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Ethics in Business: Is Compliance the best we can expect?

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Abstract
Recent evidence of criminal corporate behavior seems to indicate that efforts to develop more ethical business leaders by requiring courses on ethics in business schools has not worked. The creation and use of corporate ethics codes and "codes of conduct" has provided companies with a way to publicly demonstrate their commitment to good ethics, but by focusing their efforts on simply ensuring corporate "compliance" with such codes, the larger issues of right and wrong are often ignored. An example of the limitations of mere "compliance" is offered, along with a call for the academy to do more to develop future business leaders with more acceptable ethical values.

Keywords: Business ethics, Codes of Conduct, Compliance programs, Codes of Ethics, Values, Ethics Courses.

The recent spate of high profile corporate law breakers in the US has resulted, once again, in a heated discussion about the need for more ethical behavior on the part of our corporate leaders and renewed calls for more effective ethics courses in business education programs. The last such wave took place in the 1980's as a result of the insider trading scandals of those days. Universities began incorporating courses on ethics in their business programs and such courses have become a part of the requirements for the US accrediting bodies of business education such as the AACSB. Are college ethics courses effective in engendering a sense of right and wrong in our future business leaders that will ensure that they understand the ethical implications of their actions? I see no evidence that this approach is working.

With these ethics courses in place and government oversight bodies endorsing formal corporate ethics codes or codes of conduct as a means to mitigating sentences of those companies or individuals convicted of illegal activities, the answer for many companies was to show the public and the regulators that they were ethical by developing a set of rules and standards for corporate behavior. The response of companies to public concerns about ethics in business seems to have been that of showing the public that they have a strict "Code of Ethics" or "Code of Conduct" that everyone in the company understands and has legally agreed to adhere to and that such compliance will preclude future wrongdoing. This also spanned a sub-industry of ethics consultants and individuals or organizations who would be happy to create and implement such codes within companies.
Is contractual compliance with the law and with a written code of conduct the best we can expect from today's corporations? I suspect this is the case. Is this an approach that will preclude the more egregious of ethical lapses in business? I think not.

As the Enron, Worldcom, Cendant and other recent corporate scandals have shown, these codes of conduct and ethics courses have not limited the greed and rapacity which seems to drive some, at least, of our corporate leaders. This time around, perhaps we will finally come to realize that there is no "fix", quick or otherwise, for ensuring that individuals in business will act more ethically. Part of the problem is the apparent difficulty in understanding that companies are not the locus of ethics: but the people in the company are. Ethics are personal, not corporate, but this does not mean that corporations should not pursue policies that benefit society. After all, the people that comprise a company live and work in a society, have access to community goods and services, and are to some extent accountable to their various stakeholders. In the sense that being perceived by the public (who are potential shareholders and consumers) as doing good is good for business, then it is certainly in the companies interest to do so. Viewed in this way, however, corporate social responsibility is just another marketing tool and while such company activities may do some social or community good, ethics may have little to do with it. Ethics deals with what is right or wrong, not necessarily what is good for the company's bottom line.

If the locus of ethics is in the individuals that make up and direct the company, Codes of Conduct or Codes of Ethics can be seen as a bureaucratic effort to force compliance to what the company would like to consider their own corporate ethical and legal standards. That these same codes can also be used by courts and regulatory bodies to

mitigate the sentences of individuals who break the law while acting for the company should offer some explanation of their popularity. That this self-serving motivation for putting a "Code of Ethics" in place does not guarantee that companies will do the "right" thing

> While the FSGO are best known for providing for a substantial reduction of the "culpability score" of a convicted organization, and hence the ultimate fine, having an effective compliance and ethics program does not alter the general principle, as described in the text box opposite, that "the organization [should be required to] take all appropriate steps to provide compensation to victims and otherwise remedy the harm caused or threatened by the offense."'
>
> Much of the debate surrounding the "litigation dilemma," therefore, neglects the issue of what the organization should do with the information it discovers through its ethics and compliance program after it has dealt with the threat of prosecution. While it is clearly a benefit to the organization to secure reduced fines on sentencing, the underlying public policy is for organizations to adopt ethics and compliance programs as an integral part of being good corporate citizens. What may be making this debate go on is the emphasis on avoiding prosecution or plea bargaining a lighter sentence, without any representation that the organization will undo the harm it did to specific victims. [i]

