

# Statutory Regulation versus Self-Regulation:

## Thoughts on Creating a Climate of Good Business Ethics

*Recent scandals in the business world have resulted in calls for more statutory controls on business. **Andrew Wadsworth** looks at various initiatives in self-regulation, including a National Forum set up by the Institute of Directors. While the arguments are finely balanced, he concludes that only strong ethical behaviour by individuals will change the culture and so prevent even more governmental regulation.*

I completed an Archbishop of Canterbury's Lambeth Diploma by thesis on Business Ethics and the Mission of the Church in 1994. A major conclusion of the thesis was that there is an ongoing tension about whether to use the law to enforce good business practice and stop abuses or to encourage

voluntary codes which businesses create of their own volition to promote good business.

This issue continues to be a vital and controversial matter, as has been seen in the failure of the social media platforms to remove dangerous sites on a voluntary basis. Stopping these

sites will entail legislation. The Chancellor of the Exchequer's recent spring statement revealed a further commitment to legislate to stop late payments of bills by large companies to small businesses. Both these areas of poor business practice, which have been constantly highlighted over several years, could





## Self-regulation

Business Integrity Award from the Independence Business Alliance, USA.

Photo: Independence Business Alliance

have been corrected without recourse to legislation if businesses had taken a more responsible approach. But there is nothing new in this issue. Ian Paistowe, a former President of the Institute of Chartered Accountants, wrote in the Times newspaper on 2<sup>nd</sup> July 1992 arguing for a voluntary approach:

“The principles on which a voluntary code of good business practices are based – openness, integrity and accountability – are particularly difficult to capture through a statutory code. In addition, statute law inevitably tends to be backward-looking and sets in stone the lessons of the past.”

However, regulation by statute law is necessary for a range of social and economic purposes, particularly to mitigate the worst effects of market forces. A case in point is competition law where economic efficiency is promoted by curbing monopolies; this is a good example of how regulation promotes business enterprise and initiative. Regulation in the areas of health, safety and environmental protection is essential for business to function in the long term. Abuse people in the workplace and you have no employees. Abuse the environment and there are no natural resources to create a business.

But such regulation must neither be excessively disruptive nor exorbitantly costly. In a dynamic economy there can be no rewards without risk and no system of regulation will stop determined fraudsters. Certainly the costs of such effective regulation would be astronomical and destroy enterprise. Even in a command economy in the name of equality and fairness as advocated by Marxists, fraud occurs and an unregulated black market in goods and services emerges.

A society which denies entrepreneurial risk inherent in permitting human freedom destroys its moral and spiritual base. Where every aspect of life is regulated there is nothing to strive for, and therefore no point in striving. Petty bureaucracy takes over to the detriment of individual initiative.

But enterprise is not simply a matter of competition and creating wealth for the individual; there is a need to be aware of the common good and to look to see how wealth creation can serve society.

State regulation raises fundamental issues about the expertise, legitimacy and credibility of those who implement it, whether as civil servants or lay representatives. Legislation does not create good business practice by itself.

Experience suggests that those most willing to serve on regulatory bodies are not best equipped. Furthermore state bodies place a premium on avoiding criticism rather than taking prompt and decisive action. Scandals do and will occur and the apparent shortcomings of the statutory regulatory bodies will be met with the cry for more rules and more money. Public expectations will be raised which cannot be met. Above all the statutory regulator will be concerned with the letter of the law and not with its spirit. There is increased bureaucracy and excessive supervision of companies.

Self-regulation in theory gives benefits of flexibility, sensitivity, practitioner commitment, legitimacy and economy. But its benefits need to be seen and demonstrated. Standards for staff education must be set. Clear statements of ethical guidance must be made, which are understood and can be implemented at every level of business and professional operation. Discipline must be exercised and seen to be applied where business and professional voluntary codes have been broken. Transparency in the conduct of business is a crucial element in self-regulation.

But all this begs a further question: how can self-regulation work in a business?

## 'The CEO sets an example of good behaviour'

Illustration from an article by Prof. Chris MacDonald in *Canadian Business*, arguing that there are plenty of business leaders of high integrity



Photo: JPM/Getty

As in schools with the head teacher, the person at the top of a company, the CEO or the Managing Director, sets the example of good ethical behaviour. But he or she also leads with proper strategies of sound business procedures which exclude bad practices such as bribery and fraud, proactively demonstrating high standards of service towards *all* the stakeholders in a business enterprise. Good consistent leadership is the prerequisite of self-regulation.

