IS THERE A BIFURCATION OF BUSINESS ETHICS? BUSINESS PRACTICE AS A MERGER OF ETHICAL OBLIGATION AND LEGAL DUTY

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I. INTRODUCTION

Business ethics is striving for a leading role in general business practice. After several decades of examining ethical issues mainly in licensing and certification in the professional areas of medicine, law, engineering, accounting and finance, ethics for business practices is formulating into recognized principles and procedures. Compared to the structure of licensing and certification standards leading to well-defined codes of professional ethics, the flexible concepts of *fair and equitable* business practice come from moral, economic and legal origins, and provide only formulative notions of a code of business ethics. This article examines the contemporary scope of business ethics at the macro-level of management of the business firm, explores the influences of business ethics at the micro-level of decision-making in the business firm, and discusses implementation aspects.

II. MACRO FACTORS IN BUSINESS ETHICS

A. OVERALL ATTITUDES OF BUSINESS

The business view of ethics covers the value spectrum from *fairness and equity* to simply *the race is to the speedy.* An illustrative value spectrum is presented in Appendix A, which identifies business responses to specific events and situations. In this Appendix, businesses are placed into five categories as categorized by their responses to three sources of influence on business practice: moral/ethical, economic, and legal. These categories are (1) fair and equitable business response, in which ethical consideration outweighs economic and legal; (2) neutral business response, where ethical issues are balanced with economic and legal; (3) race to the speedy business response, in which economic and legal considerations dominate the ethical; and (4) export business response in which economic factors are without concern for legal and ethical issues; and (5) early, pre- global business, in which only economic factors are considered.

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Various situations and business firms are represented in Appendix A. Selection was made to illustrate responses by business firms across business functions, business situations and to provide a wide range of business firms, including the federal government. Among companies rated as ethical on the fair end of the spectrum are those whose practices meet high standards of recognition for other parties directly and indirectly related; their number and identity abound.

While identifying ethical companies along the spectrum is difficult in the abstract, an equally difficult task is to codify expected conduct from members of the business firm. The task of achieving meaningful and useful codification has come under intense scrutiny and analysis. Methodology for determining compliance with such a code is an active consideration, but as yet is unachieved.

From a review of such effort, a clear conclusion is that expectations from the business firm have received the bulk of attention. That is, the individual within the business firm has standards, principles and prohibitions established to provide ethical behavior to others in some relationship with the firm. This ethical base is found as business policies, corporate codes of conduct, and/or prohibited conduct which causes either harm to the firm and/or to another entity.

The arena of ethical conduct not as broadly reported upon as a body of ethics is that of a firm's expectations of its managers. Those expectations arise from the multiple roles of managers in the business firm. Study of the roles covers corporate governance with legally enforceable duties, corporate culture with internal environment and traditions, and corporate social responsibility with various stakeholders. Clearly those roles are related to the economic performance of the firm. Whether maximum economic performance is the firm's goal, or sufficient performance to achieve economic targets along with good corporate citizenship is an acceptable goal, the ethical role of the manager is embedded in responsibilities under corporate strategy and corporation law.[2]

Two central issues are found in these two arenas of ethical conduct. One can be characterized as the dilemma of the manager, responsible in two directions; the other is the ethical and legal precept-terminology that bridges the two arenas. Overlap and parallels to ethics and law, have been studied to a useful result.[3] A review of this commonality of ethics and law[4] is a solid base from which to review external obligations and internal responsibilities and duties.

B. SPECIFIC POSITIONS IN THE BUSINESS FIRM As noted at the

outset, ethical conduct is widely and variously expected of

1. TOM L. BEAUCHAMP & NORMAN E. BOWIE, ETHICAL THEORY AND BUSINESS 99-102 (4th ed. 1993).

2. JOHN R. BOATRIGHT, ETHICS AND THE CONDUCT OF BUSINESS 18-19 (1993)

3. Lynn S Paine it,H *E,hics› and Managerial Judgment,* 12 J. LEGAL STUD. EDUC. 153

4. *See infra* notes 16-18 and accompanying text.

the business firm and its employees and officers. The range of expectations is extensive and intensive. Professor Badaracco aptly illustrates the internal ethical obligations of the decision-maker manager and considers ethical obligation based upon the various dimensions of the roles and responsibilities of the manager's position.[5] Included among the basic and secondary responsibilities which comprise the manager's ethical framework are role obligations, economic agent, new responsibilities, cooperative capitalism, personal values, and organization leadership.[6] Focused on the individual employee, and on the several roles composing the individual job position, ethical obligation is intensive.

1. Role Obligations

The individual business unit is part of the overall business firm. The fit of the business unit is integrated in the firm, contributing to overall goals, objectives and plans, and comporting with *soft* features of the firm's overall leadership, in its culture and tradition.

Relationships of the unit to the firm are well-defined, so that regularity can be assumed for decision-making. When the relationship is flexible or in change, then clearly the unit's role obligation becomes a dominant influence on decisions. Such obligations may compel hard choices on personal values and organization leadership, that is, utilitarian consequences and only direct influence on the unit. The contemporary illustration is a firm's downsizing, with both unit elimination and staff terminations.

2. Economic Agent

The business firm is legally responsible and liable to its owners for resources and accruals from resources. Policies and procedures define that responsibility in two ways. First is the legal duty of care or performance and the fiduciary duty of loyalty, including rendering an accounting for resources. Second is the lawful conduct of business, such as fair competition and legitimate practices. Specific policies and procedures implement these legal duties in operational ways so that individually and cumulatively the duties are met.

