

Legal Studies - Ethics

- **ethics** –
 - ~ formal consideration of interests of others in deciding how to act
 - ~ values concerned w/ principles of actions)
- **values** ~ intrinsic worth that is worth acting for
 - ~ drive actions + ultimate derivative of motivation
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- **virtue** – live with honor and self respect, exercise self restraint
 - Aristotle - individuals are self fulfilled by practicing key virtues in all dimensions of life
 - Robertson – business is essential part of good life; abstract greed / π motive is character defect
- **Course themes**
 - mismatch b/w incentive schemes and society / corp level ethics needs (Bankers Trust + Sears)
 - split of authority for ensuring ethics – Gov't + Firm + Mgmt + EE + Public (Enron / Anderson + Sears + Lehman + SSB / gov't)
 - when to use competing theories
 - principles v. ends – JJ pulling Tylenol
 - utilitarian v. deontological – (SSB ~ gov't benefit from SSB making market in bonds)
 - mgmt role in ethics – (Sears + Lynn Paine Sharp's Organizational Integrity
 - **integrity based approach to mgmt** ~ concern for law + mgmt focus on ethical behavior → define company values / aspirations / thoughts / conduct
 - ◆ broader – enables responsible conduct
 - ◆ deeper – cuts to ethos of organization (not superficial)
 - ◆ more demanding – requires active effort to define requirements
 - ◆ responsibility rests at mgmt level
 - account for contextual factors – pressure to perform
 - recognize corp decisions = depend on 1000's of smaller decisions
 - **compliance based approach** – relies on reporting misdeeds to compliance officer → results in simply hiding misdeeds from compliance officer to avoid penalties
 - integrity m/b governing ethic – values / commitments makes sense / clearly communicated + leaders committed / credible willing to act + values are integrated into mgmt chain
 - ethics v. profitability – Donaldson says → ethics facilitate LT π (per empirical evidence)
 - BUT – evidence shows positive correlation b/w ethics code and criminal conduct (exception = after merger)
- **Cases**
 - Ethical Issues in Career Conflicts – Kathryn McNeil needing time off for childcare
 - Organizational Influences on EE Decision-Making – Sears
 - International Business – Merk & River blindness cure

I. Arguments Against the Value of Ethical Analysis

- **Relativism** ~ local custom requires international firms to follow local rules
 - local gov't may prefer lower standards to attract investment
 - **limits** ~ **universal principals** (these trump relativism
 - entire society can be viewed as unethical if fails to adhere to universal principles
 - **e.g.** - Profession setting its own code of conflict
- **Egoism** ~ act solely to maximize self interest
 - **psychological egoism** – humans not capable of considering the interests of others
 - **ethical egoism** – everyone has right to act in their own self interest
 - **criticism** – not satisfying as ethical theory b/c negative impact on society (~ encourages opportunism + sanctions harm to others)

II. Theories

- **Classical / Friedman – Social Responsibility of Business to Increase Profits**
 - corporation – is artificial / does not exist + cannot have responsibilities
 - corp exec = agent ~ has duty to conduct business in accordance w/ desires of S/H
 - cannot spend someone else’s money for preferred social goals (or w/b arbitrarily imposing taxes on S/H)
 - **principle argument** – government has responsibility of discharging social obligations + corp exec is not elected through the political process required to empower civil servants
 - ◆ if argue that gov’t has not / cannot fulfilling social duty → really just saying that you lost in the political process and trying to do an end around the views of society itself
 - **consequence argument** – how can exec discharge a “social obligation”? –
 - ◆ lack of expertise / moral authority + may be fired from job
 - **private competitive enterprise** – virtue is makes individuals responsible for property of others
 - **G/W justification** – is really just violating social responsibility b/c is fraud undertaken for π motive
 - S/H – same arguments – lack of expertise (do what you do best) + one S/H forcing will on others
 - Proprietor – Social responsibility is OK b/c you can do whatever you want with your money
 - market mechanism – relies on unanimity + society is collection of individuals + groups they choose to form
 - political mechanism – relies on conformity
 - Social responsibility – fraud + slippery slope (all human activity w/b eventually evaluated + assumes collectivist ends c/b achieved w/o collectivist means)
- **Neo-Classical** – fundamentally = π and social interest converge in the long run (if unethical → customers will discover)
 - **i) stakeholder** ~ exec’s principle interest is S/H BUT they should also consider stakeholders
 - treat interests on non-S/H as having intrinsic worth
 - problem – how value interests
 - **ii) social** -
 - implicit agreements shared b/w communities define limits of social behavior (unless violate fundamental / hyper norms)
 - why do we have firms? → gain productivity from pooling of resources
 - what do firms need? → limited liability
- **Maximal View**
 - investor is only a means to the end of making society better
 - concerned w/ π only to extent that it is necessary to prevent firm from going out of business
- **Ends / Consequential / Utilitarian** (Mills / later Plato) – based on outcomes / impact on society as a whole (~ ends justified means)
 - perspective = at society level
 - problem – how do you value society’s interests
 - solution – marketplace and voting
 - **act utilitarianism** – requires analysis of each action
 - **rule utilitarianism** – identify rules that maximize utility
 - relies on probability judgments that certain act will usually have a certain effect
 - **pareto superiority** – action improves the situation of at least one person and no one else is harmed
 - limits – effectively requires unanimous approval of society members + accepts status quo as a given + few policies meet requirement of harming no one
 - **kaldor hicks efficiency / wealth maximization** (not covered in class) – more relevant in Law & Economics
 - recognizes limits of pareto optimality
 - measures efficiency based on whether society realizes a net positive benefit
 - assumes – winners can compensate losers with winners still being ahead

