

A CORPORATE EXECUTIVE'S SOCIAL RESPONSIBILITIES WITH REGARD TO LAW: COOPERATE, COMPLY, OR EVADE?

by

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This article examines the relationship between a businessperson's legal and social duties. In particular, it seeks to distinguish situations in which a corporate executive has a social duty to cooperate with the creation and implementation of business laws, from situations where mere compliance with those laws is sufficient. The article also inquires into whether certain forms of civil disobedience are appropriate in corporate settings.

Given the recent spate of corporate scandals, including widespread instances of white collar crime, an inquiry into the legal duties owed by corporate officers seems both timely and needed. A nuanced understanding of why businesspeople obey law, and an understanding of the conditions that are most likely to elicit cooperation can help inform the likely effects of any regulatory reforms.

The article proceeds in three parts followed by a conclusion. Part I begins with a brief review of the corporate social responsibility literature. This review supports the general normative proposition that a businessperson has a social obligation to inquire into the social purposes that underlie law and to cooperate with those purposes. Part I closes by examining and refining the normative implications of this proposition.

Part II then offers a positive perspective, asking not what business executives should do, but rather, offering a framework for understanding and predicting what business executives are most likely to do. Two reasons as to why businesspeople might cooperate with law -- pecuniary self-interest and public duty -- are distinguished and discussed.

Part III adds the details. It proceeds with reference to a hypothetical case. Analysis of this case illustrates and supports several propositions. First, the case demonstrates the extent to which businesspersons in some settings can ethically evade or disobey law. Second, the case illustrates that a businessperson's social obligations typically include a duty to cooperate with the spirit of the law, not just comply with its letter. Third, the case demonstrates that a businessperson's social obligations with regard to law vary systematically with the moral content that underlies the particular law in question. The higher the moral content, the greater is the duty to cooperate. Fourth, the hypothetical demonstrates that a businessperson's social responsibilities do not depend upon the organizational structure of the firm. The social duties owed by the chief executive officer of a publicly traded firm are identical to those owed by the owner of sole proprietorship. The article concludes with brief reflections.

I. RELATIONSHIP BETWEEN A BUSINESSPERSON'S SOCIAL AND LEGAL DUTIES

It is difficult to talk about a businessperson's social duties without referencing his or her legal duties. Social and legal duties are intertwined. A legal duty is enforced by a legal sanction such as a fine, imprisonment, or civil liability. Social duties, by contrast, include duties that are not enforced through legal sanctions. Social duties typically include legal duties,¹ but the concept of a social duty is more expansive.

The present task is to examine the extent of a businessperson's social duties to cooperate with law. A number of interesting questions present themselves. For example, when the letter of the law is vague or ambiguous, is a businessperson free to exploit that legal ambiguity for personal gain, or must he or she seek to cooperate with the intent or social spirit behind the law? If the law is inane or unjust, must the businessperson nonetheless follow it, or is she free to engage in a form of civil disobedience and intentionally evade the law? When lobbying, must the businessperson consider the public good, or is he or she ethically authorized to unabashedly seek the self-interests of his or her firm? And if the answers to these queries depend on other factors, what are these factors?

The analysis begins with a brief review of several well-known and influential works from the corporate social responsibility literature. Taken collectively, these works posit a fairly robust normative

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stance. That is, each suggests that businesspeople generally must cooperate with law and the regulatory process rather than seek to exploit it. After clarifying this normative proposition, its implications are examined more fully.

A. *The Corporate Social Responsibility Literature: A Normative Proposition*

The topic of corporate social responsibility addresses the goals a firm ought to seek. Academic discussions of the topic begin in earnest in the 1950s.² Howard Bowen,³ often cited as seminal thinker on the topic,⁴ offered a useful view of a businessperson's legal and social duties.

Bowen began his analysis with reference to the legal era preceding the Great Depression.⁵ This was the heyday of *laissez faire* with little or no direct legal regulation of business beyond that provided by the minimal dictates of common law. Bowen emphasized that under such a regime, businesspeople were expected to accept a self-imposed set of ethical principles as a guide to business behavior. For Bowen, these ethical principles included obligations "to honor contracts, ... to refrain from deception and fraud, ... [and] to protect the life, limb, and health of workers and of the general public."⁶ Under the *laissez faire* system, businesspeople were expected to cooperate with these duties even if they had no direct legal obligation to do so.

