

Complementary Aspects between COMPLIANCE AND ETHICS Ethical and Christian Perspectives

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Wang Zhile and Jiang Heng (Wang 2010)¹ argue that the first priority of Corporate Social Responsibility (CSR) is compliance. Without a strong commitment of firms and other institutions to strict legal adherence, so runs the argument, the whole discourse on Corporate Social Responsibility would be ultimately meaningless.

The current article argues that an exclusive focus on compliance remains questionable as it is unlikely to have a decisive impact on human behaviour.

The word "Compliance" has two sets of meanings:

- a. compliance with the law, regulations and all regulatory requirements; and
- b. compliance with a company's corporate ethics and internal rules; as well as the wider social norms and codes for credibility and morality.

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¹ Wang, Z., *Compliance. First Priority of Corporate Responsibilities*, Beijing: China Economic Publishing House, 2010.

This paper will explore both meanings of compliance, especially noting that the second meaning is much more extensive than the first.

Compliance as a Business Contributor to Rule of Law

Such an insight is particularly valuable in a context where there is not a strong tradition of the rule OF law, but rather rule BY law. Given the great progress on the law and legislation of China, especially since its open door policy, it is indeed vital that business is seen as a main driver in making the law happen, particularly in the area of anti-corruption, abuse of labour, and environmental protection. This means that the bottom line for a company and an institution is to communicate on all levels what the law and the concrete regulations actually mean as well as what the social norms and codes require all members to adhere to. This requires the companies to take compliance as their primary duty, to strengthen a regular compliance management; and to assist in promoting compliance administration in government agencies.

I would like to highlight the balance which needs to be achieved between compliance in its first, narrow, meaning and compliance in the second meaning, with three examples:

1. Whistle-Blowing;
2. Sexual Harassment;
3. Human Trafficking.

Each example will show the need for values-based ethical training and application in the business sector.

1. Whistle-Blowing

The significant progress in legislation in China can be seen, for example, in the legislation of so called “Whistle-Blowing”, i.e. to voice legitimate grievances concerning a specific abuse through proper channels within a company or institution by an employee in order to bring about a change without reporting the case to the media. Already in the *Labor Law* the Chinese government passed on July 5, 1994 it is stipulated in Article 88 of Chapter XI: “Any organizations or individuals shall have the right to expose and accuse any acts that violate the law, rules and regulations on labour.”² Businesses may not have realized that such a law exists, in an environment which seems to be usually extremely reluctant if not hostile regarding exposing illegal acts.

It is therefore insufficient to understand and communicate “compliance” as a kind of necessary inculcation of the law. What

² *Economic Law English and Chinese*, Beijing: Law Press, 2004, 293.

needs to be cultivated first of all is an understanding of the law as a protection of the rights of each one and a compassionate attitude towards legitimate concerns and grievances voiced by workers. But also this would be vastly insufficient if it would not be complemented by another major element which is stipulated in the same Article 88 which is the right that "Trade unions at various levels shall, in accordance with the law, safeguard the legitimate rights and interests of labourers, and supervise the implementation of laws, rules and regulations on labour by the employing units." The string of suicides which occurred last year in the firm Foxconn among workers (at least 13) may indicate that these legitimate channels of voicing concerns are hardly used. During the same period labour unrest and strikes were staged by employees in the Honda factories in the Guangdong province. Clearly a new generation of mostly young migrant workers who are deeply frustrated by their working environment seem to indicate as well that their concerns have been largely ignored by the leadership. If we are aware of the frequent occurrence of cut-throat business competition we may realize that just inculcating legal regulations which any way are already quite clear will certainly not be enough, but that in addition appropriate training programs need to foster a sense of values, and the sense of care for each individual may bring about a decisive change of working conditions. Without regular and systematic training involving especially middle managers there is a great risk that legitimate demands from workers are brushed aside and that promises for improvement will be ignored.

2. Sexual Harassment

Last year I was asked by a French Business School in Shanghai which kind of case studies I would like to touch upon during teaching. I suggested among others the case of sexual harassment. At that time the term of "Dignity" was being intensely debated and was being strongly developed by Prime Minister Wen Jiabao, perhaps as an equivalent what in Western categories would fall under the term "Human Rights". With what may appear to be typical French snootiness, my suggestion was rather dismissed as not really significant, especially in the Chinese context. There is no doubt that I would not have any difficulty to make this case this year, after the controversy surrounding Dominique Strauss-Kahn, the former IMF director whose alleged rape of a hotel maid, Ms. Diallo, caused a stir in the debate about a certain macho political culture quite prevalent in France. The wide ranging debate touched upon an important element from an ethical perspective: the link between power and sex. It does not seem to be surprising that progress in legislation is

