

LAW AND ETHICS IN ENTREPRENEURSHIP: SOME THOUGHTS

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ABSTRACT

This conceptual paper seeks to examine the importance of law and ethics in entrepreneurship. The scope of research is generally about the literature review on issues arising from law and ethics and the legal implications for such. The methodology used is a socio-legal analysis with reference to the legal texts and simple systematic review. The findings show that law and ethics are vital to mould the best practices in entrepreneurship which may have some effect on the investors's trust and business reputation as well as part of the corporate social responsibility.

Key Words: Law; ethics; entrepreneurship; impact, literature review.

INTRODUCTION

Law as a set of rules plays an important fragment to control and curb illegal practices in the local and global business environment. It provides rules of the journey undertaken for business road map. In simple form, it protects rights and imposes obligations. Generally, law gives the impression of perfection but practically there are still some grey area worth probing into and that is where ethics will fill in the gap. Law and ethics are equally important to shape the decision making process and moral concerns in entrepreneurship organization.

Law governs many aspects of business transactions including contracts, intellectual property rights, human resources, funding and debtor-creditors relationship such as insolvency. On the other hand, law also restricts certain type of businesses for example selling of human organs which is an offence and ethically wrong. As such, law and ethics complement each other to ensure the long term success of a business entity based on values and reputation. Thus, regardless the size, industry or level of profitability of an organization, business ethics are one of the most important aspects of long-term success (Melissa Horton 2017).

In terms of ethics, according to R. Edward Freeman (2000) business ethics, as a discipline, appears to be at a crossroads. Most philosophers are taking what they know of ethics and ethical theory and applying it to business based on tradition of scholars working in the area known as "business and society" or "social issues in management." Entrepreneurs are widely said to engage in rule breaking (George G. Brenkert, 2009). The object of business is money-making, but its essence is service (John F. Moors, 1916). John (1916) claimed that the recipient of this service must pay and the service of business is reciprocal.

George G. Brenkert (2009) examines the aspect of the ethics of entrepreneurship that relates to the changes and innovations with which entrepreneurship is frequently associated. Accordingly George G. Brenkert (2009) claims that it is often said that to be an entrepreneur one must break the rules, not accept conventional wisdom, but take advantage of the various opportunities that one identifies or can create. Following such injunctions may, of course, lead entrepreneurs to a number of moral dilemmas, especially when rule breaking takes place within legal and moral contexts George G. Brenkert (2009).

This conceptual paper seeks to examine the importance of law and ethics in entrepreneurship. The scope of research is generally about the literature review on issues arising from law and ethics and the legal implications of such. The research objective is to link the law and ethics as an important aspect in entrepreneurship. For ease of reference, the term entrepreneurship and business will be used interchangeably in this paper.

DEFINITIONS

According to the business dictionary, 'law' means "the binding rules of conduct meant to enforce justice and prescribe duty or obligation, and derived largely from custom or formal enactment by a ruler or legislature", while 'ethics' means "the basic concepts and fundamental principles of decent human conduct". 'Entrepreneurship' is "the capacity and willingness to develop, organize and manage a business venture along with any of its risks in order to make a profit."

The term 'ethics' is rooted in the Greek term "ethos", which translates into the term character. Ethics is a broader concept designed to promote the common good. Legal concepts can be used to promote ethics, or a common good, but they are not the sole definition of ethics.

'Entrepreneurship' relates to innovation and creativity while business normally about managing activities and profit driven. Obviously entrepreneurship is also profit driven but it dares to gamble risks to achieve targets.

METHODOLOGY

The methodology used is a socio-legal analysis with reference to the legal texts based on research in the field of ethics relating to law and entrepreneurship. In general, the processes and impacts of law and ethics are explored to examine the connection between law and ethics in entrepreneurship. Various texts were searched and selected for relevancy. A systematic review was conducted in which a total number of 703 searches resulted in the Cambridge University Press open access publication and 55 searches in the Oxford Academics Journal under the search title “law and business ethics”. Searches were then reduced to the related materials most relevance in the business environment. Only 20 articles were then refined under the title “law” in the Cambridge University Press open access publication and 8 articles in the Oxford Academics Journal.