The manager's role in decision-making is proscribed from violating duties. For example, conflict-of-interest in transactions of the business unit fail the fiduciary duty and do not meet the obligation to disclose the underlying relationship, or role obligation. Fair and vigorous competition is an affirmative duty to use one's best efforts, whereas overbearing or deceptive practices are ethically proscribed. But where does vigorous competition merge into predatory practice?

[5] JOSEPH L. BADARACCO, JR., BUSINESS ETHICS: ROLES AND RESPONSIBILITIES 4-5 (1995).
6 ID.

3. New Responsibilities

The flatter decentralized organization has delegated more independent decision-making, that is, expanded the manager's zone of ownership and control. Business policies delineate how to treat decision-making within overall goals, objectives and plans of the company. Therefore, as decisions are made in regional and global activities of the business firm, the manager is called on to make timely decisions, independent of central approval. That independence is limited by authority actually extended as managerial discretion, by potential overlap with several managers, and by obligation to the organization. Personal values and organization leadership are the bases for the manager to consider the ethical course of action in new responsibility areas of decision.

4. Cooperative Capitalism

More managerial independence is required by the changed business environment. That environment has various relationships to the business firm, from stakeholder interests, to joint economic relationship with the community, to new challenging business relationships, such as global partnering and alliance. Intensity of influence on the decision-maker increases from the recognition of purely external parties to participation with actual partners in business activities. The more external, less direct organizational influence on the business decision requires more exceptional authority, with on-site course of action dictated by ethical and economic considerations under well-structured policies.

The modern dimensionality of the formal business relationship has expanded the need for independence in decision-making. One dimension is introduced by the *strategic alliance* with another business entity. Such alliance is flexible on a contract basis in contrast to creating a new entity under the joint venture approach. The basis for decision-making is influenced by the need to collaborate, recognizing joint responsibility to the allied entities with their differing goals, objectives, and plans. Contract terms provide some guidance, and internal influences are also determinative on the manager.

5. Global Operations

The global dimension also provides the need for independence in decisionmaking. The different business environment, encompassing social and regulatory differences from the domestic environment, requires marked independence in

7.Michael **A.** Hitt, R. durane Ireland & Robert **E.** Hoskisson, strategic MANAGEMENT: COMPETITIVENESS AND GLOBALIZATION 151-53 (1995)

[8]
decision-making. Given differences in societies and in governmental policies and procedures, the elements of personal values and organization leadership take on substantially greater weights. Personal obligations to foreign individuals, such as rights and dignity, character and virtue, and organization leadership impacted by spheres of role obligations and new responsibilities to the firm, such as duty to ownership and extended authority, take on different roles in decision-making. Policy guidance is provided under considerations of role obligation and economic agent.

In summary, the decision-maker is confronted by a conventional management problem, with a wide range of factors influencing the decision. Influences on an ethical decision can be grouped as *practical wisdom,* in arriving at a realistic course of action.[9] It is instructive to identify the various sources of influences, such as role obligation and economic agent. It is further necessary to determine how related factors vary in influence under different situations, particularly extended and global situations. The influences by the manager are embedded in the demonstration of personal values and organization leadership.

C. MACRO SHAPERS OF BUSINESS ETHICS

Given the specific positions and the economic-ethical expectation of management, the next step of inquiry is toward the business firm's influence to assure ethical conduct. At the overaT. firm level, some enforcement procedures are available to shape such ethical conduct and response.

1. *Post Hoc* Procedure

A costly approach to shaping ethical conduct is in capturing instances of failure to comply. Preventing the cost of violation to individuals, to business and business reputation, and to society would justify the cost of developing business ethics beyond the current level. No empirical cost information is available for determining the cost to business or implementing versus the cost of remedying violations. Anecdotal information is plentiful. For example, Procter & Gamble withdrew its *Rely* product (TM) in response to information on toxic shock syndrome without a factual basis that its product was linked. That response was costly: withdrawal of its distributed product, communication with consumers to buy back the product, and loss of market. The cost, totaling seventy-five million dollars, was to a business firm that acted promptly and decisively out of a focused concern.[10]

[8] PHILIP R. HARRIS & ROBERT T. MORAN, MANAGING CULTURAL DIFFERENCES: LEADERSHIP STRATEGIES FOR A NEW WORLD OF BUSINESS 179(1996).

[9] *See* Badaracco, *supra note* 5, at 42.

10.See BEAUCHAMP, *supra* note 1, at 100-01.

2. *In Situ* Compliance Methods

Various specific and general approaches are already available to determine ethical behavior in the business firm.

a. Interim Decisions

Within business decision-making, policies and procedures call for higher level approvals and oversight. Clearly this is the first instance available for an organization to determine compliance. Such determination is in the specific decision-making situation.

b. Affirmative Statement of Compliance

The appearance of corporate codes of conduct provides a basis for managers to express commitment. Illustrations of affirmative codes include a conflict of interest policy and a policy on corrupt payments to foreign government officials. In both instances, the business firm is protecting assets from loss due to conflict of interest and due to fines under the Foreign Corrupt Practices Act of 1977." Notice of contrary interests to the business firm is mandated under these affirmative codes. Notice here is the legal disclosure to owners and owner representatives. Further, some codes largely represent proscribed conduct covering a wide range of business practices. Where specific conduct is so identified, compliance is found in enforcing procedures against violations.

c. Due Diligence Investigations

In specific business areas, for example, financial affairs, corporate officials owe the basic duty of diligence to corporate affairs. This duty of due diligence is normative and requires employees to discharge the duties of their positions with that degree of diligence, care and skill which ordinarily prudent (persons) would exercise under similar circumstances in like positions."[12] This duty also includes an affirmative duty to investigate the veracity of information in areas of responsibility; the duty is a reasonable one, beyond mere inquiry.