Bowen then illustrated how businesses in the 1920s failed to live up to these ethical standards. In his view, this failure of business ethics contributed to the lack of confidence that led to the Great Depression, which in turn led to the New Deal and the birth of widespread government regulation.

Writing in 1953, Bowen reflected on the emerging welfare state of the post-depression era. He identified a new social responsibility of business necessary to supplement the business ethics of the previous decades. He wrote:

[S]ince government has become, and will necessarily continue to be, a partner in all economic affairs, the businessman is expected to cooperate with government in the formulation and execution of public policy.⁷

Hence, for Bowen, a firm's legal responsibilities were not limited to mere legal compliance. They included an affirmative duty to *cooperate* with government regulations and business laws generally.

Writing in 1960, Keith Davis, also a well-known and influential author,⁸ continued this theme, penning what is now referred to as the "Iron Law of Responsibility."⁹ Davis emphasized that if businesspeople refused to accept the mantle of responsibility made possible by great wealth, then the government would fill the void. In essence, Davis' Iron Law admonished business leaders to use their great power responsibly or lose that power to a growing array of government regulations. The idea, much like that offered by Bowen, was that society had certain expectations of business. Those expectations could be addressed through direct regulation, or they could be entrusted to the goodwill and ethics of the business community. If businesspeople prove unable to self-regulate, the law would step in.

By the close of the 1970s, Davis appeared to be somewhat prescient. Government regulation and the establishment of a fully mature welfare state had arrived in full force. Society found it necessary to establish the Equal Employment Opportunity Commission (EEOC), the Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), the Occupational Safety and Health Administration (OSHA), and a host of other regulatory agencies designed to protect the public from corporate misconduct.¹⁰ In fact, by the close of the 1970s government regulation seemed to be addressing every important ethical and social issue faced by business.

Writing in 1975, Lee Preston and James Post offered a view of a business executive's social responsibility particularly attuned to the modern welfare state.¹¹ They analyzed two key issues: (1) the scope of the businessperson's social obligations, and (2) the criteria for assessing whether a businessperson was behaving responsibly. On the former issue, Preston and Post asserted that the scope of a businessperson's obligations were defined by and confined to his or her business activities. For example, a trucking executive would have responsibilities concerning transportation safety, fuel economy, and labor union issues. General philanthropic concern with providing shelters for the homeless, by contrast, would be too far afield.¹² On the second issue, assessing responsible behavior, Preston and Post identified a single criterion—cooperation with the creation and execution of "public policy."¹³

In a welfare state in which government regulations touch virtually all aspects of corporate life, the notion that cooperation with those policies provides not only a necessary, but also a sufficient criterion to

assess corporate conduct makes intuitive sense. Preston and Post emphasized that their notion of “public policy” went beyond the letter of the law to the social policies that underlie law. It includes not only the rules and regulations spelled out in federal codes and state statutes, but also the spirit that underlies those rules and regulations. Hence, like Bowen, Preston and Post defined an executive’s social duties to include a duty to cooperate, not just comply, with law.

B. *Normative Implications*

Taken collectively, the works of Bowen, Davis, and Preston and Post offer a fairly progressive and robust view of a corporate executive’s social duties with regard to law. This view casts law and government in fairly positive lights. Regulators regulate in the public interest and regulations reflect the aspirations of a democratic society. In such a world, businesspeople are expected to cooperate, not just comply.

Of course, not everyone shares this progressive view of law and government.¹⁴ In 1980, Ronald Reagan campaigned on the slogan: “Government is the Problem, Not the Solution.”¹⁵ Central to his successful platform was a promise to “de-regulate” businesspeople on many fronts.¹⁶ Sounding at times like an empowered Ayn Rand, the Reagan revolution ushered in a wave of conservative rhetoric largely disrespectful of government regulations.¹⁷ According to this new conservatism, government regulators may be capable of doing good, but they are certainly capable of ineffectual meddling. Regulations do not always serve the public good, and some things that are currently regulated might be better addressed through a market supported solely by common law and business ethics rather than through affirmative regulation.

There is, of course, some truth in both the progressive and the conservative visions of government regulations. Regulations vary both in moral content and effectiveness. Some regulations serve important public purposes quite well; others are inane or perhaps even harmful. In this light a businessperson’s social duties with regard to law vary with regard to the regulation in question.