The challenge to all companies is creating a moral and ethical ethos and climate that works in practice. Part of this involves having clear agreed standards which all businesses agree upon. An attempt was made in the late 1990s to establish a common set of values which would act as benchmarks in the practice of business. A National Forum was set up, led by the Institute of Directors. It was a ten-

year movement to enhance the reputation of business through promoting enterprise and integrity – the Institute’s motto. There were three stages.

1. Developing and agreeing a statement of the common purpose and values that underpin the way business is done in Britain today. This was:

“The purpose of Business is to trade profitably and reward enterprise and effort. The best businesses do this while taking into account: the interests of the wider community, the values of honesty, trust, responsibility, fairness and innovation.” Two conferences were held at St George’s House Windsor in 1998 and 1999 to work this out. It was done under the auspices of the Royal Society of Arts, Manufactures and Commerce, the Institute of Directors and the Comino Foundation. I attended as a participant.

2. The second stage was to test the draft statement throughout the business community and its stakeholders to establish to what extent these purposes and values were present in business.

Interviewees were asked to consider a situation and choose from a list of possible actions the one which they would take and the one which they commonly experience business taking. In this way a measure of both expectations and experience was established and the gap between them ascertained. There is a model here which could be used to train employees in the exercise of good business ethics within a company.

3. The purpose of this stage was to communicate the research findings widely and to encourage companies to define their own purpose and values and to stimulate wide discussion.

The second and third stages were not implemented and sadly this initiative

did not come to anything substantial. However the outcomes which were sought remain sound and should be pursued today. They were:

1. A benchmarking process for British business that can be repeated to measure changes in the way business operates today in the UK.
2. A benchmark for British business from which individual companies can review their own purpose and values.
3. A statement that can be used to stimulate informed discussion both inside and outside business on its purpose and values.

What was interesting about all of this was that it was an attempt at self-regulation by the business community. It was led by the Institute of Directors who were the only body with sufficient integrity and respect who could initiate such a project, and I was the only Church of England representative present. The Church of England has done little since then to develop dialogue with such organisations to promote a common set of values for business. The Bishops in General Synod as part of their role in the established Church could take the lead on this. A clear statement of business ethical values could be researched and stated as part of the mission of the Church and in developing the common good without recourse to legislation.

There remains an overriding case for common values to be established in business, agreed and adopted voluntarily. For just as schools have an ethos backed by a statement of

aims, so also should businesses. Then having established their values, these can be translated into action and application.


The methodology which is described above in the Institute of Directors National Forum remains a valid way forward. But it was a tragedy that the initiative did not come to fruition. This was due to a change of leadership at the top of the organisation. The new leadership did not see business ethics as a key part of the operations of the Institute. I hope that it can be taken up again and pursued. But whilst I believe the Institute of Directors' approach was inherently right, another catalyst will be required with the necessary vision, respect, recognition and clout for this to happen and be taken forward again. It is difficult to see who can do this. The Church of England is impeded because it has little moral or ethical integrity as a result of the recent abuse scandals and will always be seen as 'lecturing'. Besides, the Church of England tends to be deeply distrustful of business because of the issue of financial greed at the expense of the poor and the dispossessed. There is the additional issue of what are the common values of the nation and business in our fragmented and individualistic culture, where most people believe they have the same authority as the Pope in matters of ethics and morals. People will not be 'told' how to behave. To achieve a framework of

**'most people believe they have the same authority as the Pope in matters of ethics and morals'**

morals and ethics in business will require determined and respected national leadership. It is difficult to see where that will come from.

Self-regulation versus regulation can be mirrored in St Paul's understanding of grace and law. Law does not change human nature; only the grace of God can achieve that. Just as grace promotes and creates good human behaviour in a believer, so too an enlightened company working out and applying business ethics at all levels will achieve far more in changing a poor business ethical culture than the statutory law's attempt to coerce and force ethical change.

For self-regulation to work, the bottom line is that all the stakeholders in a business enterprise must be responsible for their actions and have to exercise self-discipline in their

behaviour in all that they do. Much is made of workers at shop floor level exercising appropriate responsibility. But leaders in business have a double obligation: their personal behaviour must be exemplary in relation to all their stakeholders, and their leadership demands setting the tone as well as the direction of the company. Without that foundation in action the direct consequence will be increasing legislation and bureaucracy to correct the human failures in business practice. That will inevitably stifle creativity and enterprise. 



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