With regard to ethical compliance, directors and officers have the duty to monitor compliance with the corporate code of ethics as found in business policies Clearly a due diligence inquiry to a reasonable extent of inquiry is called for when a prudent person would inquire. This due diligence inquiry is recognized as a good

11.15U.S.C. §78(1988).

12.WILLIAM E. KNEPPER, LIABILITY OF CORPORATE OFFICERS AND DIRECTORS 10(1985) faith defense against official liability and corporate liability.[13] The determinative factor is that the corporate code of ethics is operational, not merely in existence.

The mode of implementing the duty of diligence into ethical compliance is not entirely open. An approach used elsewhere is to identify "breeding grounds for trouble."[14] Proscribed areas of business practice[15] are a likely list of ethical problems. In particularly nettlesome areas, a due diligence meeting of corporate managers in specific corporate areas with duty-bound officers and directors is advised.

III. A BRIDGE FROM MACRO-TO-MICRO SHAPERS OF BUSINESS ETHICS

The macro level of influence on ethical conduct and response is described from points of view of roles in the firm and the firm's procedures on enforcement. Now, as this development turns to the micro level of influence on individual managers, an interim review that considers the language, terminology and concepts of ethics and law is offered. The close similarities are useful in recasting the macro considerations previously discussed, and in fully understanding the micro factors subsequently discussed.

The foundation study provided a comparison of ethics and law. Emphases of these two spheres may be shown differently directed:

13. Id. at 572.
14. Id. at 573.
15. Robert Chatov, *What Corporate Ethics Statements Say*, 22 CAL. Mgmt. Rev. 20 (1980).
16. *See* Paine, *supra* note 3, at 153.

OVERLAP AND PARALLELS TO LAW AND ETHICS[17]

Overlapping Systems

Dynamic & interrelated nature of law and ethics at different starting points, different times, different societies with different procedural characteristics; joint social disapproval and legal sanctions

Common syntax: rights, wrongs, duties

Terms & precepts: deception, promise-breaking, theft, overreaching, unfairness, injustice imposing unconsented-to harm on others

Emphasis of Ethics

Importance of ethical basis: to define quality of life and community ideas, aspirations (human excellence), good will, human sympathy, concepts of freedom, responsibility, well-being, justice, truth, rights, wrongs

Addresses misconduct, unethical behavior endorsed by social ideas exemplified in good practice

Emphasis of Law

Basis for law: reinforce and enforce obligations critical to social life through coercive power of the state

Imprimatur on accepted moral standards: condemn conduct failing to match, moral uprightness, fundamental honesty, fair play, right dealing, business life of society Criticism of law as ethical basis: poverty of reliance on law; lacks guide to right conduct; atmosphere of moral mediocrity; paralyze noblest impulses; legally permissible, legally required; still morally wrong

Leading & Lagging Indicators

Leading: social morality drives legal system; legislative & regulatory deals with social concerns

Lagging: social ethics demand on law for society with rapid technological change Matching: judicial processes as judge-made law

Overall: effect of strong legal system, respect for the law-> obligation to obey 4 expect others to obey

The ethical basis is on precepts that define the quality of life to the individual and quality to the community as a whole. From that basis, characteristics of freedom, well-being, and justice define the ambience of life to the individual and the community. Ethical behavior then is characterized as truthful and differentiating right from wrong. Unethical behavior is characterized as actual practice outside of, or contrary to, social ideals.[18]

Standards of behavior are classified into categories that are legally

17.*See id.* This chart is designed to illustrate Professor Paine's discussion.

18.*See* BOATRIGHT, *supra* note 2, at 19-22.

permissible (may do), legally required (must do) and proscriptive (may not do). Legal standards are set by social determination; those most fundamental to life and property are set by constitution. The power of the state is used to enforce behavior consistent with those standards.

Legal standards overlap with ethical precepts, but neither legal standards nor ethical precepts totally cover the other. From that perspective, behavior might be legally permissible, but still morally wrong. A leading illustration is a domestic firm's extraterritorial behavior that lawfully infringes on human rights and decency, as morally repugnant business conduct, for example, when a retailer accepts garments made in child-labor or prison-labor factories in underdeveloped countries for sale in the United States. It has been suggested that a legal focus on behavior paralyzes ethical impulses creating an "atmosphere of moral mediocrity."[19] Yet that conclusion is true only in limited spheres of conduct. In the supplementary spheres there are common concepts and parallel outcomes, within and outside of ethical precepts and legal standards. Behavioral terms in common with unlawful behavior are deception, promise-breaking, and theft. Terms for unethical behavior include overreaching, unfairness, and injustice. The syntax of terminology also commonly includes rights, wrongs, and duties.