Consider for example, a regulation designed to protect the health and safety of workers in chemical plants. A chemical-industry executive would have a fairly robust affirmative social duty to cooperate with safety regulators, to take steps to assure that regulations reflected the proper level of precautions, and to cooperate with the implementation of those regulations. Regulations concerning issues directly affecting human health and safety have high moral content and call upon a spirit of cooperation, not mere compliance or evasion.¹⁸

Regulations with lower moral content require less cooperation. Consider, for example, a general tax regulation, the purpose of which is to generate revenues for the government and to assure that everyone pays an equitable share. These social purposes are important, but do not carry in the moral saliency of health and safety on the plant floor. Hence, in the general tax arena, the executive’s duty would seem to be no more extensive than mere compliance. In fact, the executive could ethically defend most decisions to exploit tax loopholes and to lobby for reduced levels of taxation. When it comes to tax, the societal norm seems to be “comply,” not “cooperate.”

Some regulations have no moral content. When this is true, the businessperson would seem to be free to evade the law or comply with the law in accordance with the dictates of self-interest. For example, consider the social duty to comply with a misconceived environmental regulation. Suppose that compliance with the letter of this law actually causes more damage to the environment than good. In such a situation, the executive would have no social duty (though he or she might a legal duty) to follow the law.¹⁹ In fact, he or she may have a social duty to disobey it.

C. *Summary*

In summary, the above discussion suggests that a businessperson has a general moral obligation to inquire into the social policies that underscore the regulatory environment in which he or she operates. The decision to comply, cooperate, or evade a particular regulation should also include an inquiry into the moral content of the specific rule. The higher the moral content that underlies the law or regulation in question, the greater is the social duty to cooperate. If the spirit or purpose of the law has little or no moral content, the businessperson is relatively free to seek self-interest.

II. WHY PEOPLE OBEY LAW

Having explored some reasons as to why businesspeople should obey law, the discussion now turns to factors that make it more or less likely that they will do so. Two reasons are proposed. First, people obey law when legal obedience is in their own pecuniary self-interest. Second, people obey law because they perceive and accept a public duty to do so. The discussion focuses first on pecuniary self-interest. It then considers situations in which self-interest and public duties conflict.

A. *Pecuniary Self-Interest*

People are motivated by pecuniary self-interest. Most often it is within a person's own pecuniary self-interests to obey law. The person calculates the potential gains from illegal behavior and compares those gains to the potential costs associated with criminal and/or civil sanctions and loss of reputation. When projected costs exceed projected benefits the person has no pecuniary incentive to break the law.

Although the logic of self-interest is easily understood, calculating the pecuniary effects of illegal behavior can be quite complex.²⁰ Suppose a business executive is considering engaging in insider trading. Quite a number of factors appear relevant.²¹ First, the executive must assess the likelihood that her crime will be detected. This is dependent upon a number of factors including the amount of precautions she takes to conceal her crime. Second, the executive must calculate the likely consequences of getting caught. These include, among other things, assessing legal expenses, predicting the likely judgments in both criminal and civil proceedings, and estimating the market costs to her reputation. The executive must also consider various opportunity costs, such as the benefits forgone while she spends time plotting, concealing, and potentially litigating her crime. There is also a pecuniary opportunity associated with time spent in a minimum-security prison. The executive sums these various costs and compares them to the potential pecuniary gains from cheating investors. Of course, this comparison is embedded in uncertainty. The executive cannot foresee the costs and benefits effects of her crimes with precision. To account for this the rational executive adjusts her comparison to reflect her aversion to risk.

Of course, people are not always so calculating.²² More commonly, people are creatures of habit obeying law without reflection.²³ But sometimes a person might actually consider breaking the law. Interesting questions arise when that person does a thorough risk-adjusted cost/benefit analysis and convinces himself or herself that it is in his or her own pecuniary self-interests to engage in illegal activity. When this occurs, does the person break the law, or does she restrain herself? In such settings, one's sense of public duty and one's own sense of personal shame and conscience take on heightened importance.

B. *Public Duty and Non-Pecuniary Self-Interest*

A person does not always break the law just because it is in his or her interest to do so. After all, people are capable of restraining themselves. This may be because people value things other than money. For example, a person may feel a sense of shame from blatant criminal activity such as arson and insurance fraud even if their guilt goes completely undetected.²⁴ If this is true, then it is in this person's non-pecuniary self-interests to obey laws regarding those crimes. Alternatively, a person may restrain himself out of an altruistic sense of public duty. Perhaps this person has respect for the rule of law in general, or a respect for the purposes that underlie the particular law in question. As a practical matter, however, it matters little whether people are motivated by self-interest or by altruism.²⁵ The point is that people sometimes obey the law even when it is in their pecuniary interest to disobey.