reflected in the legislation about the sexual harassment the Chinese government passed in 2005. Although it is particularly difficult to find empirical evidence it seems to be quite clear from different surveys that well over 70% of Chinese women suffer from different forms of sexual harassment. How to get a real improvement of the situation? A narrowly legalistic interpretation and inculcation of this legislation may again kill the true purpose of the legislation and may again be dismissed as waste of time or, in the worst case, may just be ridiculed as a move which is deemed to fail. Again we should stress first that it is an important achievement that the legislator intends to further protect the rights of each woman. However, proper implementation requires a culture of communication and convincing models of ethics which most firms so far perceive as completely useless. An appropriate training in values needs not only to refer to case studies but also suggest an analysis of a prevalent macho culture which tends to give undue preference to males.

3. Human Trafficking

Along the same lines I would conclude with a case study which is usually left out of the classical textbooks on Business Ethics: the case of Human Trafficking and its links with prostitution. I would like to touch on a relevant aspect if we randomly compare two vastly different pieces of legislation in order to handle the problem: in the Netherlands there is a legislation considered as one of the most liberal legislation, which basically declares prostitution in certain quarters of a town or city as legal. On the other side you have the case of China where prostitution is illegal. Is there a possible link from an ethical point of view? In Europe, Giulio Amato, a former Prime Minister of Italy, suggested that not the prostitute should be punished but rather the customer who with full knowledge buys a sexual service, especially when he is aware that the woman lives under slave-like conditions. The brutal methods by which criminal gangs and triads control the trafficking of mostly women, but also children and men, with extremely coercive methods are illegal even under the most liberal laws. The victims of human trafficking are quickly locked into a situation of slavery, deprived of their personal identification documents and often burdened with paying back large amounts of illegal debts. In China and other countries where prostitution is illegal the debate is wide-ranging. For example, the question arises how at least basic hygienic requirements should be fulfilled (for example through regular health checks) in view of the consequences for the whole society.

Despite or rather because of divergent legal stipulations it seems to be necessary from the point of INTERNATIONAL Business Ethics that this problem could be handled across borders. Governments usually operate only within their own borders, but transnational companies could be a main driver to break the back of this most destructive but hugely lucrative business by implementing values-based training on an international basis. Transnational companies can also contribute to changing the social environment. Firms like the IT giant Infosys are known for their commitment for social causes such as the rehabilitation of former prostitutes.

Do International Businesses play a Role?

As we debated these three sensitive issues (whistle-blowing; sexual harassment; and human trafficking) within the academic board of CIBE, our most senior member was passionately arguing for the much needed action to come from governments. Of course this point is well taken, but at the same time we can argue that other stakeholders – for example, firms as key drivers of change – are equally important. This is not to be a source of conflict: firms seeking to be positive in Corporate Social Responsibility can work with governments in two ways. First, firms can co-operate with governments, in implementing existing laws which already grant people the option to voice their grievances, which allow decisive intervention (and, if necessary) punishment for people who abuse their positions of power for obtaining unwanted sexual services, and which enable combating illegal trafficking while making sure that the basic needs of sex workers are taken into account. Second, firms can serve as a model for governments. Firms, especially transnational firms, are accustomed to operate across boundaries, and can thus give a lead to governments which are hesitant or inexperienced in this area. Firms which have internal structures, such as internal “ombudsmen” as an independent entity for receiving grievances and being entitled to investigate them, and which have independent structures to investigate cases of abuse of power, can serve as models for governments. Such firms, with strong adherence to the principles of Corporate Social Responsibility are examples of the need for Authority and Legitimacy, which governments also need in building modern judicial systems embodying the Rule of Law.

4. Conclusion

Compliance is a key element in Corporate Social Responsibility. However it is important to realize that the goal of compliance may almost certainly never be reached if compliance is narrowly understood in terms of inculcating laws and regulations. Full

compliance and the gradual establishment of a “rule of law” and not just “rule by law” requires a firm commitment to communicate and implement the underlying necessary values and convictions which are necessary in order to go beyond governmental regulations and a corporation’s own in-house codes, in order to achieve wider social norms and codes for credibility and morality. The three examples of Whistle-Blowing, Sexual Harassment and Human Trafficking illustrate some aspects on how international businesses can show their commitment to social responsibility, and by doing this contribute to the gradual development of true Rule of Law.

Although the law in China is clear on Whistle-Blowing, Sexual Harassment and Human Trafficking concrete guidelines need to be worked out in order to honour *the spirit of the law*. Concretely speaking, in the case of Whistle-Blowing it is appropriate to appoint at least one board member as “ombudsman”. In order to keep the confidentiality of a Whistle-Blower such an ombudsman would be entitled to be contacted by anyone who would like to share some legitimate grievances and would have full authority to investigate a given case. Once completed an investigation the ombudsman would be able to issue a recommendation for the board. However, just the institution of an ombudsman could hardly honour the requirements of the Whistle-Blowing. Moreover, trade unions should play a key role in making sure that the rights of all the employees are safeguarded.