Beyond commonality is interaction or even synergy between the ethical system and the legal system. Consider a structure of this interaction:

INTERACTION	**DESCRIPTION**	**EXAMPLE**
Leading	Social morality driving the legal system to deal with main social concerns	The V-chip for monitoring TV programming
Lagging	Unmet social demands on law	Control use of addictive products
Equilibrating	Judge-made law to enhance individual rights and liberties	Specific privacy rights of the individual

With this interaction, an overall effect of ethical obligations is an enhanced respect for the law, or for a vigorous legal system, and the setting of high expectations for others to obey the law. This interaction within the business firm is a main thrust of this article and is considered next.

IV. Micro Shapers of Business Ethics

A. Firm-to-Entities

The range of both externally-related and internally-related entities may be

[19]See Paine, *supra* note 3, at 159.

described in several ways. Within this range, obligations of the firm can be seen on both ethical and legal bases.

1. Stakeholders

The stakeholder concept provides a full range of related entities. Both directly related entities, on the basis of contract and regulation, and indirectly related entities have expectations of the business firm's conduct given the firm's activity. Various research efforts have identified stakeholders of a business firm. One study in the context of business ethics has listed direct stakeholders as including society, the government, shareholders and customers, and indirect stakeholders as including the environment, the local community, unions and dealers.[20] In addition, employees have a direct expectation of ethical conduct from the firm.

2. Spheres of Obligation

Where stakeholders are identified as individuals or collections of individuals, the actual performance of a business firm is transaction-oriented. Rather than focusing mainly on its status as an individual entity, the business firm is episodically and continually dealing with others. It is the effect of those dealings that is the obligation of business ethics.[21] The range of spheres may be illustrated as a continuum of ethical relationships in business from employee, consumer, environment, corporation and capitalism.[22] Core obligations exist in each of these five spheres. The business relationship to the employee includes the person, workplace safety, duty to the firm, and rights. To the consumer the relationship includes product and fairness. Common property, the duty to sustain and protect, and rights comprise ethical relationships to the environment. The relationship to the corporation includes stakeholders, culture, governance, along with moral and social responsibility. Finally the ethical business relationship to capitalism embraces ownership, social welfare, markets and incentives, and meeting demand and need. Society is not considered to be an independent sphere; it is represented in each sphere and collectively over all spheres.[23]

3. Business Policies

The business firm imposes its duties and obligations as established policies. Policies

20.Messod D. Beneish & Roben Chatov, *Corporate Codes of Conduct: Economic Determinants and Legal Implications for Independent Auditors*, 12 J. ACCT. PUB Pol'y 3(1991) [21]william h. Shaw, business Ethics 121 (1991).

21.William H SHAW, BUSINESS ETHICS 121 (1991)

22. Id. 141-42.

23. Id.

are intended as guidelines for compliance throughout the firm. To the extent the business firm is an ethical organization, its policies include its ethical obligations.[24] Four areas of business policy are presented related to business ethics:

1. External Entities	**2. Individual Obligations**	**3. Joint Obligations**	**4. Specific Programs**
Marketing	Unauthorized Use of Property, Trade Secrets	Environmental Issues	Employee Relations
Purchasing	Confidential Information	Shareholder Relations	Drug and Alcohol Abuse
Consultants	Insider Trading	Compliance Programs	Corporate Political Activity
Antitrust	Contracts		Foreign Corrupt Practices
	Conflict of Interest		

The non-program policies are fairly extensive, covering business activities in each area. Private and government expectations set standards for compliance by the business firm and its individual employees.

Probably the most limited set of ethical obligations is prohibited employee conduct such as bribery, commercial espionage, theft, extortion, receiving kickbacks, trading on insider information, and moonlighting. Limitations are given by statement in corporate codes of ethics. Behavior can be explicitly prohibited, generally prohibited, prohibited with minor exceptions, tolerated so long as there is full disclosure, or tolerated if there is no conflict of interest. To be consistent with the business firm’s ethical expectations, the proscribed conduct represents legal bases for sanction, even termination of employment. Such negative identification of ethical obligations does not contribute much to the full range of ethical and legal standards.

B. NATURE OF ORGANIZATIONAL LEADERS

In the most definitive role, the manager exercises direct influences on subordinates. Those influences are defined in the specific job position and based on the accumulated experience of the manager. Those job descriptions provide for recognition of the role and contributions of members of the organization. As with

[24] WILLIAM A. HANCOCK, CORPORATE COUNSEL'S GUIDE TO BUSINESS ETHICS POLICIES 72 (1995).

the organizational leadership dimensions,[2i] those provisions call for the rights and dignity of all employees, responsibility for personal well-being, and sustaining an ethical climate. How managers arrive at the correct decision requires, first, an appropriate balance and application of their own personal values, and then, a pragmatic, high-minded, resourceful and persistent ability.

Those personal values are categorized[26] as (1) utilitarian consequences (organization's welfare), (2) rights and duties as humans (humanistic), (3) character and virtue (moral), and (4) practical perspective (tradeoff recognized). A single decision is the consequence of weighing the four types of values and recognizing multiple considerations within each type. The fourth type probably involves the weighing process in a situation. The most frequent use and highest weight would be on utilitarian consequences. That is because the business situation should infrequently involve human-oriented considerations, such as the reputation of an employee, and personal morality, such as deceptive practices. Such considerations are not involved in most situations of decision making.