It also seems reasonable to assume that businesspeople will obey or disobey laws in systematic ways. On the one hand, white-collar crime is positively correlated with the promise of pecuniary gain. The more profitable the crime appears, *ceteris paribus*, the more likely it is to be committed. On the other hand, legal obedience also depends on the person's sense of fidelity to the law.²⁶ The more respect for the law businessperson has the less likely the crime. The level of respect, in turn, would depend, at least in part, on the moral content of the particular law. The greater the moral content as perceived by the businessperson, the less likely the crime.

III. EXTENDING THE ANALYSIS

To explore both the normative duty to cooperate with law and to understand how one's sense of public duty and self-interests are likely to interact, consider the following hypothetical case. The case involves a businessperson who must decide whether to cooperate with a series of environmental regulations. Relevant to the discussion are the letter of the law, the social spirit that underlies the law, the pecuniary self-interests of the businessperson, and the businessperson's sense of fidelity to law.

An Illustrative Case Cooperate, Comply, or Evade?

A manufacturing firm is operated as a sole proprietorship. The firm's owner must decide whether to implement costly controls to reduce emissions of a set of toxins. Without controls, emissions of each of four toxins would be 25 parts per million (ppm). The Environmental Protection Agency (EPA) regulates emissions of toxins A, B, and C, permitting 10 ppm for each toxin and providing fines for exceeding those limits. Emissions of Toxin D are not regulated (see Table 1, Column 1).

The firm's owner, who is also an environmental engineer and a Ph.D. toxicologist, is convinced that Toxins A and D are dangerous unless sufficiently diluted. In fact, the owner believes emissions of Toxins A and D would only be safe at 10 ppm, not beyond. The owner also believes that Toxins B and C are not dangerous. The owner is convinced that emitting at 25 ppm of either of these two toxins poses no significant harm (Table 1, Column 2).

Upon conferring with legal counsel, the owner concludes that after accounting for potential criminal fines, civil liabilities, and the possible economic harm to the firm's reputation, it is not cost effective to control for emissions of Toxins C or D. It is, however, in the owner's pecuniary interests to reduce emissions of A and B to 10 ppm (Table 1, Column 3).

What will/should the owner do? Emit at 10 ppm, or at 25 ppm?

	Letter of Law	Spirit of Law	Profit Max	Decision
Toxin A	10 ppm	10 ppm	10 ppm	10 ppm
Toxin B	10 ppm	Unregulated	10 ppm	10 ppm
Toxin C	10 ppm	Unregulated	25 ppm	25 ppm
Toxin D	Unregulated	10 ppm	25 ppm	10 ppm

TABLE 1

A. *General Discussion*

Table 1 summarizes the salient facts posed in the hypothetical case. The contents of first and third columns should be fairly self-evident. The first (letter of the law) simply reflects the regulations as specified in the first paragraph of the case. The third column (profit max) indicates whether emitting at 10 ppm or 25 ppm would be in the pecuniary interests of the owner, given the current state of the law. As discussed previously,²⁷ the profit maximizing decision depends on such factors as the likelihood of detection, likely fines and prison terms, potential civil liabilities, and potential economic harms to the firm's reputation if illegal activities became publicly known. Column 3 reflects the level of emission the owner would choose if his or her only motivation were to maximize his or her own pecuniary interests.

The second column (spirit of the law) requires a bit of explanation. The "spirit" of the law refers to the policies that underlie the law with particular emphasis on the social and ethical values that the letter of the law either reflects or seeks to project. Ideally, the "spirit" of environmental law includes, at least in part, a utilitarian calculus in which the likely consequences of alternative level of emissions have been identified and weighed. Relevant consequences include the impact the toxins will have on the ecosystem, wildlife, and ultimately on humans. Other relevant consequences include the need for economic efficiency in the firm's manufacturing processes. Ideally, the spirit of environmental laws will also reflect certain

deontological values. For example, recognizing the ultimate consequences of toxic emissions may be hard to predict, regulators may decide that they have a duty to error on the side of public safety.

Hence, the second column of Table 1 reflects the level of emissions that should be allowed given the current state of social mores and values and the aspirations that the society wishes to realize. More precisely, Column 2 of Table 1 reflects the owner's good faith assessment of what the regulations should be. In short, it reflects what the owner thinks that a "properly balanced" and publicly-minded regulation should provide.