THE LITERATURE REVIEW

There have been arguments that “the law is narrower in focus than ethics or morality” (The Ethics Centre, 2016). It was also argued that “so long as we’re fulfilling our legal obligations we can consider ourselves ‘ethical’” which was not “because the law outlines a basic standard of behaviour necessary for our social institutions to keep functioning” and “there may be times when obeying the law would require us to act against our ethics or morality” (The Ethics Centre, 2016). Integrity on the other hand, differs from ethics, morality and legality but integrity encompasses legality, ethics and morality. (Cressy et.al, 2010).

According to Fisscher et al. 2005, “...entrepreneurs, ... are regarded as creative innovators, are praised for their contribution to the development of society by creating new products, employment opportunities and thus opening new possibilities.”. However, “entrepreneurs are often criticized for a one-sided pursuit of business success and being willing to compromise moral values if needed” (Fisscher et al., 2005). In light of such criticisms, some have opined that due to this, “... the market itself become vulnerable to serious moral criticism” (Machan, 1999).

Jon Gillham (2015), an online entrepreneur summarized the differences between a business person and an entrepreneur is mainly of the following points-

- Originality of ideas
- Profit driven
- Risk managements
- Innovations

Milton Friedman (1970) believed that “there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.” (Milton Friedman, 1970). This contention means that the only social responsibility of business is to make money for its stakeholders and no one else as long as it is within the law.

Edward Freeman (2010) argued that businesses should also benefit other stakeholders and should also include employees, their families and the community related to the business.

According to Kirk O. Hanson (2015), a study in 2013 published by the Wall Street Journal stated that “most common forms of misconducts observed include anti-competitive practices, lying to employees, abusive behaviour, lying to customers, conflicts of interest and violations of health or safety regulations.”.

A report by the economic scientists from the University of Zurich in Switzerland on business culture and dishonesty in the banking sector, revealed that “prevailing business culture in the banking industry weakens and undermines the honesty norm, implying that measures to re-establish an honest culture are very important.”(Alain Cohn, Ernst Fehr and Michel André Maréchal, 2014)

Mollie Painter-Morland (2009) pointed about a succession of corporate scandals which rocked the international business community and as a result, many companies have invested considerable time, money and effort on the development of ethics management programs. However, in many cases, such programs are nothing more than insurance policies against corporate liability, designed merely to limit the fallout of scandals should they occur (Mollie Painter-Morland, 2009).

Companies increasingly recognize the need to commit to business ethics and measure their success by more than just profitability with the introduction of triple bottom line known as people, planet and profit. (Mac Donald, 2018).

Accordingly, trust in others’ honesty is a key component of the long-term performance of firms, industries, and even whole countries (Algan, Y. & Cahuc, 2013).

Raquel Baldelomar (2016) suggested that determining how much ethics versus profitability in decision-making could be a company’s values and mission statement. She further suggested that “...businesses should establish a code of ethics” which policies should include inter alia, the definition of the code of ethics, organisation core values, consequence of breach updated annually and a system where complaints could be channelled.

Raquel Baldelomar (2016) opined that “CEOs do have a responsibility to keep businesses profitable, But some businesses also value having high ethical standards” leaving the CEO not much of an option “that may negatively impact employees or customers.” She further contended that “CEOs should keep their company’s ethical barometer close at hand and remember that just because something is legal doesn’t always mean it’s right,” citing the case of the most controversial decision of Martin

Shkreli, the former CEO of Turing Pharmaceuticals, which raised the price of a drug called Daraprim by 5,000% from \$13.50 per pill to \$750 per pill overnight.

Ethics works well for investors on the basis of trust as their money is in good hands. Employees and customers will also be comfortable as strong business ethics would not allow unethical practices to continue. Reputation is also vital for which requires rapport and good track record. If reputation is tarnished, profits may fall and the elements of trust from investors will drop drastically where investors may withdraw themselves causing further losses to the business entity. Thus, unethical practices can affect businesses.

John C. Coffee, Jr (2017) researched on the factor in shaping law compliance and business ethics within corporations. He focuses on the impact of recent changes in corporate governance on ethical behaviour within the public corporation arguing that a style of corporate behaviour—one characterized by a risk tolerant, even reckless, pursuit of short-term profits and a disregard for the interests of non-shareholder constituencies—is attributable in significant part to recent changes in corporate governance, including the rise of hedge fund activism, greater use of incentive compensation, and the appearance of blockholder directors (John C. Coffee (2017). He opined that the consensus view is that ‘tone at the top’ is a critical factor in shaping law compliance and business ethics within corporations. and predicted that the problems identified are likely to get worse before they get better(John C. Coffee (2017).