Multiple-modifiers are necessary to concurrently apply personal values and meet job position requirements. It would seem that a shallow decision-maker can default most dimensions of personal values and organization leadership, and focus entirely on the direct influence with most utilitarian consequences, for a technically correct decision in the job position. The mature decision-maker invests considerable weighing and resourceful effort concurrently in the decision.

The individual roles of the manager (personal values and organization leadership) fit within the context of the other recognized roles: role obligation, economic agent, responsibilities for extension outside of the organization (cooperative capitalism), and responsibilities in extended business relationship (new responsibilities). Two of those roles are within classic organization structure: role obligation, and economic agent. The other two roles are extended leadership of the manager into external relationships of modem commerce and trade.

C. VIEWS OF CORPORATE ETHICS

As there are many entities and many spheres which influence and shape ethical conduct within the business firm, there are many views of the status of business ethics in the contemporary corporate world. Clearly there is much skepticism that the corporation is ethical. Several broad views may be considered.

1. A Realism Perspective

A report on consulting experience provides a list of skeptical views of

25.*See supra* text accompanying notes 5-6.

26*See* BADARACCO, *supra* note 5, at 4-5.

corporate ethics.[27] First, stereotypes show that profit and ethics are necessarily incompatible, that ethical problems have simple (right/wrong) answers, and that ethics is simply compliance with law and regulation. Second, business conduct is deviant from ethical conduct due to greed, the sharp distinction between personal and professional ethics, as a shortcut in time of pressure and crisis, and uninformed on ethical fundamentals. Third, caveats that excuse ethical conduct include (1) difficult integration into mission and policy; (2) inescapable interference and roadblocks in the corporate structure; (3) outlays of resources without short-term return; and (4) the burden of implementation. These views of business ethics give both the measure and difficulty of implementing business ethics in the current environment.

2. Corporate Codes of Conduct

Rather than accept a sparse foundation for business ethics in the business firm, there is a clear need to have a system in place and operating. Corporate codes of conduct have been increasingly pronounced. There are numerous objectives for the business firm in adopting such codes. A remote consideration is that credible experience with corporate codes will forestall adverse business legislation.

A study of one hundred-sixty corporate codes has analyzed the content, and described substantive uses for the corporate code.[28] Foundation for the codes is derived initially from growing stakeholder influence along with questionable corporate conduct. Stakeholders are viewed as those with policy commitments: the government, shareholders, society in general, along with those less empowered such as customers, unions, environmental groups, and communities. More recently corporate codes have been generated from expanded bases for asserting corporate criminal liability.

Recognition of corporate criminal behavior was greatly expanded with the arrival of organization sentencing under the federal sentencing guidelines.[29] Organization criminal liability and sentencing are determined concurrently under the guidelines, based on (1) corporate internal controls, (2) independent supervision of controls, and (3) internal sanctions to deter illegal conduct. Clearly corporate codes provide a basis to protect against corporate criminal liability. It is further considered that corporate codes have the potential to isolate the corporation from imputed employee criminal conduct, that is, employee conduct that occurs in spite of an enforced code of conduct.

A study of corporate codes[30] shows that the content of corporate codes reflects industry differences, such as manufacturing versus service, the size of

[27] R0BERT A. COOKE, ETHICS IN BUSINESS: A PERSPECTIVE 7 (1990).

[28] *See* Benish & Chatov, *supra* note 20, at 5-7.

[29] UNITED STATES SENTENCING COMMISSION, FEDERAL SENTENCING GUIDELINES MANUAL (1992).

[30] *See* Benish & Chatov, *supra* note 20, at 5-7.

workforce, capital intensity, and the level of advertising. Content of the codes is keyed to attracting public confidence and exerting positive influence on the firms ethical conduct, and rejecting a view as window dressing. The influence of corporate codes of conduct in the sizable corporate arena is considered next.

D. MICRO-LEVEL INFLUENCE OF BUSINESS ETHICS

Audit and compliance programs are routinely applied in the modern business firm. Specific areas call for conduct to comply with regulation and performance standards. Extending compliance programs to measure ethical conduct of the business is recognized as valuable to the firm.[31] That view presents methodology to develop an ethical compliance program as externally focused, and as internally based in the firm.

The external focus is succinctly described as "corporate social reporting," which reports the results of activities that have a social impact.[32] This reporting is done as a supplement to the annual financial report, and by some firms, as a separate report on environmental affairs and on equal employment practice. In line with corporate control on financial reporting, a policy/social policy committee of the board of directors is responsible for such corporate social reports.

Given the joint economic, legal and ethical interests of the business firm, the internal compliance program has been a subject of research. This requires corporate strategy and corporate culture to be jointly managed.[33] Managing the corporate culture "to refashion in an ethical model"[34] is outlined based on the Business Roundtable's study of two hundred corporate codes of conduct.[35]

A management basis expressly shows the influence of ethics as having (1) positive participation and committed role of the organizational leader; (2) articulation of a code of ethics and of ethical goals; (3) processes for implementation and control at macro and micro levels of the organization; (4) criteria for measuring ethical performance; and (5) involvement of personnel at all levels. This management approach requires both conceptualization and institutionalization.[36] Conceptualization is essential as ethical conduct, or a code, and ethical goals are subject to continual revision. Institutionalization therefore must incorporate this moving target of conduct and goals.

