

Behavioral Ethics, Behavioral Compliance

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Role of Ethics in Compliance: The CECO's Lament

"I'm not actually sure what that ethics thing is"

"Bury it, deny, deny, deny . . . that's the legal perspective"

--CECOs quoted in Trevino et al., *Legitimizing the Legitimate: Legitimacy Work among Ethics and Compliance Officers*, 123 *Org. Behav. & Human Dec. Processes* (2014)

Code Obsession

- The directive approach: ABA Model Rules, New York Rules of Professional Conduct, corporate codes of conduct
- The disconnect to psychology and culture

Kluser, Frazier & Haidt, *Behavioral Ethics for Homo Economicus, Homo Heuristicus and Homo Duplex*, 123 *Org. Behav. & Human Dec. Processes* 150 (2014)

Panopticon?

"J.P. Morgan's Algorithm Knows You're a Rogue Employee Before You Do"
(Bloomberg Business, April 8, 2015)

But crowding out, defensive accountability, diminished motivation?

Tenbrunsel & Messick, "Sanctioning Systems, Decision Frames and Cooperation," 44 *Admin. Sci. Q.* 684 (1999)

Langevoort, "Monitoring: The Behavioral Economics of Corporate Compliance," 2002 *Colum. Bus. L. Rev.* 71



Craving Autonomy

- “I’m a good person . . . I know right from wrong”
- But what do people do when no one can see?
- “Shredder” experiments—most cheat some, but not so much that self-image of respectability is threatened

Dan Ariely, *The (Honest) Truth About Dishonesty* (2012)

Rationalization and Self-serving Inference

- Even without temptation (Bazerman’s auditor experiments)
- Fraud triangle (with pressure, opportunity)
- Good intentions (irrelevant)
- In the moment, automaticity, “ethical fading,” “moral wiggle-room”

Max Bazerman & Ann Tenbrunsel, *Blind Spots: Why We Fail to Do What’s Right and What to Do About It* (2011)

When Is Cheating More Likely?

- Depletion (stress, tiredness, resisting temptation)
- Money priming
- “Altruistic” cheating—for the team (or the family, or)
- Loss aversion and hyper-competition
- “Goals Gone Wild”
- Indirect agency: cheating through agents
- Status and power

Disclosing Conflicts

- Increases “license” to cheat
- “Insinuation anxiety”—recipients signal trust, not caution

Cain et al., *The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest*, 34 *J. Leg. Studies* 1 (2005)

Slippery Slopes

- Escalation of commitment
- Cognitive dissonance
- Role of optimism at the beginning
- Evidence: financial fraud

Schrand & Zechman, *Executive Overconfidence and the Slippery Slope to Financial Misreporting*, 53 *J. Acct'g & Econ.* 311 (2012)

Adaptive Biases

- Focus, intensity, competitiveness
- Taste for risk
 - testosterone, oxytocin
- Deception and self-deception (Robert Trivers)
- Ethical plasticity
- Pathways to power (and the case for gender diversity)

J.M. Coates, *The Hour Between Dog and Wolf: Risk Taking, Gut Feelings and the Biology of Boom and Bust* (2012)

Is this Useful?

- Little things: dashboards, nudges, timing (auto insurance mileage self-reporting)
- Bigger things: ethics can't be "priced" (Israeli day care study), maybe awareness prompted
- Sending clear compliance messages (insurance churning)
- Noticing change (status quo biases)
- Compliance design: paths of least (ethical) resistance (e.g., financial advisers and suitability)

McLean & Benham, *The Dangers of Decoupling: Compliance Programs, Legitimacy Perceptions and Institutionalized Misconduct*, 53 Acad. Mgt. J. 1499 (2010)

Feldman & Halali, *Can We Regulate "Good People"? An Exploratory Study of Subtle Conflict of Interest Situations* (working paper, 2014)

More?

- Andrew Perlman, *A Behavioral Theory of Legal Ethics*, Indiana Law Journal (forthcoming), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2320605
- Donald Langevoort, *Getting (Too) Comfortable: In-House Lawyers, Enterprise Risk and the Financial Crisis*, 2012 Wis. L. Rev. 495
- Milton Regan, *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* (2004)
- Tom Tyler et al., *The Ethical Commitment to Compliance*, 50 Cal. Mgt. Rev. 31 (2008)