- **Coase theorem** (not covered in class) – without transaction costs → people will bargain to efficient outcomes regardless of how property rights are initially divided
- **cons** – used to justified human horrors in history
- **pros** – recognizes that all actions have consequences

- **Deontological / Principles** (Kant / Plato) - duty based
 - **perspective** = at individual level

 - **duty hierarchy** –
 - i) fundamental duties - **categorical imperative of duty** ~ obligation existing as an affirmative duty in all circumstances / contexts
 - ii) specialized duties – promises + prof codes + role obligations
 - **problem** ~ duty conflicts
 - solution ~ resign from situation w/o breaching either duty
 - ◆ problem2 – mandatory duty (can't avoid duty conflict simply by leaving)
 - ◆ solution2 – hierarchical system of duties
 - **cons** – promotes rigidity + over-commitment to inconsequential interests
 - **pros** – reputation

- **Social Contract** (Donaldson) – focuses on allocation of resources b/w members of society
 - parties agree to K b/c – they are rational + recognize that the (implied) K is necessary to solve a problem
 - **Social K** ~ implied / informal understanding concerning norms of behavior t/b followed in certain contexts
 - **Donaldson** – see below
 - **stakeholder concept** – firms must consider the interests of **stakeholders** (~ anyone significantly effected by firms actions) in making decisions
 - e.g., - EE / ER

- **Donaldson (Social K)**
 - **basis** - an implied social K exists b/w society and the businesses operating w/i it

 - **global corporations** – must respect certain fundamental rights (freedom of physical movement + ownership of property + freedom from torture + fair trial + nondiscriminatory treatment + physical security + freedom speech / association + some minimal amount of education + political participation + subsistence)

 - **hurdles**
 - moral agents (seeking to implement social K) - suffer from bounded moral rationality (~ limited info / time)
 - ethical theorists (seeking to develop universal calculus) – similarly limited

 - **solution** – allow people to form their own econ groups & develop / adopt binding ethical rules
 - **moral free space** – parties want to keep all options open until confront full context of a decision
 - **BUT** – moral free space should be limited by **hypernorms** to prevent the adoption of unethical norms
 - ◆ **hypernorms** ~ super norms against which all other norms are judged

 - **conflicts** – resolved by looking at 6 principles
 - i) transactions w/i a community are governed by the host community norms
 - ii) local norms dealing w/ conflict resolution s/b respected to the extent that they do not adversely affect others
 - iii) norms from more global / extensive communities should be given greater priority
 - iv) norms essential to econ enviro of a transaction s/b given priority over norms that damage that enviro
 - v) if conflict b/w multiple norms → look for patterns of consistency b/w norms
 - vi) precise norms have priority over broad / general norms

- **Kohlberg theory of identifying ethical development**
 - stages – classify humans into 6 stages of human moral development
 - claims – everyone goes thru each stage + non one regresses +
 - use of theory ~ classifying ethical arguments put forth by individuals to justify their actions
 - criticisms – Kohlberg's study = limited to males + use of a hierarchy lacks philosophical justification + mgmt varies stage of moral development depending on context

- **Market Place Morality** - legal requirements of “good faith” / “reckless disregard” are defined in marketplace

- Law -
 - may be unethical – merely acting legally is NOT sufficient
 - consider difficulty of applying law to Execs
 - Federal Sentencing guidelines – sanctions reduced if (i) compliance program in place + (ii) mgmt coop in reporting investigating corp misdeeds