In the case of sexual harassment the narrow reach of a legal requirement may even be more self evident. One issue is to come up with the most accurate definition about what “sexual harassment” entails which usually highlights unwanted sexual advances and the abuse of a situation of power in order to get sexual rewards. But even the key term “unwanted” sexual advances may not be that clear. Imagine sexual traffic which may kick off as consensual arrangement but at some point turns violent and may thus necessarily become a totally unwanted form of interaction.

Consistency of a legal argument seems also far from being sufficient in order to reach the desired goals if, say, the situation of a culture of a firm is taken into account where the job as a secretary would also entail the availability to serve as mistress of the boss. It is unlikely that in such a situation any guidelines on “sexual harassment” would be well understood and received.

Also in the case of Human Trafficking the role of business can hardly be underestimated. The consequences of Human Trafficking may have again an impact on a given business culture. In a context where

business deals not only pass through business meals but involve prolonged karaoke session, heavy drinking games with the appearance of prostitutes a firm indicates by hiring prostitutes that it is still locked up in a macho world which basically discriminates women and approves the practice to abuse women as sex slaves.

5. Catholic perspectives on ethics and compliance

Given the inadequacies of exclusively legalistic approaches of Whistle-Blowing, Sexual Harassment and Human Trafficking the question will be explored if a Catholic perspective may bring any inspiration for a progress on these sensitive matters. It may be first of all objected that Christian and Catholic influence is minimal in the Asian context in general and all the more in China where most people are considered atheist.

However such an assessment overlooks the fact that since the so called "Open-Door- Policy" of the Chinese government in 1978 there has been an explosive growth among all the religions in China, Islam, Buddhism, Taoism, and Christianity (which officially is divided among "Catholicism" and "Protestantism"), most notably among different Christian denominations. This fact is further confirmed through a similar growth among Chinese Overseas who establishing themselves in the Philippines, Indonesia, and Singapore, etc., usually opt to become Christians. For a number of years the book "Story of the Bible" which gives an illustrated overview over main stories of the Bible ranked as bestseller in Mainland China. The official copy of the Bible is still not available in the bookstores of the Mainland. However in the shops of the Churches as well as increasingly on the streets copies of the Bible are available.

Statistics about the numbers are notoriously unreliable. For a number of years the number of adherents of the official five Religions in China has been put around 100 million. A recent study of East Normal University in Shanghai has put this figure around 300 million.

Based on different assessments I would put the figure of all the Christians in China between 70 and 90 million people.

The aftermath of the period of the so called "Cultural Revolution", 1966–1976, with its broad destruction of cultural and religious heritage provoked an enormous spiritual vacuum and a craving for wisdom and spiritual guidance.

The impact on ethics and the legal system should therefore not be underestimated. In the case of Whistle-Blowing there is a rich heritage of conflicts and disputes going back right to the first

generation. The conflict between the Apostles Peter and Paul is an appropriate example to explain how the key pillars and Founding Fathers of the Church who certainly united in one mission still clashed on certain issues. Given their basic loyalty to the message of Christ these conflicts did not harm the internal unity; on the contrary, they greatly contributed to the better focus of the mission of the Church, in this case to reach out not only to the Jews but to all people.

When we consider now the implementation of the legislation of Whistle-Blowing in China it may be an encouraging reference that in the Special Administrative Region of Hong Kong where Christian education has been particularly influential and which has been integrated within the People's Republic of China in 1997 that there seems to be a culture of "blowing the Whistle" both in the area of politics and business which finds its most significant expression in the institution of the Ombudsman. Whoever feels wronged in Hong Kong may get in touch with the Ombudsman with the firm hope that the Ombudsman will investigate in the nature of the grievances.

Voicing grievances in China may often be understood within the Imperial tradition of subsequent dynasties and are therefore often perceived as threat to the power; whereas the Christian tradition based on the loyalty both with fellow Christians and with the leaders encourages loyal disagreement which is focused to improve situations of malaise. Including Pope John Paul II who led the Catholic Church between 1978 and 2005 insisted on the insight that each healthy system needs criticism.