Organizational leadership then is recognized as having a unique requirement, as a transformational leader, in contrast to a transactional leader. The transactional leader is viewed as achieving proper performance in exchange for

[31] Richard E. Wokutck & Barbara A. Spencer, *Corporate Saints and Sinners,* 29 CAL. MGMT. REV. 29,62-77(1987).

[32] Gerald E. Cavanaugh, American Business Values 234-38 (3d ed. 1990).

[33] Daniel Denison, corporate Culture and organizational effectiveness 26 (1990).

[34] Paul Steidlmeier, People and profits: The Ethics of Capitalism 183-92 (1992).

[35] Business roundtable, corporate ethics: A Prime asset 1 -34 (1988).

36. *See* Steidlmeier, *supra* note 34, at 183-84.

reward for compliance. The transformational leader is viewed as achieving elevated performance based on focused awareness to key issues and to group and organization performance. This approach to ethical performance integrates business performance along with the individual's self-fulfillment. In this way, a holistic institutionalization is achieved, as opposed to a utilitarian task-oriented approach. The importance of a code of conduct was emphasized previously. Again, clear articulation of the code is integral to leadership in the ethical compliance program.

Processes for implementation and involvement at all levels of the organization are essential to extend ethics to the business activities and decisionmaking of the corporation. An illustration of these processes is available in the environmental affairs, a prototype non-financial compliance program. A specific costly area of compliance is in emissions of *air toxins*, gaseous toxic substances discharged into the air. The associated environmental regulation, under the Clean Air Act places an investment burden to eliminate discharge, as well as an incentive for accelerated reduction of discharge under the schedule of standards. There is a severe penalty for exceeding current standards for emission. In a far flung business activity, multiple units are under such regulation. For compliance, each unit is apprised of standards for emissions and for the accelerated reduction program. Reports of recorded emissions allow the business firm to ascertain compliance, and to determine its options between investment-based and operational elimination.[38]

Clearly, compliance with ethical standards in decision-making is a difficult undertaking. Ethical considerations may be interstitial in some situations, and may be distinct and determinative in others. Ignoring ethical violation can cause a range of effects, from loss to the organization, to legal action against the firm.

Consistent with business ethics being pervasive in the affairs of the business, the means with which ethical conduct can be validated are numerous. Clearly, the need for ethical conduct and/or the severity of violation will emphasize a single means for ascertaining compliance.

V. Implementing Ethics in the Business Firm

Recognizing the pervasiveness of business ethics, it should be of little surprise that implementing business ethics is no incidental undertaking. As with any system in the business environment, implementation follows the normal rationale: (1) establish the need in the organization, (2) train leaders and employees in principles and application of the system, and (3) appoint responsible officials to support use and enforce compliance.

[37]42 U.S.C. §§7412(d)-(k) (1990).

[38]John P. Surma, *Tackling Corporate America's Environmental Challenge,* 36 PRICE WATERHOUSE REV. 10(1992).

A. IMPLEMENTATION RATIONALE

Organizational need is for both ethics and leadership. Ethics is said to be "the moral compass for tomorrow's leaders" and "a connection with employees." Ethics stimulates the corporate climate to be successful, productive, efficient, and in compliance with the law. As does leadership, ethics affects motivation and influences management processes.[40] It is further recognized that the newer corporate structure "of heightened autonomy", with decision-making and responsibilities at lower levels, requires that managers have a common set of values [41]

In addition to qualified trainers and appropriate employees to be trained, ethics training requires a workable ethics program. The content and structure of training are open, providing a sharing of experiences and collaboration applying clear ethical principles. Above all, training needs to be centered on the ethical code of the firm. The combined code and training program show the organization's firm ethical commitment, and is reasonable evidence in light of federal sentencing guidelines.

To some extent corporate general counsel is involved in the ethics organization.[42] Legal expertise participates in formulating and adjusting the corporate code, auditing compliance, investigating violations and administering appropriate sanctions.

Thus, the need for an ethics organization for implementation in the corporation is more than apparent[4'] As corporate codes are intended to be self- regulatory devices, the role of the ethics organization is based on exceptions, whereas the content of other corporate codes is more definite and comprehensive. The ethics organization takes the shape of need in the business firm, from dedicated to part-time personnel, and from individual position to committee. Those noted include a full-time ethics officer, an outside ombudsman, an outside audit firm, and a part-time ethics committee. In some instances, the ethics committee reports to the board of directors; in others, the board of directors has a board committee on policy and social policy which considers ethical matters.[44] Finally, in others it may be as a board committee specifically considering ethical outcomes.[45] An ethical audit shows, beyond specific findings, an evaluation of the overall ethics of the business firm.

39.Michael G. Daigneault & Moira McGinty Klos, *Will Your Company Be a Virtuous 21st Century Organization?*, 5 CORP. LEG. TIMES 29 (1994).

40.See BADARACCO, *supra* note 5, at 270-71.

[4l]Daigneault & Klos, *supra* note 39, at 31.

42. Id

[43]*Structuring the Ethics Office*, CONF. Bd,, Bus. ETHICS CONF., May 22, 1996, New York City (on file with author).

44.See CAVANAUGH, *supra* note 32, at 241.

45.Sprint Agrees to Form Special Committee to Review Ethics, Wall STREET J. , Oct 2 1993 at BIO.

