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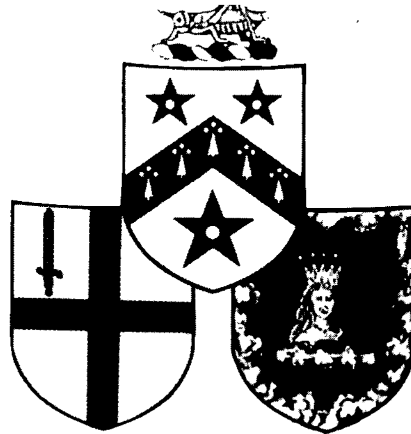

BUSINESS, ETHICS, AND THE LAW

Three lectures given by

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Lecture 1 - 7 March 1990
IS IT ENOUGH TO BE LEGAL?

Lecture 2 - 14 March 1990
BUSINESS AND THE ROLE OF THE LAW

Lecture 3 - 28 March 1990
BUSINESS, LAW AND MORAL MATURITY

GRESHAM COLLEGE

THREE PUBLIC LECTURES

BUSINESS, ETHICS, AND THE LAW

by

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of Commerce at Gresham College

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I. Is it enough to be legal?
II. Business and the role of law
III. Business, law and moral maturity

I

Is it enough to be legal?

In an earlier series of Gresham Lectures on business ethics entitled Business and Social Responsibility I devoted a lecture to 'Business, the Law, and Ethics'. My aim was to explore whether, and if so how, society should attempt to regulate the activities of business in its midst; and to consider the respective merits of legislation and self-regulation. The subject of law and business, however, is so important and so topical that it seems worthwhile to devote a series of lectures to it and to develop other aspects of the topic. And I propose to begin this series by considering two questions which it is not uncommon to hear among business people: what difference, if any, is there between business ethics and legal compliance? And is not all justice fulfilled by businesses simply keeping within the law in all their dealings? The answers I propose to develop are that there is a considerable difference between being ethical in business and being law-abiding; and that in ethical terms it is by no means enough to be legal.

Law and harm

If we begin with the latter point, I would want to maintain that if we consider the law and ethics as two different systems of influencing human behaviour, then a priority should be given to ethics over the law, on several counts. Many laws which are introduced in society are attempts to check or deter actions which have proved to be seriously harmful to a considerable number of people. In other words, when harm to the public reaches a certain scale in terms of the gravity of harm done and the numbers of people affected, then government decides to do something about it, because it considers such behaviour socially undesirable.

Protection is thus introduced for the future, but in the nature of the case what is now decreed as illegal because harmful was formerly legal and harmful, even if not notably. Before the total amount of harm was perpetrated which alerted the legislators there will have been considerable harm done, and before the number of people harmed becomes sufficiently large to call for public prevention there will already have been a considerable number of innocent people affected. What this indicates is not only that the purpose of

law is to deter unethical or harmful behaviour, but that it is a blunt instrument for that purpose, and necessarily involves a time-lag until the behaviour becomes socially notable.

Bad laws

Moreover, if we compare law and ethics it also emerges that law, or some laws, can be unethical, so that in such cases it would certainly not be ethically sufficient simply to be law-abiding. And laws can be unethical either by excess or by defect. Part of the purpose and the effect of the Sullivan Code to which many companies in the United States and elsewhere have subscribed as regulating their dealings in South Africa have been to defy the laws of apartheid in that country. For apartheid is recognised as being a gravely unjust repressive system supported by a whole body of law. I am not concerned here with the rights and wrongs of trading with or in South Africa, which does not appear to me so simple as it does to some others. What I am pointing to is the widely acknowledged fact that some laws in that country make demands of people in their behaviour towards others which are grossly unethical by excess.

In other countries, however, it is possible for the legal system to be unethical by defect. For instance, there are some business practices engaged in by international companies in certain Third World countries which are widely questioned on ethical grounds (one may think of some baby foods, or of cigarettes). It is not unheard of for the companies themselves to protest that their behaviour is entirely legal in the countries in question, and that they are therefore doing nothing wrong. Two questions which this must raise, however, are whether the countries in question should in fact legislate in order to protect the health and safety of their citizens, and whether in not doing so they are seriously remiss in their responsibilities for the public welfare. A further question may also be whether, or to what extent, companies which stand to gain by laxity in local legislation must bear some responsibility for such remissness, or whether at least local economic necessity compels governments to turn a blind eye to the harm being inflicted on their populations.