More specifically the framework of key terms of Catholic Social Teaching³ such as Solidarity, Subsidiarity, Justice, Dignity and the Concern for the Common Good may have a particular significance in dealing with above mentioned ethical issues. The respected China watcher, Laszlo Ladanyi (1914-1990) who served as Chief editor of the magazine "China News Analysis" from 1953 until 1982, based in Hong Kong, suggested already in his "Meditation on the Church in China" (published in 1988) that Catholic Social Teaching could give not only the Church but also the society in China a much needed orientation. The latest update on Catholic Social Teaching has been the letter *Charity in Truth (Caritas in Veritate)*, 2009) which makes a point to have not so much the very first Encyclical Letter *Rerum Novarum* as main focus point. Since *Rerum Novarum* the Church attempted to respond to the pressing social problems by advocating

³ *Compendium Of The Social Doctrine of the Church*, ed., Pontifical Council for Justice and Peace, Rome: Libreria Editrice Vaticana, 2004.

to implement human values, to support the rights of the workers, argue for healthy working conditions. But the main reference point for the modern contemporary context is according to the Letter *Charity in Truth*, key insights of the Encyclical Letter *On the Progress of Peoples* (*Populorum Progressio*, 1967) as it dwells on how to humanize the economic development. It seems that this process of implementing solidarity, justice and the concern for the common good is also particularly relevant in the context of China. Along with the dramatic economic development there has been a true progress in legislation. However, as the case studies of Sexual Harassment, Whistle Blowing and Human Trafficking seem to indicate there needs to be a solid set of values of trustworthiness, reliability, truthfulness without which the law would risk to get constantly bypassed.

An awareness of values which are developed by Catholic Social Teaching could also trigger an ecumenical response, i.e. to draw on the resources of other religious traditions such as Buddhism, Islam and Taoism in order to shape a new value system.

An intriguing point of Catholic Social Teaching lies in the fact that it supports the rights of the worker to stage a strike (see *Laborem Exercens*, 1981). Goal would obviously not be to lead to the collapse of a firm or a given institution but to bring about a change to the better in a critical period where there are perceived intolerable situations of abuse and injustice.

Also for the issue of Sexual Harassment and Human Trafficking the Christian influence may indeed be truly "revolutionary". It is certainly a vain illusion to believe that a deep seated Macho behaviour may be eradicated with just a few new legal regulations. Concretely speaking, not only the law but also a narrow minded view on Confucian ethics favours boys over girls with the fatal consequence of the so called "Gendercide" as the British magazine *The Economist* puts it. It is sometimes claimed that the positive side of the so called "Cultural Revolution" in China would have been to valorize the position of the woman. There is no place to make a critical assessment of such a claim. It is just observed that Marxist and a Communist ideology with the so called Chinese Characteristics did not change at all the prevalent predilection for boys.

We may also keep in mind a widespread cynical perception that prostitution has and will always be around.

There is however a certain irony in the fact that the Communist Party of China is highly aware of a certain vacuum of values. As a specific Confucian contribution the Communist Party is recently very much insisting on the value of dignity. As this term urges for the respect of

each human being, the respect of healthy working conditions, argues for product safety etc. it seems to correlate to the Western concept of Human Rights.

Dignity can also be considered as cornerstone of Catholic Social Teaching which can shed light on the thorny issues. When Christians right from their beginning very much insist on the dignity of the woman being created on the image of God on equal foot with men they may very well offer a main key element of much needed change in the treatment of women in an Asian context. In concrete terms it should just thus never come to the mind of a Christian CEO, politician or clergyman to abuse his or her subordinates for personal entertainment or benefit. A familiar concrete feature of how corruption as abuse of power is obvious in deep ingrained drinking rituals which allows the people to indicate and reinforce their position of power in forcing subordinates to drink publicly and subsequently to get drunk. Precisely not because a certain new law is telling him to do so, but out of his deeper embrace of what the dignity of each human being is all about he would rather refrain in engaging in immoral acts or, at some point, he would have the courage to resist calls to engage in acts which actually could also be termed inhuman.

Along the same lines the Christian respect of the woman would just almost naturally make it inconceivable to treat her – as it is the case of Human Trafficking – as pure commodity to be traded and exchanged in the narrow sense of the Marxist terms but make all possible efforts to resist and to stop commercial activities which treat women basically as slaves.

Conclusion

There has been a significant improvement in the legislation in China since the opening of the economy in 1978. The paper however argues that an exclusive trust in the beneficial effect of punishment and legal regulations may be misleading. In sensitive areas such as Whistle-Blowing, Sexual Harassment and Human Trafficking it is suggested that perspectives from Business Ethics and some key insights from the Christian tradition may also be crucial to achieve a true headway in areas like loyal criticism, dignity of each human being, treatment of woman, and ultimately changing cultures of corruption. Catholic Social Teaching would offer a rich reference for values such as dignity, which the Communist Party in China is advocating recently. The dramatic awakening of religion in China, especially among Christian denominations, may thus also have an impact in shaping a new value system which is needed for the implementation of a culture based on the rule OF law.