B. Some Evidence on Ethical Interaction

A main thesis of this article is that business ethics do influence business decisions, and those business decisions are indeed ethical. For a final demonstration of this thesis, select contemporaneous business situations are presented in Appendix B. Again, an illustrative spectrum is displayed from a positive ethical stance: from

assertively ethical and determinable ethics to business firms' plea of criminal violation in an industry legal quagmire. The situations and categories were selected to demonstrate how business firms react to claimed, charged, or actual unethical conduct.

In most situations shown in Appendix B, recipients or victims of the conduct call for correction and/or compensation. Business firm response, in most situations, is remedial, either toward victims or on the business itself. Further, the illustrations show that ethical decisions and conduct are goals of the business firm. These require persistence in response, interaction through time, and remediation for lapses. The most severe lapses involve personal sanctions, and dire remediation involve the criminal justice system.

VI. Summary

The business arena for ethical encounters is broad indeed. As noted previously, extensive relationships exist with a range of entities external to the business firm. Also noted are the intensive spheres of demand on the decision-maker manager. Intensity is reflected in the complexity of decision-making situations. Some situations retain complex spheres of influence and multiple factors within spheres to make ethical decisions. Other situations, which are neutral as to organization structure and to participating units, are resolved with few spheres of influence and single factors within a sphere. To fully appreciate the appropriate relationships, there is a need to recognize and apply the range of economic, legal and ethical precepts, and to understand the terminology common to these external- internal arenas.

Equally there is need to develop a compliance validation for ethical decision-making and overall conduct in the business firm. Such validation does not come from a singular approach, but is to be found at the macro and micro levels of legal duty and ethical obligation in the conduct of business affairs. Here the duality of legal and economic duty and moral obligation have similar purpose and construct.

This article has provided some views into the range of ethics in business practice, and into some means for recognizing duality assuring ethical practice.

APPENDIX A. AN ILLUSTRATIVE VALUE SPECTRUM OF BUSINESS RESPONSE

FAIR AND EQUITABLE RESPONSE		
Event/Situation	**Business Response**	**Business Firm**
Documentation of Toxic Shock Syndrome [1980] (W. MICHAEL HOFFMAN & JENNIFER M. MORE, BUSINESS ETHICS: READINGS AND CASES IN CORPORATE MORALITY 636-641 (2d ed. 1990))	*Withdrawal* **of product without casual link at loss of market position**	**Procter & Gamble**
"River of Blindness" in developing countries [1987] (GERALD E. CAVANAGH, AMERICAN BUSINESS VALUES 222-223 (3d ed. 1990))	**Curative** *donated* **for treatment restricted to medical practitioners**	**Merck & Company**
Tylenol ™ tampering with 7 fatalities [1982] (GERALD E. CAVANAGH, AMERICAN BUSINESS VALUES 219-220 (3d ed. 1990))	*Crisis management* **approach; withdrawal of shelf product; notice to the public; redesign of product**	**Johnson & Johnson**

NEUTRAL RESPONSE		
Event/Situation	**Business Response**	**Business Firm**
Fetal protection as job requirement [1982- 1991] (JOHN R. BOATRIGHT, ETHICS AND THE CONDUCT OF BUSINESS 371-377(1993))	*Protect* **fertile women workers from hazardous conditions; unlawful under Civil Rights Act; limit own tort liability**	**Johnson Controls, Inc.**
Oil spill in Alaska Prince Edward Sound THOMAS DONALDSON & PATRICIA H. WERHANE, ETHICAL ISSUES IN BUSINESS: (A PHILOSOPHICAL APROACH 384-394 (4th ed. 1993))	*Non-negligent* **operation; clean-up expenditures; compensation for fishing loss**	**Exxon Corporation**

RACE TO THE SPEEDY		
Event/Situation	**Business Response**	**Business Firm**
Asbestosis, silicosis injury due to product [to 1982] (MANUEL G. VELASQUEZ, BUSINESS ETHICS: CONCEPTS AND CASES 121-131 (3d ed. 1992))	*Concealed* **health impact in production and installation; liability avoidance under Chapter 11 Bankruptcy**	**Johns-Manville Corporation**
Rear-end collision hazard from gas tank design [1971 +] (W. MICHAEL HOFFMAN & JENNIFER M. MORE, BUSINESS ETHICS: READINGS AND CASES IN CORPORATE MORALITY 585-591 (2d ed. 1990))	*Continued* **production not employing own safe design; lobbied against design regulation**	**Ford Motor Company**
Phony apple juice sale to infant market [1977-1988] (TOM L. BEAUCHAMP & NORMAN E. BOWIE, ETHICAL THEORY AND BUSINESS 173 (4th ed. 1993))	*Continued* **supplier arrangement under suspicion and evidence under financial strain**	**Beech-Nut Corporation**
Cigarette marketing via "Joe Camel" & "Marlboro Man" ™ [1967+] (GERALD E. CAVANAUGH, AMERICAN BUSINESS VALUES 206-208 (3d ed. 1990))	*Promotion* **to susceptible markets contra to health effects**	**RJ Reynolds & Philip Morris**