From what I have been saying, then, it appears to follow that we cannot make a simple equation in principle between legal compliance and ethical behaviour and argue that it is morally enough to be law-abiding. For one thing, law may eventually take account only of serious collective harm over time; and for another it is itself subject to ethical scrutiny, whether in requiring behaviour which is unethical or in not outlawing behaviour which is seriously harmful.

Ethics above the law

These considerations, however, raise a deeper question about the nature of law in society and they evoke the centuries-old historical oscillation between two views of law, whether it is based primarily on reason or whether it is based primarily on will, or power. On the whole it is not oversimplifying to suggest that the view which emphasises in law the idea of will or of coercive power originates in the late works of Plato and his idealistic and perfectionist view of reality. The law must be absolute and its power must not be diminished or undermined by allowing too many exceptions to it. By contrast, Plato's pupil, Aristotle, was much more of a realist. Where Plato viewed the law as perfect and the real world which we experience as defective, Aristotle concentrated on the richness of reality as we experience it, and viewed laws as imperfect in being abstract and unable to take account of all the diversities of experience.

Aristotle was above all concerned to examine what the purpose of any law is, and to recognise its roots in human reason as a rational means to an end. This was the view introduced into mediaeval philosophy by Thomas Aquinas, resulting in his conclusion that if a law did not fulfil the purpose for which it had been created, then it was unreasonable, and unjust, and simply ceased to be a law. Later philosophy, however, was to lose such confidence in the power of reason, particularly with Nominalism and the Protestant Reformation, and the primary idea of law became one of power to compel conformity, notably on the part of God and his revealed law, but also of monarchs and magistrates as deriving their power and authority from God.

That age of political and religious absolutism in due course gave way to the Enlightenment and the social and political movements of the American and French Revolutions, when the power of reason gained ascendency over absolutism and the democratic process demythologised, or detheologised, the majesty of law. To the present the two views of law, as the expression of power or as the expression of reason, still compete for attention, but it seems as if the view more consonant with human dignity must be that which accords primacy to human reason over coercive power as at the heart of any law. For one thing, if law is primarily power then unreasoning totalitarianism is forever waiting in the wings, and

change in the law is more likely to require recourse to superior force than to anything else. On the other hand, if law is primarily a matter of applied reason, then the capacity for development and reform of the law is inherent and assured in principle, and flexibility in its application is a matter of reasonable course rather than an apparent attack on the power of law.

Handling exceptions

This leads me to a final point in considering whether it is ethically sufficient just to observe the law. If law is primarily a matter of power, then it simply must be subject to ethical scrutiny and monitoring. The whole development of human rights, as we shall see in my next lecture, is in one sense a continuing ethical challenge to law as power. But even if law is primarily a matter of reasoning, of devising means to a chosen social end, then it too requires ethical control to prevent injustices. Aristotle saw this in his exploration of the moral virtue of *epieicheia*, or the capacity to identify permissible exceptions to a law. And today we acknowledge the same in identifying the 'legalist' attitude of mind. In other words, situations can arise when to stick to the letter of the law will produce results which are contrary to its spirit.

What this betokens is that we require a higher criterion above the law to be able to judge when a particular law should be observed and when it should be ignored. This is a different situation from that which I mentioned earlier, when the law can be unethical in general either by excess (cf apartheid) or by defect (cf inadequate health regulation). Here the law in general may be entirely reasonable and good, but what is in question is whether it should apply in absolutely every case. If legalism is to be avoided, then it is not enough just to be legal, in any area of life, including business.

II

Business and the role of law

In the first lecture in my series 'Business, Ethics and the Law' I explored the question whether it is enough to be legal, and I concluded that while legal compliance may in general (though by no means always) be an ethical requirement, there is much more to ethics in business, or in any sphere of human activity, than simply obeying the law. In this lecture I propose to consider what the purpose of law is in any society, and to consider how this applies to the conduct of business. I shall begin by recalling a famous debate which took place in England in the sixties on the purpose of law in any society, in the exchanges between Lord Justice Devlin and Professor H L A Hart.

