact that one chemical company produces solvent-based adhesives, but it is a social problem, and Kativo or any other company is limited in what it could do about the problem. [Beauchamp, Bowie & Arnold, 2009, p. 102]

In conclusion, important as it is, strict legality in business cannot be accepted as a wise and efficient strategy. “Even in the best cases – says Dienhart – legal compliance is unlikely to unleash much moral imagination or commitment. The law does not generally seek to inspire human excellence or distinction. It is no guide for exemplary behaviour – or even good practice. Those managers who define ethics as legal compliance are implicitly endorsing a code of moral mediocrity for their organizations”. [Dienhart, 2000, p. 32] As Richard Breeden, former chairman of the Securities and Exchange Commission, noted, “It is not an adequate ethical standard to aspire to get through the day without being indicted.” [*idem*]

References

1. Beauchamp, Tom, *Case Studies in Business, Society, and Ethics*, 1998, Prentice Hall, Upper Saddle River, New Jersey
2. Beauchamp, Tom & Bowie, Norman & Arnold, Denis, *Ethical Theory and Business*, 8th edition, 2009, Pearson / Prentice Hall, Upper Saddle River, New Jersey
3. Boatright, John, *Ethics and the Conduct of Business*, 6th edition, 2009, Prentice Hall, Upper Saddle River, New Jersey
4. De George, Richard, *Business Ethics*, 6th edition, 2006, Pearson / Prentice Hall, Upper Saddle River, New Jersey
5. Dienhart, John, *Business, Institutions, and Ethics. A Text with Cases and Readings*, 2000, Oxford University Press
6. Sorell, Tom & Hendry, John, *Business Ethics*, 1994, Butterworth-Heinemann, Oxford
7. Velasquez, Manuel, *Business Ethics. Concepts and Cases*, 6th edition, 2006, Pearson / Prentice Hall, Upper Saddle River, New Jersey