

Law & Business Ethics Research Initiative

There are growing ethical, social, and environmental problems one can experience in the current corporate world. The deepening crisis of the legitimacy of corporate functioning requires particular attention that need be paid to legal issues. For this reason, the *Business Ethics Center* of the *Corvinus University of Budapest* is launching a Law & Business Ethics Research Initiative to gather the representatives of *business ethics*, on the one hand, and *legal scholars* and *practitioners*, on the other one, with a view to mobilizing legal instruments. The aim of the initiative is to help corporations and other businesses with forming themselves more ethical and human, and less environmentally destructive.

1. Considerations of Business Ethics

- (1) How can legal means be used to enhance the social responsibility of businesses and make their CSR policies more effective and beneficial for all stakeholders?
- (2) How should the freedom of venture be considered, or even reconsidered, in the light of the idea of common good? To what extent can companies be subject to filing for a license to operate?
- (3) How can the liability of companies be restated and extended to the extent that they cause irreversible and irreplaceable damage to nature and future generations? How can the life cycle of companies be extended, and even pierce the corporate veil when necessary?
- (4) Which legal means should be used in order to make corporate accountability more realistic?
- (5) How can companies be encouraged by legal means to refrain from the misuse of their power, the abuse of law and tax-avoidance?
- (6) How can the responsibility of companies be enhanced vis-à-vis the wide spectrum of stakeholders, including local communities? How can the self-regulation and the ethically-minded legislation of local communities be developed within the boundaries of current legal institutions? (As good examples, fair trade cities or GMO-free territories can be mentioned).

2. *Legal Perspective*

(I) Contract of business association versus public registration

Formation of corporations, or rather justification of corporations, based on a bottom up approach (by way of contracts) or seen from a top down perspective (by means of public recognition):

What can we expect from statutory law, from the state, from national jurisdictions, or from community (EU) bodies, and what not? Can we expect alternatives to the traditional legal regulation? Can we envisage multifaceted and facilitating legislation? Can we require law to support self-regulation? Or can we foresee the establishment of a variety of fora for the settlement of legal disputes instead of the enforcement of distributive justice? Or the breakdown of the barriers between national legal systems and the removal of the harmful forms of regulatory competition? How can the principles of the equality before the law and proportionality, or the requirement of legal certainty and the efficiency in the protection of rights be interpreted?

(II) Company law and the law of enterprises (shareholder versus stakeholder)

Corporation:

Is the corporation a means of maximizing the shareholder return or it provides a venue for the achievement of the corporate social responsibility as well? Can shareholder rights be easily identified, or have investor and ownership schemes been broken down into partial rights that can be traded independently (due to the process like securitization)? Can fundamental rights be understood, independent of the related social costs? Do we have rights which are not deposited, but which can be discovered? Do we have innate rights the respect of which cannot be made subject to the assessment of the cost the society incurs to finance them? Who can be parties in the business life to the assumption of social responsibility?

(III) Form and type of enterprises

The crisis of „societas animus“:

Is there a continued need today of the preliminarily determined legal forms of companies or is it preferable to switch over to the (economic) types of enterprises? What does the size-related legal regulation (authorization of concentrations, company take over, publication duties, etc.) ensue in the modern business, company and financial law? Is business law on the way of being fragmentalized? What are the developments macroscopic legal mechanisms can cover (the requirement of the proper exercise of rights, the prohibition of distorting free competition, the conflict between the formal and beneficial owner, disappearing boundaries between tangible and intangible assets, problems of accounting for arm's length prices, etc.)?

3. *A Need for Law & Business Ethics*

In recent years, big corporations have discovered the significance of the corporate social responsibility issue. It has been proliferated with them to make sustainability declarations or advertise ethical codes, which they subject themselves to. As long as considerations of business ethics have been built in the daily practice of big corporations, the question of the review of legal institutions can be raised not only from the perspective the “law &

economics” suggests, but also from a viewpoint the “law & ethics”, or rather the “law & business ethics”, can denote. The “law & economic analysis” points out the limits on the operation of the law from its own viewpoint. That is, market players avoid following statutory law provisions where they can see that the sacrifice they have to make will exceed the benefits that may arise from the observation of laws. What is suggested this way is an approach of microeconomics, based on the market-oriented standards of efficiency. In a positive and systemic view of law, however, these limits cannot be seen or they do not seem to be as suggested.

In terms of the „Law & Business Ethics Research Initiative”, not only the question can be raised of how legal institutions can be evaluated from the perspective of ethics. Inversely, the question can also be raised as to whether there are legal instruments that can strengthen the ethical economic behavior. In the current business life, areas have been being proliferated where the nation state and the statutory law are not able longer to serve for social actors. In such circumstances, according to Gunther Teubner, the insufficiencies in legal regulation may lead to the paralysis of actions and the collapse of the social knowledge.

The question can be posed whether there are ethical values that can be associated with the legal installation and the operation of the reflexive law as experienced in practice. Would it be impossible, that would lead to catastrophes. This is because the ethical insight of the social practice can generate values the disregard of which would undermine the basics of living conditions. Eventually we cannot be successful in struggling for the living conditions worthy for the human life unless we admit that once there will be time to realize that the wolf and the lamb will clearly be distinguished from each other.

Scholars and practitioners interested in the Law & Business Ethics Research Initiative are welcome to contact the organizers.

Professor Dániel Deák
Institute of Business Law,
Corvinus University of Budapest
email: daniel.deak@uni-corvinus.hu

and

Professor László Zsolnai
Director, Business Ethics Center,
Corvinus University of Budapest
email: laszlo_zsolnai@interware.hu