The focus of many corporate ethics programs then is on "compliance", meaning compliance with the laws and ethical rules developed by the company. While this will do nothing to stop the Bernie Ebbers of the world from developing schemes to defraud people for huge profits, such codes serve a valuable purpose by making corporate rules explicit and available to the workforce. Enron, however, had just such a code. [ii]

The problems with ethics in business is that if you agree that all ethics are personal, and understand, as sociologists tell us, that we have all developed our basic ethical values specific to our native cultures by the time we are 12 years old[iii], then what can we really do about the ethics of our business leaders? Can an ethics course in an MBA program have the same affect as being taught what is right and wrong by our parents? Some greed is considered to be a good thing in today's market economy, but how much is enough and when does the desire for personal wealth outweigh concern for others who will be harmed for our actions?

I recently hosted a select panel of local business leaders in Providence, Rhode Island, to discuss the topic of Ethics in Business. Of my four participants, two were from large corporations – a regional bank and a global lottery provider – one was the President and CEO of a privately owned OEM manufacturing company and one was an accountant, very active as the ethics chair of the state accountants association. Their perspectives on business ethics was varied and interesting. Both of the large company representatives discussed their corporate codes of conduct and compliance with these codes as being the centerpiece of their companies ethics "program" - in fact, the large multinational lottery provider's representative was their "Compliance Officer," and a lawyer. The president of the somewhat smaller privately owned company stressed the ethical values that he personally felt were important and influenced the way that he conducted business. His company had no code of conduct and he felt no need for one. The accountant discussed the regulatory environment that she felt made unethical or illegal activity difficult in her profession. While a very limited sample, these seemed a fair representation of the various approaches to business ethics at the enterprise level.
At a subsequent Global Ethics conference conducted at a nearby university, a different representative from the same international lottery corporation discussed an interesting case study of their problems in Brazil due to what he called a "false impression of wrongdoing". Their local representative had several meetings with a potential partner who had been recommended to them by a senior government official. When the senior government official was subsequently indicted for bribery and corruption, the company's close connections with him had been made public and as part of the damage control conducted by the country's president, the company's lucrative contract to conduct the national lottery was suspended. The company's representative at this Global Ethics conference, a senior vice president, indicated that if their code of conduct[iv] and compliance had been followed, the senior leadership would have been notified earlier about the subject of their representative's interaction with the senior government official and they would have taken steps to stop any further, potentially comprising, action. This case caused the corporation to lose a multi-million dollar contract, but even more importantly, severely damaged the corporation's worldwide reputation for honesty and integrity, a vital consideration for a company providing services to governments in which millions of dollars are involved. At this conference, the corporate vice president concluded his discussion with a broad look at their code of conduct and their focus on compliance with this code. He felt that if the individuals

involved in this case at the local level had adhered to their code by reporting the gist of his meetings with the government official earlier, the problem could have been minimized.
This interesting case and the events surrounding it illustrate the key weakness of any code of conduct or compliance program: it only works if the people within the company adhere to it. One could make the argument that the lottery corporation's representative in Brazil was only doing his job – networking with influential government officials. With his close acquaintance to the senior government official who became the subject of the national bribery scandal, this representative might be expected to have had some knowledge of the way business "was done" in Brazil, whether or not he was culpable in participating in any wrongdoing himself. It is hard for me to believe that the senior leadership of the corporation would have warned him away from developing too close ties to this influential (at the time) government leader, since such ties are the way the game is often played in international business. What he really should have done was ask himself whether or not there was anything wrong or unethical about what he was doing. It would appear that simply creating a code of conduct does not necessarily improve the morality of corporate actions. In any event, the company seems to have weathered this problem very well and has continued to perform globally. In fact, it has now become so profitable that it is now the target of a possible acquisition bid. [v]

If "compliance" to a set of corporate rules is not really sufficient to preclude unethical behavior in business, what can educators do to help develop more ethical managers and leaders? Many of the currently available texts on business ethics try to link ethical theories with actual workplace situations.[vi] Others focus almost exclusively on business ethics cases or use a combination of both.[vii] Both approaches are useful and offer the student who takes the time to digest them highly valuable background and theoretical insights that may be useful for future decision-making. The case study method for discussing ethical issues is especially useful as it puts ethical theories and concepts into a real world perspective. Of interest, however, is that they arguably have not been effective in influencing the personal ethics of our future business leaders in any significant way, if the leaders of Enron, Worldcom, and Arthur Anderson are considered examples. It is noteworthy that many of these individuals were educated at the best US business schools and presumably had taken some of the required traditional ethics courses. This approach does not seem to work.