EXPORT BUSINESS PRACTICE		
Event/Situation	**Business Response**	**Business Firm**
Export aircraft sale to foreign governments [1972-1977] (JOHN R. BOATRIGHT, ETHICS AND THE CONDUCT OF BUSINESS 27-31 (1993))	*Facilitation* **payments to government officials prior to Foreign Corrupt Practices Act**	**Lockheed Aircraft Corporation**
Infant formula distribution in developing countries [1974-1982] (TOM L. BEAUCHAMP, CASE STUDIES IN BUSINESS, SOCIETY AND ETHICS, 150-160 (1993))	*Promotion* **without consideration of infant-feeding practice and water source for use**	**Nestle Corporation**
Export hazardous substances industrial chemicals and pesticides [1980] (TOM L. BEAUCHAMP & NORMAN E. BOWIE, ETHICAL THEORY AND BUSINESS 514-516 (4th ed. 1993))	**No prior** *informed consent* **under US TSCA and FIFRA versus UNEP notification and industrial self-regulation**	**United States Government**

PRE-GLOBAL BUSINESS PRACTICE		
Event/Situation	Business Response	Business Firm
Sale of electrical equipment to municipalities [1950s-1962] (DOUGLAS F. GREER, INDUSTRIAL ORGANIZATION AND PUBLIC POLICY 407- 410 (3d ed. 1992))	*Collusion* on price fixing; economic injury to specific markets & consumers	29 firms
Defense contract procurement under long term conditions with large firms [to 1986] (S. PRAKASH SETHI & PAUL STEIDLMEŒR, UP AGAINST THE CORPORATE WALL: MODERN CORPORATIONS AND SOCIAL ISSUES OF THE NINETIES 20-32 (5th ed. 1991))	*Expenses* undocumented and as suspect gratuities; created company & industry code; "best practices" code of conduct	General Dynamics Corporation

APPENDIX B. AN ILLUSTRATIVE SPECTRUM OF ETHICAL INTERACTION

ASSERTIVELY ETHICAL		
Company/Industry	Business/Market Situation	Ethical Stance
Phillips-VanHusen Corp. *venerable* shirtmaker (brands: Izod, Gant) [1996] (Wendy Bounds, *Critics Confront a CEO Dedicated to Human Rights,* **WALL ST.** J., Feb. 24, 1997, at Bl)	global apparel industry import- oriented; low labor cost; nonunion conditions	code for all suppliers and contractors; monitor HR programs for wages, conditions

DETERMINABLE ETHICS		
Company/Industry	Business/Market Situation	Ethical Stance
Dow Corning Corp. producer: silicones with other firms: 3M, Bristol-Meyers Squibb, Baxter Int'l Inc. (breast implant) [1996] (Thomas M. Burton, *Dow Corning Moves to Quit Chapter 11,* **WALL** St. J., Dec. 3, 1996, at AIO)	cosmetic surgery optional procedure restoration procedure conflict on i.s.i. effect individual vs cumulative increased small risk	accusation: immune system illness settlement withdrawn 400,000 claimants Chapter 11 reorganization

ETHICAL REPRESENTATIONS		
Company/Industry	Business/Market Situation	Ethical Stance
Nutri-Systems health food producer (health diet system) Joint Venture Johnson & Johnson [1994] (Richard A. Melcher, *Care and Feeding at Nutri/Systems,* BUS. Wk., Mar. 1, 1994, at 70)	diet program weight loss representation as healthful, balanced to adapt to *fitness* program	systematic health problems customer lawsuits FDA advertising complaint Chapter 11 reorganization with supplements to product

REMEDIAL ETHICS		
Company/Industry	Business/Market Situation	Ethical Stance
Texaco Inc. Integrated oil company (employment opportunity) [1996] (Peter Fritsch, *Texaco to Pay $176.1 Million in Bias Suit*, WALLST. J„ Nov. 18, 1996, at A3)	employment discrimination racial bias recorded views impact on promotion "Where we go from here"	remedial organization dedicated taskforce outside leader report status to EEOC settlement w/workers

EXPRESS UNETHICAL CONDUCT		
Company/Industry	Business/Market Situation	Ethical Stance
Morgan Stanley Citibank NA (e-mail correspondence) [1995, 1997] (Frances A. McMorris, *Citibank Workers File Bias Lawsuit over Racist E-Mail*, **WALL** ST. J„ Feb. 19, 1997, at A4)	modem business communication: offensive, inappropriate, racially based; by supervision, coworkers	employee lawsuits disciplinary actions suspensions reduced severance pay

INDUSTRY LEGAL/ETHICAL QUAGMIRE		
Company/Industry	Business/Market Situation	Ethical Stance
grain producing firms Archer-Daniels Midland Co Ajinomoto Co (Japan) Kyowa Hakko Kogyo Co (Japan) Sewan Co (S Korea) (high fructose corn syrup, lysine feedstock additive, citric acid) [1996] (Scott Kilman, *Ajinomoto Pleads Guilty to Conspiring with ADM, Others to Fix Lysine Prices,* **WALL** St. J., Nov. 15, 1996, at A3)	cartel-like conduct[46] price-fixing meeting output agreement sale to food companies and drink bottlers officers/executives cartel participants charged: fraud of employer[47]	US firm & US affiliate lysine, citric acid guilty **plea-^immunity** criminal fines (US Sentencing GL) damages to customers and shareholders -> **immunity** hfc syrup damages to customers change composition of ADM Board of Directors

[46]Holman W. Jenkins, Jr., *Hey Joel, This Is the Land of the Free, Remember?,* WALL ST. J., Oct. 29, 1996, at A15.

[47]Scott Kilman, *Three Ex-ADM Executives Are Indicted,* WALL ST. J., Dec. 4, 1996, at A6.