B. Predicting and Assessing the Owner's Decisions

The final column of the Table 1 provides a prediction of what a reasonable owner would most likely do given the letter of the law, the social spirit of the law, and the logic of pecuniary self-interest. It also provides an avenue to discuss what a responsible owner should do. The positive prediction and the normative implications with regard to each toxin are considered separately.

Toxin A: The Normal Case

Toxin A reflects the most common state of affairs. Both the owner and the EPA officials agree that it is in the public's best interests to make sure that Toxin A enters the environment in a diluted form (10 ppm). It is costly for the firm to reduce emissions for Toxin A. But given the current state of the law, including the fines and likelihood of detection, it would be even more costly for the firm to not control these emissions. Thus, it is in the owner's own pecuniary interests to cooperate with the law. In addition, because the owner recognizes that the law is legitimate and just there is simply no reason to disobey it. In short, one can confidently predict that the owner will obey the law and safely say that the owner should do so. Toxin A serves as a useful norm and baseline with which to consider the other toxins.

Toxin B: Exploring the Duty to Disobey Harmful Laws

In the eyes of the firm's owner, the EPA regulations with regard to Toxin B are at best a mistake. The owner, who is very familiar with the manufacturing process at his or her own plant and an expert toxicologist, honestly believes that Toxin B poses no significant risks to the environment or to society at large. Hence, in the eyes of the owner, the law is at best inane and deserving of no respect. If he or she disobeys the law, however, it will hurt the firm. This is true simply because the costs of litigating, and the potential for actually losing the litigation makes it too risky to seek to circumvent the law. In such a case, it is very likely that the owner will reluctantly comply with the letter of the law.

Whether the owner should comply with law with which he or she disagrees is essentially a question of civil disobedience. In the present hypothetical it is unlikely that the owner would feel ethically compelled to disobey the command to reduce emissions of Toxin B. But suppose, for sake of argument, that removing Toxin B from the firm's emissions caused more harm to the environment than leaving the levels of Toxin B alone. In such a case, the regulation of Toxin B would be more than inane; it would actually be harmful to society. If the harm was sufficiently direct and severe, an owner who is motivated by a strong sense of public duty might actually decide to sacrifice his or her own pecuniary interest so as to not inflict this harm. Such a scenario seems unlikely here; hence, the fourth column of Table 1 reflects a prediction that the owner will comply with the law regarding Toxin B.

Toxin C: A Moral Right to Disobey Inane Laws

Toxin C poses a scenario in which the owner's pecuniary self-interest is enhanced by violating the letter of the law. Perhaps this reflects a modest likelihood of getting caught and/or the modest fines. In addition, the owner believes that the environmental dangers posed by Toxin C are slight. If the owner is correct, then the potential harms to the firm's reputation appear would be lessened, and the potential for civil liability appear negligible. In short, when the owner does the risk adjusted cost/benefit analysis, there are simply no economic reasons to obey the law.

In addition, the moral underpinnings of this particular regulation are particularly weak. As discussed above, environmental regulations are supposed to balance the needs for economic efficiency with the needs to protect the environment. Environmental laws that are too restrictive are unjust, and at least

arguably do not deserve to be followed. Again, a long tradition of civil disobedience suggests that citizens have a moral right, and quite possibly a moral duty, to disregard unjust laws.

Hence, the only reason why the owner might obey this regulation is out of a sense of duty to the “rule of law” in general. In this case, this seems very unlikely. Laws are only obeyed if obedience is cost effective or if there is sufficient moral justification that outweighs that actor’s self-interest. Toxin C represents a situation where the owner will disobey the law and is morally justified to do so.

Toxin D: A Moral Duty to Cooperate with the Spirit of the Law

The final toxin, Toxin D is not regulated by the EPA, but the owner believes that it should be. In fact, the owner believes that Toxin D poses identical dangers as those posed by Toxin A. The EPA’s failure to regulate Toxin D appears to be an oversight. In other words, there is a “loophole” in the law.

Because of the accidental loophole in the law, the owner can live to the letter of the law while simultaneously violating the spirit of the law. That is, the owner can endanger the public interest without violating the letter of the law. In addition, it is in the owner’s pecuniary interest to exploit the loophole. What is the owner likely to do?