Another approach that may have more promise is that of using the concept of "stakeholder management" to broaden the perspective of business leaders regarding ethical issues and ethical decision-making. A good example of this is Bowie and Werhane's "Management Ethics", published by Blackwell publishing as a part of their Foundations of Management Ethics series.[viii] This text and others like it, expand the view of what the responsibilities of a corporation are from simply taking care of the shareholders to recognizing the corporation's obligations to other stakeholders: employees, customers, suppliers, the local community, etc. In my view, this approach combines both idealism and pragmatism into a logical and useful worldview that has promise for actually changing the ethical perspectives of corporate leaders in a positive way. In conjunction with case studies, this approach can lead students to a deeper understanding of their responsibilities as business managers and leaders. It is unfortunate, although not surprising, that this concept of ethics in business is not more popular as it greatly complicates corporate decision making by reflecting the reality of the complex potential impact of corporate decisions.

Additional approaches are possible, including examining ethics from a cross-cultural and trans-national perspective.[ix] This subject needs more study and assessment, but is absolutely critical for today's global economy.

In the meantime we are left with what companies can do fairly easily (without really changing the actual away they operate) and that can support their legal case in the event that someone within the company actually is found guilty of wrongdoing: compliance with an all-inclusive Code of Conduct of Code of Ethics. This offers a bureaucratic "fix" that seems to satisfy both the public and the oversight bodies. Is compliance with the law and an explicit statement of conduct the best we can expect from our global companies? I suspect it is. Should we continue to press for more rigorous and innovative ways of actually changing the personal ethics of our business leaders to reflect acceptable views of what is really right and what is really wrong? I submit that we should and believe it is a major function of teachers of business to be at the forefront of such an effort.

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[i]Kenneth W. Johnson, "The Amended Federal Sentencing Guidelines and the "Litigation Dilemma", Ethics Resource Center 2005-05 at http://www.ethics.org/resources/article_detail.cfm?ID=212 . As this article details, the "Litigation Dilemma" arises from the legal dangers of putting a code of ethics in place which then leads to a discovery of wrongdoing within the company and potentially provides the documentary evidence of such wrongdoing that can be used by prosecutors against the company.

[ii] See the document at http://www.thesmokinggun.com/graphics/packageart/enron/enron.pdf

[iii] See Hofstede, Geert and Hofstede, Gert Jan. (2005). Cultures and Organizations: Software of the Mind. New York: McGraw-Hill, p. 8-10 for an interesting discussion of value development.

[iv]Available on the web at http://www.gtech.com/site_resources/pdfs/GTECH_Code_of_Conduct.pdf

[v] See "GTECH considers buyout possibility; state is optimistic", in the 20 September issue of Providence Business News, available on the web at http://www.pbn.com/contentmgr/showdetails.php/id/116786.

[vi] See, for example, Boylan, Michael. (2001). Business Ethics: Basic Ethics in Action. Upper Saddle River, New Jersey: Prentice-Hall and Frederick, Robert E. (Ed.). (1999). A Companion to Business Ethics. Malden, Mass.: Blackwell Publishers.

[vii]See Gini, Al. (2005). Case Studies in Business Ethics (3rd ed.). Upper Saddle River, New Jersey: Prentice Hall and Velasquez, Manuel G. (2002). Business Ethics: Concepts and Cases. Upper Saddle River, New Jersey: Prentice Hall.

[viii] Bowie, Norman E. and Werhane, Patricia H. (2005). Management Ethics. Malden, Mass.: Blackwell Publishers.

[ix] An excellent effort in this area is a new text: Fritzsche, David J. (2005). Business Ethics: A Global and Managerial Perspective. Boston: McGraw-Hill.