Enforcing morality?

Devlin began by taking exception to the findings of the Wolfenden Committee which led in due course to the relaxing of the law in England on homosexual behaviour. He found the whole approach to the subject dominated by the thinking of John Stuart Mill. And he took exception to the way in which it thus distinguished between 'private' and 'public' morality, and gave primacy of respect to the liberty of the individual unless and to the extent that the exercise of liberty resulted in harm to other individuals in society. This, as he saw, led logically to the law withdrawing its writ in the area of homosexual behaviour from 'consenting adults in private'. But he felt that it also betokened a misunderstanding of the law's purpose. Its primary purpose was not to protect individuals, but to protect society, and to do this by protecting and promoting certain essential features of society, including its moral attitude to various types of behaviour.

Thus, for Lord Devlin, the purpose of law seems to be to protect a particular way of living in society, along with the values (including those resulting from its Christian history) which are considered important by its members and which are essential for its survival. In principle this entails that the purpose of law is to prevent sin, or moral wrongdoing. In practice, such a social policy would not always be feasible or capable of being enforced, but that was the general thrust which should animate all lawmaking in society. The purpose of law is the enforcement of morals.

In particular, Devlin questioned the principle that what people did in their private lives was of no consequence to the general public. For he maintained both that society has a legitimate interest in everything people do, and that the purpose of law is to uphold moral principles and an agreed moral code.

In taking issue with Lord Devlin, H L A Hart acknowledged that the development of the law in England had been influenced by common moral standards including Christian standards. But he upheld 'the realm of private morality' and individual liberty, and he vigorously restated Mills' objection to any form of paternalism in society,

which he saw as underlying Devlin's approach. He concurred with the view that actions which were immoral might be outlawed, but only on the associated grounds that they might be harmful, offensive or a public nuisance, and not simply on the grounds of their being morally wrong. He further recognised that public distress might be caused simply by the knowledge that certain activities were being conducted in private or without causing harm to others, but he saw this as overridden by the value of individual liberty.

An interesting entry into the debate came from the Oxford philosopher, Professor Basil Mitchell. He felt that Devlin underestimated the value of individual liberty as a value in society, and that he was too disposed to paternalism in wishing to legislate for morality. Both Devlin and Hart were agreed on the need for society's sharing some moral values as a matter of survival, but Devlin cast too wide a net, and Hart was willing to settle for the utilitarian values of not inflicting harm on others. However, it did appear that entirely 'private morality' needed questioning since it was difficult to separate it completely from the rest of one's behaviour and one's effects upon others. Mitchell's mediating conclusion was that any society required shared principles of 'basic platitudinous morality' and that the law was required to protect both individuals and some essential institutions.

The question remained, however, in Devlin's terms, how much is required in the way of basic shared standards for a society to survive. And it has become much more acute in recent years with the great increase of pluralism in modern society, a pluralism which arises not only from the increase in ethnic communities and identities, but also from the increasing differences in lifestyles and personal philosophies of many others in society. One line of answer appears to be to seek a highest common factor of values which will command social consensus while securing stability. But alongside this somewhat minimalist approach, in the interest of maximising freedom, there has developed since the Devlin-Hart debate an entirely new social emphasis in the identification and promotion of human rights, and correspondingly a more positive role for law in society.

Emerging human rights

The breakdown of European feudalism and absolutism was accompanied by the developing philosophy of human rights. Particularly through the writings of Thomas Paine and John Locke and the political revolutions in the United States of America and France, it became recognised that there were certain prerogatives and moral claims which belonged to all individuals simply by virtue of their being human beings, and that it was incumbent on society to recognise and protect such 'natural' rights. On the whole such rights were initially viewed in terms of political rights in society and of the protection of fundamental freedoms.

