

## Understanding the Characteristics of the American Ethics in the Worlds of Business and Law

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*Engaging in trade with the US makes familiarity with the ethical system found within its business world crucial, because it often acts as a guide for businesses and defines the scope of their behavior. However, because of the synergistic relationship between business and law in the US, gaining an understanding of this second ethical system also becomes important. The purpose here is to identify the basic differences in these two systems, and understand how they relate to each other and society.*

*Three stages identified here serve as a tool to explain the differences between business and legal ethics, as well as their relationship with society. The first stage involves a field that has only general areas of consensus, and allows for only statements of common principles. In the second stage, the field has achieved the formation of profession or group, allowing for the passage of a commonly applicable ethical code. The third stage involves principles in a field that are shared with society to the extent that they have been passed as law. Business ethics were found to be in the first stage, while legal ethics were found to be in the second. The areas of business and legal principles that consisted of the third stage provided interesting contrasts.*

*The three stages were found not to be hierarchical. Codification of business ethics into law do not always prove to be the most effective means of enforcement of the accompanying values. Nor was the organization of lawyers into a profession, with its accompanying "Model Rules", always superior to the more loosely organized business world and its ethical system. The key is to understand which category is applicable for a given field and for business, law, and society to cooperate to bring about a switch from one category to a more suitable one when necessary to maximize the protection of society.*

### 1. INTRODUCTION AND SCOPE

The United States has highly developed systems of business and law that serve as examples for the rest of the world. These two areas have frequent interaction with each other, and it can be said that they are "synergistically and intimately related."<sup>1</sup> However, they are governed by ethical systems that stem from the characteristics unique to each area. Although they share some similarities, it is by examining these unique characteristics, and the differences that assist in the understanding of each ethical system and the motivations contained within. This, in turn, provides assistance in understanding the larger character of American ethics, serving as a model for other nations that are grappling with many of the same issues and who are treading similar paths.

Three general stages can be identified here. At the lowest level ethical considerations take the form of statements of principle. At the next level they gel into internal ethical codes, and finally, they solidify into laws. The first stage involves a given field that has only general areas of consensus. This makes no more than a statement of such commonly held principles

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<sup>1</sup> Dunfee, Thomas W., 1996, "On the Synergistic, Interdependent Relationship of Business Ethics and Law," *American Business Journal* Winter. Strictly speaking, this quote was said about business ethics and Law, and not about the larger context of business. However, because the quote works well in describing both situations, it has been modified here.

possible. In the second stage, the areas of consensus become more specific through less diversity and the existence of more common practices. This is usually brought about through the formation of a group or profession. At this point, the specific principles are often collected into a commonly applicable ethical code. At the third stage, principles in the field that are shared with the larger society that are deemed sufficiently important are incorporated into laws.

Some of the ethical norms in both business and law have reached this third stage and have found their way into the legal system. However, as will be seen below, business ethics as a whole can still be said to be in the first stage, while legal ethics are at the second stage. Amidst the potentially broad scope of ethics, it is the narrow area of focusing on the differences that account for the placement in different stages that will be the main focus here.

First, the organization of law and business along professional and non-professional lines will be examined followed by the use of codes of ethics in the two areas. Then the group dynamic that exists in business as opposed to the legal profession and the effect it has on the systems of ethics will be discussed. Finally, the different motivations of the two areas will be examined. This will be done through the representative example of the need for confidentiality in both, while the business world faces a contrasting need that takes the form of whistle blowing that is accorded more weight than the corresponding need in law.

### 1.1. Profession vs. Diverse and Broad Community

The first distinction between the two fields lies in the fact that over the course of its history, Law has obtained the status of a profession. Accordingly, in order to receive admission to practice, permission must be granted by the courts of each state and the various federal courts (Zitrin 1995: 624). Practically, this means graduating from an ABA accredited law school, followed by passing the bar in ones' respective state.<sup>2</sup> Also, there is usually a requirement that the individual be of 'good moral character' (Zitrin 1995: 623).

The practical effect here is that Law, like other professions, might be described as a monopoly. This is because only those who have met the requirements as indicated above and have gained admission may engage in practice. Others are excluded, because the unauthorized practice of law is illegal. By definition, then, the pool is limited. This is one of the key differences with the field of business, which is significantly broader.

With the exception of some limited instances, such as when obtaining a bank charter, anyone is free to form a sole proprietorship, or partnership. Subject to the formality of obtaining state permission, the same thing can be said of a corporation. It must also be noted that in part due to the broader scope, the individuals most identified with carrying on the running of business, the managers, have not gone the path of lawyers as of yet. Raymond Baumhart also stated, "There is yet doubt as to whether business as a whole is, or can be a suitable ground for the development of a profession in the ordinary sense of the word. Large groups of managers indeed do not want to accept professionalism, or the responsibilities that come with it" (Baumhart 1968).