Michael L. Michael, 2006 argued about how little attention has been paid on the nature of rules which may or may not affect ethical decision-making, despite the corporate scandals and having more laws and regulations. He further opined that such a relationship would have practical implications for regulatory policy and managers of organizations, and concluded by suggesting how regulations and corporate ethics programs should be able to improve the ethical culture of business and enhance the ethical decision-making skills of employees. According to Michael L. Michael (2006), the assumption that behaviour and the presence of law created the largest amount of self-conscious cheating. For example, areas which have laws will have most law breakers as compared in the area where law is absent.

David Vogel (1991) researched on the historical roots of some of current preoccupations with the ethics of business, that many of the contemporary criteria used to evaluate the ethics of business are not new; rather, they date back several centuries. He compared the historical and contemporary discussions of three sets of issues: the relationship between ethics and profits, the relationship between private gain and the public good and the tension between the results of capitalism and the intentions of businessmen. Business ethics constitute part of an on-going moral dialogue with both deep secular and religious roots (David Vogel, 1991).

Anne Riley, D. Daniel Sokol (2015) addressed optimal deterrence and its limits in the context of creating a more effective mechanism for antitrust compliance to take hold in businesses and suggested the need for the creation of proactive encouragement of compliance programmes where antitrust authorities should work with the business community to create a regulatory scheme that rewards good behaviour while punishing bad behaviour by understanding how to create and sustain compliance efforts within a company. According to Anne Riley, D. Daniel Sokol (2015), the proper role of an antitrust compliance programme should be to ensure compliance with the law and to promote ethical behaviour by and between companies as part of good corporate governance and the antitrust enforcement should not just be about punishment but about changing normative values within organizations.

In terms of the Islamic perspective, according to Ismail Cebeci (2018), Islamic economics is not based on only legal principles and mathematical calculations. Many Qur’ānic verses and aḥādīth emphasize the importance of ethics in economics. This fed a sizeable literature on Islamic ethics including such classics as al-Ghazālī’s *Iḥyā’ ‘ulūm al-dīn* and al-Māwardī’s *Adab al-dunyā wa-l-dīn*. He further reiterated that Islamic ethics and their relationship with economic activities are not dealt with adequately in modern scholarship, as most studies focus on technical and legal aspects of Islamic economics and Islamic finance (Ismail Cebeci, 2018).

Richard T. De George (1994) discussed from the international perspective, about the international business ethics that might involve broad issues about the economic inequality of nations, the justice of the present international economic order, the ethical status and justifiability of such organizations as the World Bank and the International Monetary Fund and of their structures and practices, as well as the ethical dimensions of international debt, and the claimed economic dependence of some countries on others, or such global issues as the role of industry in the depletion of the ozone level.

ISSUES

Entrepreneurs are widely said to engage in rule breaking (George G. Brenkert 2009). Entrepreneurship consists of ethical activity with legal implications. Thus, law and ethics are vital elements in entrepreneurship. Entrepreneurs are prone to involve in non-compliance and issues in legal ethics. According to Mac Donald (2018), the ethical influences of entrepreneurship also have more immediate and individual impacts. The very process of creating new products, services and markets is a journey with its own enormous ethical impact on the stakeholders immediately affected by the entrepreneur’s actions (Mac Donald 2018). The question is, how important is the law to mould a sustainable entrepreneurship by filling the gap with ethics?

SUGGESTIONS

Law and ethics obviously are equally important and complement one another in entrepreneurship. The impact if law and ethics are ignored in entrepreneurship, the effect could affect the business profit margin as the investors may reconsider or even worse, unwilling to invest. The reputation and good will of the business itself will be at stake. These factors may cause substantial loss to the entrepreneurs if not well taken care of. Further, consumers and the public at large control businesses in the sense that business entities that abide law and follow ethical rules are actually fulfilling its social responsibility which benefits the society. It is suggested as a measure towards effective entrepreneurship that the blend of law and ethics is exercised not as an option but rather a fulfilled requirement.

CONCLUDING THOUGHTS

Further research based on real data on profits and losses, market integrity and reputation of the business, would in a way reflect some relativity. The literature review shows the importance of both law and ethics blended together. However, the industry itself must have some level of awareness and continue to observe the importance of law and ethics in entrepreneurship as part of good governance and corporate social responsibility.

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