In more recent times, however, two factors have expanded the programme of human rights to include not only political rights, but also economic and social rights: the formation of the United Nations after the cataclysm of the Second World War; and the emergence of underdeveloped nations as players on the global economic and political stage. The result has been that where previously the law was seen primarily in libertarian terms of *protections* for individuals, to permit them to pursue their lives free of impediment from others, it is now increasingly also viewed in terms of *provisions* for individuals, and of actively promoting and providing the social and welfare conditions to meet and satisfy the basic human needs of all.

Rights in business

How does all this theorising about law affect business? I suggest in three ways. In an earlier series on 'Business and Social Responsibility' I explored the preference of business for as broad a climate of social freedom as possible in which to conduct its activities against the background of two views of society, the libertarian and the communitarian. And I suggested that a major consideration is how business can exercise its freedom in as socially responsible a manner as possible. The ideal would be self-regulation on the part of companies or industries, but there are good reasons, partly favouring business itself, for social restraints being enshrined in law.

In a sense, this view of the relation of law to business favours the libertarian approach, and from this viewpoint the responsibility of business can be summed up in the over-riding maxim taken from the medical profession of above all doing no deliberate harm (*primum non nocere*). At the very least, then, the ethical responsibility of business is to respect the law as and insofar as it protects other people. At the same time, as I noted in my last lecture, while the purpose of law is to prevent harm to others, it enters in only at a certain stage after considerable harm may have been done to large numbers of people. And this serves to confirm the idea shared by many that in society the law should identify the floor of ethical behaviour, below which one should not descend,

rather than be seen as identifying the sum-total of desirable ethical activity.

A second consideration is that as law moves beyond a basically libertarian attitude to identifying a more social and welfare programme for society as a whole, then it tends to identify positive expectations as much as negative restrictions. And this can find expression for business in the expectation that it not only refrain from inflicting harm but that it make a positive contribution to the life and welfare of society. Here is where, as I also explored in a previous lecture, the active social responsibility of business attracts increasing attention today. But my conclusion, then as now, is that the primary positive social contribution of business is to provide a service of value to society, and only thereafter to consider what more it might voluntarily undertake in terms of philanthropy or good citizenship.

One value of the increasing attention paid to human rights in society, to come to my third point, is that it is useful in helping to identify in increasing detail what constitutes the common interest, or human welfare in society. It is certainly true that the language of rights can become rhetorical, and that the total of what are claimed as human rights can become unrealistic and inflated. Nevertheless, when rigorously applied, the language is useful in identifying specific serious moral claims enjoyed by individuals and in undercutting purely utilitarian considerations in moral, and business, decisions.

In particular, so far as business is concerned, the idea of Richard Dworkin that 'rights are trumps' over other considerations can give welcome precision to the important but rather vague concept of 'stakeholders' in business decisions. Not that all human rights are absolute, of course. Occasions can arise when some have to be overriden. But the fact that they count as rights gives them considerable priority in all business deliberations.

Promoting human rights

When one considers the role of law in society today it is attractive to suggest that it exists to protect and promote human rights. For one thing, what this brings out once again is the priority of ethics over law. Positive rights accorded by law to citizens or subjects are the legal and social expression of prior moral claims which they each possess in virtue of their basic common humanity. It is true that the law confers such positive and legal rights, but in doing so it is recognizing basic human rights. And the whole human rights movement, including not only political but also social and welfare rights, is a continual stimulus and goad to societies throughout the world to enshrine respect and provision for such rights in their legislation.

If, however, as I have observed several times, law is inevitably slow to act, then although it is obviously true that in certain cases legal rights are not yet enjoyed by various individuals and so cannot be legally enforced on others, the human and moral rights which are the basis of eventual legislation already exist and are morally in possession. And the ethical responsibility of all in society, including business, is to recognise and promote those rights even before they may come to find juridical expression and determination.

One of the recognised difficulties, of course, of individuals claiming social and welfare rights is that of identifying against whom they can make their claim. For instance, if I have a right to employment, as many would maintain, it is not one which I can urge on a specific company. If there is any claimee it appears to be society as a whole, or government. And indeed the main thrust of a human right to employment appears to be to stimulate governments to reduce unemployment. Nevertheless, there are other rights to which I might reasonably make a claim against my employer, such as the right of information and training relevant to the discharge of my responsibilities, the right to welfare and health facilities consonant with my work, and the right to share appropriately in decisions affecting my future.