As discussed previously,²⁸ the prediction will turn on two factors. First, the prediction will depend on how much money is to be made by exploiting the legal loophole, in this case, emitting Toxin D at 25 ppm. Second, the prediction will depend on the policies that underlie the regulatory scheme. In other words, the owner’s decision is likely to depend in part on the potential harm posed by Toxin D. If the harm is so great as to trigger the owner’s sense of personal shame and public duty, then perhaps the owner may cooperate with the spirit of the law and hold the firm to a higher standard than required by the letter of the law. Absent a triggering of personal shame, the owner will likely exploit the loophole.

C. Additional Implications

Reflecting on the above case, a number of implications can be drawn. Two warrant special attention. First, to what extent does a businessperson’s duty to cooperate with the law and his or her likelihood to do so vary systematically with the subject matter of the law? Second, to what extent would a businessperson’s duty to cooperate with and likelihood to do so vary by organizational structure. In other words, does the chief executive of a publicly traded company have the same obligations as a sole proprietor and are they likely to behave in the same fashion.

1. The Relevance of Legal Subject Matter

The toxin case rests on the assumption that businesspeople will do what is in their own self interest to do unless there is a sufficient reason not to. The case illustrates that a duty to follow the letter of the law, without support of the spirit of the law (Toxin C) is typically insufficient to control self-interest. On the other hand, even without the letter of the law, an appeal to the spirit of the law (Toxin D) can restrain self interest, but only if that person places sufficient weight on the purposes that underlie the law. The businessperson must think that the purpose behind the law is sufficiently noble to be willing to sacrifice.

More simply put, the willingness to cooperate with the law depends on what type of law is being addressed. It suggests that a tax loophole is more likely to be exploited than is a loophole in a health regulation aimed at reducing the incidents of birth defects. In fact, one could imagine a continuum placing regulations with high-moral-content, such as health and safety regulations, on one end of the continuum and regulations with relatively less moral content, such as the tax code, on the other. A businessperson might sacrifice self-interest so as to cooperate with high-moral-content-laws (Toxin D). But society should not expect cooperation with low-moral-content-laws (Toxins B and C). In fact, society will not even get compliance with a low-moral-content-law unless the business actor concludes that compliance is in his or her pecuniary interests (Toxin B).

2. The Relevance of Organizational Structure

The manufacturing firm in the hypothetical is a sole proprietorship. It is interesting to ask what effect this choice of organizational structure has on both the positive predictions and the moral assessments

with regard to each toxin. For example, what changes if we assume the decision maker is the chief executive officer (CEO) of a publicly traded firm rather than a sole proprietor?

Interestingly, the moral implications for each toxin do not change. That is, the moral obligations of the CEO are exactly the same as the moral obligations of the sole proprietor. The sole proprietor is generally free to pursue his or her own pecuniary interests; however, he or she cannot do so in a way that violates the spirit of high moral content regulation. If the proprietor becomes a passive shareholder and hires the CEO to manage the firm, the proprietor has no moral authority to authorize the CEO to do anything that the proprietor could not ethically do. The proprietor had an ethical duty to consider the effect that his or her actions would have on unborn children, so to does the CEO.

The change of organizational structure, however, does change one's predictions as to how the firm will behave. This is because the cost benefit analysis that generates the "profit max" Column of Table 1 must now be reconsidered from the perspective of the CEO rather than from the perspective of the sole proprietor. Certain illegal activities that may not have been in the best interests of the sole proprietor may be in the interests of the CEO. In these situations, whether the CEO restrains herself will depend upon whether she feels a sense of commitment to the spirit of fiduciary law.

CONCLUSION

Given the immense scale of the current wave of corporate accounting scandals, one can only wonder as to how such widespread white-collar-crime came to be. This article has suggested two answers. First, apparently the potential for pecuniary gain by violating one's fiduciary duties was far too high. Second, apparently respect for the underlying spirit, and at times even the letter, of financial disclosure regulations was far too low.

Current legal reforms, such as the Sarbanes-Oxley Act of 2002, will modify the calculus of pecuniary gain to some extent. The Act makes it harder to conceal misconduct and increases the penalties for financial fraud.