By way of conclusion, then, to considering business and the role of law, I suggest that what law does in normal circumstances is indicate and enforce throughout society, including business, a minimum level of public behaviour as expressing basic ethical and shared values in society. Above and beyond this, however, it is also an instrument through which society has begun to evolve, not simply negatively to protect but also positively to promote, basic human values. To that extent it may be considered as pointing towards what is a continuing programme for itself, and is also an ethical *desideratum* for other institutions in society, including business.

III

Business, Law, and Moral Maturity

In this series of Gresham Lectures I have been exploring the subject of Business, the Law, and Ethics, and in my first lecture I addressed the question whether legal compliance is enough for a business person to say that he or she is acting ethically. My conclusion was that, on the whole, being law-abiding in one's business transactions constitutes an ethical minimum, but that, for the reasons which I put forward, being ethical encompasses much more than just obeying the law. In my second lecture I considered the purpose and role of law in society, and recalled the important debate between Lord Devlin and Professor Hart on whether the point of the law is to enforce moral behaviour on its subjects. My conclusion then was that today the programme of human rights is increasingly providing the agenda for the law, but that such rights have a prior ethical claim on their own account, to which business should be correspondingly sensitive, even before they may become enshrined in legislation.

In discussing whether legal compliance is ethically sufficient I drew attention to the attitude which we know as legalism, or of being fixated on the letter of the law regardless of its spirit, and I argued that the best way to avoid such behaviour was to recognise that the law's purpose can be identified in ethical terms, and that this can act as a criterion as to when the law should be observed and when it may, or should, be morally ignored. This psychological freedom towards the law can be seen as a mark of moral maturity, and makes a useful introduction to my present lecture on Business, Law, and Moral Maturity.

Moral development

The two outstanding students of the whole idea of moral maturity have been the psychologists Jean Piaget and Lawrence Kohlberg; and the latter in particular has become a highly influential authority in educational circles. He rejects the idea of moral education as inculcating a determined set of values where loyalty is paramount and children are provided with a 'bag of virtues' which they are exhorted to practise in order to form their moral character. Kohlberg's preference is to follow Dewey and Piaget in stimulating the natural development of the individual child's own moral judgment and capacities without imposing a pattern on him. Preference is thus given to the idea of autonomy over indoctrination in moral education, and Kohlberg explored this subject by studying people's patterns of reasoning about the moral decisions with which he faced them. In this way he claimed to be able to sketch a picture of how growing children and individuals develop morally.

Kohlberg's approach was to follow the Socratic method of putting questions in order to create dissatisfaction with the standard answers. And this he did by facing children and young adults with moral conflicts for which the principles which they already possessed provided no ready solution. In this way they were led to question the rules which formed their morality and gradually to move beyond such rules, from a heteronomous morality of external and unchanging rules to an autonomous morality where laws have a purpose but are not an end in themselves. This step-by-step moral development was seen as just that; at any one stage the developing child was capable of being stimulated to move to the next stage, and to understand and accept it, but not to leap ahead over intervening stages of moral development.

Moral stages

The pattern of moral development which Kohlberg identified contains three levels which he called the pre-conventional, the conventional, and the post-conventional; and each level in turn contained two stages which could be identified. Thus the first stage of pre-conventional morality was characterised for him by the ideas of punishment and obedience as reasons for behaving. It begins with self-centred deference to a superior power which is capable of inflicting punishment if its wishes are not met. In this projection morality means obedience; and badness is determined by being punished by someone stronger than oneself. At this stage rules and laws have no other meaning, but are only indicators of pain to come if they are broken. For Kohlberg this attitude was characteristic of pre-adolescents about the ages of 10-13, although he also claimed to find examples among some fixated adults in prison populations.

In stage two of the pre-conventional level attention moves from punishment for 'bad' behaviour to include reward for approved behaviour. The egoistic pleasure principle is still operative, but now some idea of recognising other individuals is developing, and some rudimentary fairness and equality are being recognised. The beginnings of social awareness and reciprocity are being grasped.

With the conventional level of moral orientation a major step forward takes place as social aware-

ness develops to take cognisance of the value of the group and of its rules. There is a move from concentrating on the personal consequences of one's actions to incorporating the expectations of others; and belonging, identifying, conformity and loyalty are becoming the moral order of the day. In Kohlberg's stage three (the first stage of the conventional level) one meets what he calls the 'good boy / nice girl morality', where the aim is to please others and so to secure their approval and esteem. Positively what this entails is a recognition of the limits of egoism, the beginnings of seeing things from others' points of view, and the growing awareness of the value of cooperating with others in groups. It becomes a matter of pulling one's weight, and of finding one's self-identity in relation to others. At this stage of moral orientation approval is earned by being 'acceptable', and much importance is attached to conforming to stereotypes of what is considered 'normal' behaviour.

Kohlberg's 'stage four', or the second stage of the conventional level of moral orientation, he calls 'the law and order orientation'. This is characterised not just by seeking the approval of the group, but by recognising the importance of groups, or of the social order, and by adopting an attitude of strict adherence to law and order as the ultimate guarantee of people's rights in the social order. Right is defined as doing one's duty, respecting authority and thus preventing social chaos. It is at this stage of moral maturity that Kohlberg suggests most adults are to be found. However, he also introduces a 'stage 4 B' where attention begins to be given to what lies behind the rules of society or the group, and to the possibility of an ordering principle which provides justification for those rules and laws. This principle may be, for instance, the common good, which can lead to abandoning or changing a rule, or the views of the majority in society, or 'the moral law' which leads one beyond social rules or conventional roles in society.

So far, for Kohlberg, the four stages included in the pre-conventional and the conventional levels of growing moral maturity have indicated an increasing perception of a social system. With what he terms the 'post-conventional level' there is a move to evaluate the social system itself, and to adopt a detached and critical attitude to it in the light of an ideal order or of one's own developed principles. Thus, after a 'stage four-and-a-half' characterised by scepticism, relativism and alienation, stage five, as the 'Social-Contract Legalistic Orientation', comes to view the purpose of law as created for the common good, and transcends relativism and scepticism by seeking agreement on rational considerations of social utility. Consensus and collaborating to change the law as necessary for the common good are now operative principles in one's behaviour, rather than, as previously, a wooden insistence on absolute obedience.

The final sixth Kohlbergian stage of moral orientation moves beyond law and social codes as determinants of behaviour, to emphasise the role of self-chosen moral principles and of the individual conscience. Morality is no longer a matter of compliance with rules and codes, but of universal maxims, such as the Golden Rule, or of universal principles of justice, equality, and respect for individuals.

Is Kohlberg right?

Not surprisingly, various criticisms have been directed against Kohlberg's theory of the moral development of individuals through the successive stages which he identifies. Some have noted the selective nature of the groups with which he worked, males between the ages of 9 and 23 in the USA, South America and the Far East, as well as boys and men in criminal institutions. In particular, one of his former colleagues, Carol Gilligan, faulted him for choosing only males for his thought-experiments, and for visiting his conclusions of male moral development, in terms of a progression of attitudes to laws and principles, also on girls and women, for whom a contextual relational approach may be more appropriate.

Others have criticised his concentration on problems involving justice and his generalising from that to a theory about all morality, to the neglect of religious considerations and of a possible progression through various stages of love. Criticism has been directed at his emphasis on moral reasoning as the most important element of moral behaviour, as contrasted with the affective and emotional dimension of persons. And perhaps more seriously for educational psychology, there has been serious questioning of what is considered his unproven assumption that moral maturation invariably proceeds through all his six stages - and should be encouraged to do so. If it is viewed in terms of a scale of individual moral development, rather than of successive stages of moral reasoning, it easily becomes an undesirable test of achievement.