The more difficult task is to get corporate executives to cooperate with the spirit underlying disclosure regulations. Reflecting on two decades of political discourse, Professor Kahn writes: "The political commitment to deregulation and laissez faire that had predominated in the preceding twenty years had undermined the notion that business, and business executives, were bound by the rule of law."²⁹ If this is true, then perhaps we need a change in political discourse.³⁰

The motto of the Securities and Exchange Commission (SEC) has always been "Full and Fair Disclosure to the Investing Public." For SEC regulations to work, the commission needs the regulated to cooperate with this spirit of full disclosure, rather than to use the letter of the arcane accounting procedures to frustrate that spirit. Absent such cooperation, it is only a matter of time before the next wave of scandals.

Footnotes

¹ Recognizing the possibility of a legitimate form of civil disobedience, a person "typically" has a social duty to follow the law, but not always. For example, a person has no social duty to follow an unjust law, but he or she does have a "legal duty" to do so; enforced through threat of legal sanction. Perhaps the most commonly cited passage on civil disobedience comes from Aquinas. See SAINT THOMAS AQUINAS, SUMMA THEOLOGICA QU. 90, Art. 4.3 ("[L]aws may be unjust through being opposed to the Divine good; such are the laws of tyrants inducing idolatry, or to anything else contrary to Divine law: and laws of this kind must nowise be observed."). On civil disobedience generally, see R. A. Wassertrom, *The Obligation to Obey Law*, in ESSAYS IN LEGAL PHILOSOPHY 279 (R. Summers ed., 1968).

² See Archie B. Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct*, 38 BUS. & SOC'Y 268, 268-69 (1999) (dating the beginning of the "modern period" of corporate social responsibility literature in the 1950s, but noting concern with the topic appeared earlier); cf. C.A. Harwell Wells, *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-first Century*, 51 KAN. L. REV. 77, 78-79 (2002) (citing a 1931-32 *Harvard Law Review* exchange between Professors Bearle and Dodd as the first "clear debate over corporate social responsibility").

³ HOWARD R. BOWEN, SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN (1953).

⁴ See, e.g., Carroll, *supra* note 2, at 269 (citing Bowen's work as seminal); Lee E. Preston, *Corporation and Society: The Search for a Paradigm*, 13 J. ECON. LITERATURE 434, 436 (tracing the origins of the business and society literature to Bowen).

⁵ See BOWEN, *supra* note 3, at 14-20.

⁶ *Id.* at 19. Bowen enumerated eight distinct duties. *Id.*

⁷ *Id.* at 28.

⁸ See Carroll, *supra* note 2, at 271 (calling Davis the "runner up to Bowen for the Father of the [corporate social responsibility] designation").

⁹ Keith Davis, *Can Business Afford to Ignore Social Responsibilities?* 2 CAL. MGT. REV. 70 (1960).

¹⁰ See Archie B. Carroll, *The Pyramid of Corporate Social Responsibilities: Toward the Moral Management of Organizational Stakeholders*, 34 BUS. HORIZONS 39, 39 (1991) In Professor Carroll's view, the new regulatory bodies such as the EPA, the EEOC, the OSHA, and the CPSC "established that national public policy ... officially recognized the environment, employees, and consumers to be significant and legitimate stakeholders of business." *Id.*

¹¹ LEE E. PRESTON & JAMES E. POST, *PRIVATE MANAGEMENT AND PUBLIC POLICY* (1975). Attesting to the lasting influence of the work, the book was recently the subject of a scholarly symposium. See generally Symposium, *Private Management and Public Policy*, 35 BUS. & SOC'Y 436 (1996).

¹² *Id.* at 9-10.

¹³ *Id.* at 100.

¹⁴ See GARY WILLS, *A NECESSARY EVIL: A HISTORY OF AMERICAN DISTRUST OF GOVERNMENT* 17-18 (1999) (distinguishing two "belief clusters" in American society; one which views government in a negative light, the other a positive one).

¹⁵ President Reagan no doubt tapped into a growing anti-government sentiment that predated his candidacy and then gave the movement fuel. Several authors have identified a steady decline in the societal trust for government, from about 75% in 1964 to about 24% in 1996. See JOZEF C.N. RADDSCHELDERS, *Public Administration: Toward a Study of Government or Public Affairs for a Civil Society*, PUBLIC LECTURE, April 8, 2002, at 9 (citing four studies and providing an insightful discussion).

¹⁶ For an insightful overview of the growth of regulations in the 1960s and 1970s and the resulting "deregulation" political movement of the early 1980s, see STEPHEN BREYER, *REGULATION AND ITS REFORM* 1-11 (1982).