In Kohlberg's favour, however, from the ethical point of view, are his affirmation of the importance for individuals of the values of freedom, responsibility, conscience, and justice, and his

recognition of an innate but progressively refined, or refinable, sense of justice. Again, his emphasis on the role of moral reasoning about ethical dilemmas, on which he concentrates rather than on the 'answers' offered by his subjects, is a salutary corrective to subjectivist and emotional theories of ethics. His idea of progression through successive stages of such reasoning, as the principles on which one has been working are recognised as not quite capable of solving the problem at hand, also appears to do justice to the way in which at least some people's morality develops. Sometimes the experiencing of a serious moral dilemma betrays the inadequacy of one's present principles as 'counter-intuitive' and leads not necessarily to their abandonment but to their refinement in the light of such experience. Perhaps one American philosopher speaks for many people when he remarks that Kohlberg's theories on moral development 'coincide with what many people experience in their own moral development, and therefore his position, at least in its broad general outlines, is widely accepted.'

Application to business

In identifying three major levels in individual moral development Kohlberg was not maintaining that everyone achieves the third, post-conventional, level, nor that anyone invariably operates only on the third exalted level. Many people can operate on several levels according to situations, and sometimes even simultaneously. The pre-conventional level which argues in terms of avoiding personal discomfort (stage 1) or of being rewarded for 'good' behaviour (stage 2) is one which may play some part in many decisions arrived at for more 'advanced' reasons. And stage 3 of the conventional level where social acceptance and approval are all-important is no doubt an important, if not over-riding, feature in many people's moral deliberation. Whether it is desirable that these considerations should predominate and dictate one's ethical decisions is, of course, quite a different matter; and from the ethical viewpoint there can be little doubt that the later stages where awareness of the social reality come to the fore, but with a critical awareness of the inadequacies of 'conventional' morality, are more consonant with the idea of free and autonomously responsible decision-making.

The application to business decisions needs no spelling out, but it may be interesting to conclude by referring to attempts which have been made, along broadly Kohlbergian lines, to apply the idea of moral development to business companies as such, and not just to the individuals who belong to them. The study of corporate moral development apears a legitimate enquiry if one accepts that in some sense business companies can be identified as moral entities as well as legal entities, and that corporate ethical behaviour can be analysed to some degree by analogy with individual human behaviour.

The American philosopher Reidenbach, for example, identifies five stages of moral development in business companies ranging from, at the bottom, the stage of amorality where the sole concern is for financial profit to, at the top, what he calls a 'balanced concern' for profits and ethics. The amoral stage is typified by short-term ruthlessness, whereas the fully 'ethical' stage is one where ethics is never overridden and where all concerned are full partners in the systematic corporate goal of behaving ethically. The intervening stages two, three, and four, he terms the 'legalistic', the 'responsive', and the 'emerging ethical'.

At the legalistic stage, which may well represent the majority of American companies, the criterion for behaviour is what is legal rather than what is morally right. Laws are manipulated and resisted, but all legal standards are met as soon as they are imposed, and the general attitude is one of being reactive to ethical developments and of public relations damage limitation as and when necessary. At the 'responsive' stage a corporation is still on the whole reactive rather than proactive, but it has regard for its stakeholders as well as for responsible citizenship, and it is heavily influenced by the maxim that being ethical pays dividends.

More constructively, what is termed the 'emerging ethical' corporation has become more concerned with the ethical dimension of its activities as such, and with the need to be proactive, by introducing various structures into the organisation, such as codes of practice, ombudsmen and the like. Where this approach differs from the topmost stage, that of the 'ethical' company, is in the concern of the latter to adopt a fully ethical focus and to bring this to bear on its long-term planning. In other words, ethics is completely incorporated into the culture and goals of the company.

This typology of varying degrees of ethical awareness may be considered a useful one, not just in grading various companies, or successive stages in a company's ethical odyssey, but also in helping to identify and separate out the prevailing or predominant motives which can lead to corporate business policies and decisions. For our pre-

sent purpose, however, what it brings out, as also does the Kohlbergian theory, is the role which law can play in the consideration of ethical business behaviour. In my first lecture in this series I rejected the idea that ethics is satisfied by legal compliance; and in my second lecture I indicated that law's function in society is not necessarily to enforce ethical standards as such. In this lecture I have explored some considerations which appear to indicate that law has a bearing on business and ethical behaviour, but that law itself is a derivation and determination of ethical principles and values, by which it itself can and should be judged, and that these principles and values should also in their own right determine the moral quality of all business activities in society.

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- to foster academic consideration of contemporary problems;

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