¹⁷ See generally AYN RAND, *ATLAS SHRUGGED* (1957) (deriding government regulators as mindless buffoons interfering with the creative genius of her protagonist entrepreneur); LEONARD PEIKOFF, *OBJECTIVISM: THE PHILOSOPHY OF AYN RAND* (1991) (providing the best non-fiction account of Rand's philosophy).

¹⁸ The notion that law has "moral content" is consistent with a natural law tradition. See generally Manuel Valasquez & F. Neil Brady, *Natural Law and Business Ethics*, 7 BUS. ETHICS Q. 83 (1997) (detailing four natural law traditions: traditionalists, proportionist, right reason, and historicist); Daniel T. Ostas, *Deconstructing Corporate Social Responsibility: Insights from Legal and Economic Theory*, 38 AM. BUS. L.J. 261, 271-73 (2001) (analyzing the implications of a natural law perspective on a firm's social responsibilities).

¹⁹ See *supra* note 1 (distinguishing legal from social duties and discussing civil disobedience); see also Martin Luther King, Jr., *Letter from a Birmingham Jail* (1968), in *LAW AND MORALITY: READINGS IN LEGAL PHILOSOPHY* 453, 459 (David Dyzenhaus & Arthur Ripstein, eds., 1996) ("I submit that an individual who breaks a law that conscience tells him is unjust and willingly accepts the penalty . . . is in reality expressing the very highest respect for the law).

²⁰ An explicit assumption of self-interest underscores neoclassical economic theory. For an insightful explanation of the power of economics to explain a wide range of human activities see GARY S. BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 3-14 (1976). To understand just how complicated the logic of self-interest can get, open any recent issue of the *Journal of Legal Studies*, a University of Chicago publication focusing on traditional law and economics scholarship. Today, of course, law and economics scholars embraces a number of traditions. See Daniel T. Ostas, *The Evolution of Economic Analysis of Law: Is Pragmatic Institutionalism Displacing Orthodoxy?*, 33 J. ECON. ISSUES 287 (1999).

²¹ See Margaret M. Blair & Lynn A. Stout, *Trust, Trustworthiness, and the Behavioral Foundation of Corporate Law*, 149 U. PA. L. REV. 1735, 1747-50 (2001) (detailing the calculations necessary to assess the potential effects of legal and market sanctions for untrustworthy behavior).

²² See Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471 (1998) (challenging several traditional economic behavioral assumptions); Donald C. Langevoort, *Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review*, 51 VAND. L. REV. 1499 (1998).

²³ See generally TOM R. TYLER, WHY PEOPLE OBEY THE LAW 170-78 (1990) (suggesting most people obey law because they believe they ought too and that this belief is in part a product of socialization).

²⁴ See generally Robert H. Frank, *If Homo Economicus Could Choose His Own Utility Function, Would He Want One with a Conscience?*, 77 AM. ECON. REV. 593 (1987).

²⁵ The language of egoism and altruism is a bit slippery in economics. Richard Posner notes that one's utility function could include "the happiness . . . of other people [as] a part of one's satisfactions." Richard A. Posner, *Economic Analysis of Law* 3-4 (4th ed. 1992).

²⁶ The fidelity to law runs both to the system of law generally and to the justice of the specific law. On the former point, Austin Sarat writes: "The justice of law is what earns our acquiescence; and even if particular laws seem less than just, we are urged to invest ourselves in the moral value of maintaining a system of law." Austin Sarat, *Review Essay of Tom R. Tyler's Why People Obey Law*, 27 L. & SOC'Y REV. 647, 648 (1993) (emphasis added).

²⁷ See *supra* discussion following note 20.

²⁸ See *supra* discussion preceding and following note 26.

²⁹ Faith Stelman Kahn, *What are the Ways of Achieving Corporate Social Responsibility?: Bombing Markets, Subverting the Rule of Law: Enron, Financial Fraud, and September 11, 2001*, 76 TUL. L. REV. 1579, 1634 (2002).

³⁰ The political debate continues. Compare Rich Karlgaard, *Atlas Mugged*, FORBES, Oct. 28, 2002, at 43 (denouncing the Sarbanes-Oxley Act as antithetical to the American entrepreneurial spirit) with Arianna Huffington, *No More Pigs at the Trough: How to Cure Infectious Greed*, THE NATION, Feb. 3, 2003, at 26 (dismissing Sarbanes-Oxley as illustrative of an ineffective Congress so corrupted by the campaign finance system that meaningful reform seems impossible).