The debate within the business community can be summarized as follows. In favor of forming "a profession" it has been stated that, "all elements affected by business would benefit from some sort of 'professional control' (Baumhart 1968). It has also been said that

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<sup>2</sup> It should be noted that there are a few states that do not require the passing of a bar examination for the practice of law.

private licensing and enforcement may increase status and business ethics, and help keep the government out of business (Baumhart 1968). Those in opposition to forming “a profession” have noted that business “can’t afford to operate on [such] a high professional plane,” and that the accompanying ethics, “would be a luxury” (Baumhart 1968). It is also thought that it might impede the entrepreneurial process, because in an open market all should be free to enter, and compete (Baumhart 1968). Such an open market wouldn’t be possible if management was organized along the lines of lawyers because the existence of a profession closes the opportunities on a great many people by definition. This is because it is only open to its members and it follows that especially small and medium sized businesses, would face more obstacles. The owners who would have otherwise served as their own managers would incur higher costs by having to hire “professional managers.”

## 2. CODES OF ETHICS

Once admitted to practice, lawyers are subject to a common set of ethics unique to the profession. The Model Code of Professional Responsibility (Model Rules) has been developed by the American Bar Association (ABA). It has been adopted by most states, “in whole or in part, for their own rules of professional conduct” (Zitrin 1995: 5).

It is of a ‘clear and detailed structure’ (Zitrin 1995: 6) and is comprised of nine Canons, that each deal with a general principle. Within each canon, there are a set of Ethical Considerations (EC’s) and Disciplinary Rules (DR’s). A common set of standards were agreed upon, which according to the Preamble, “express[es] the conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession” (Zitrin 1995: 6). Although the Model Rules may be changed by the respective adopting states, its significance lies in the fact that it is the single model for the Codes of nearly all of the fifty states. Accordingly, it can be said that legal ethics are at the second stage identified above, where principles have become less general through common practice, and that the Model Rules constitute the uniform ethical code.

In the absence of the existence of “a profession” in business, there has also been an absence of a uniform set of ethics, which stands in contrast to the Model Rules in Law. Accordingly, it has been said by Baumhart that there is “a divergence of opinion over what constitutes ethical behavior in a specific situation” (Baumhart 1968: 159). On this topic, Douglas Sherwin stated, “unfortunately, what is meant by social responsibility or ethical behavior remains unclear. But if both business and public leaders could come to some accord on what these concepts mean in the context of business, then possibly business performance and the public expectation for business performance could converge at a higher level of satisfaction” (Sherwin 1985). Such a higher level would, in effect, be the shift from ethics in business to the second or third stages identified above. Taking into account the divergence, one definition has business ethics as being more in the sphere of a ‘moral philosophy’ (Messick 1996), than as a practical field of application.

The reception and opposition to codes in the business world can be summarized as follows: speaking in favor of corporate codes, John B. Shallenberger, the research officer of the Comité International de l’Organisation Scientifique has said, “In my opinion, based on a wide and intimate exposure to top managers, they are potentially a great force for good”

(Baumhart 1968). He adds that they have the function of delineating the parameters of performance that can guide the behavior of managers, providing general recognition by the board of directors and stockholders that managers “desire to perform their duties on a high ethical plane” (Baumhart 1968) and that this opens up the possibility for the free discussion of ethics and morals (Baumhart 1968).

Opposition has been more towards industry-wide codes because they have led to interference by government agencies, such as the federal trade Commission (FTC) and Anti-Trust Division of the Department of Justice (Baumhart 1968). This can be seen in Assistant Secretary of Commerce, Theodore Thau’s description of such individuals: “We don’t dare do anything in the way of establishing industry codes that have any enforcement teeth in them; and without enforcement teeth, they are meaningless in our industry ... We run the risk that the FTC or the Anti-Trust Division may get after us” (Baumhart 1968: 165).

With the existence of more diversity in the business world concerning which ethics should be held in common, Baumhart speaks of the wide degree of variation concerning codes of ethics adopted by businesses. He notes that Hartford Accident and Indemnity Co.’s code, which consists of a single sentence, stands in contrast to the code of Republic Aviation Corps, which is extensive and detailed (Baumhart 1968: 153-154).

In the absence of uniform code, the application of ethical norms also takes on a variety of forms. An example of successful application and the creativity sometimes employed can be found at Howmet Corporation, located in Greenwich, CT, where the internal auditor also serves as the ethics officer (Singer 1999). Such an arrangement is possible because the restrictions of a Professional Code, such as the Model Rules are not binding.

Originally absent a “diligent” program of enforcement for their ethics policy, internal auditor and ethics officer Karl J. Van Mill utilized the commonalities existing between his two areas to design and implement an effective training program that led to better enforcement of ethical norms (Singer 1999). Such common characteristics included independence, access to senior management, objectivity, and regular reporting to the board of directors (Singer 1999).

However, this example also illustrates the potential weakness of the lack of a professional code. First of all corporate Compliance Liaison officer, Jeff Holmes, notes that absent support from senior management, such a program’s demise will come quickly (Singer 1999). This illustrates the lack of a uniform provision for disciplinary action. Management is not consistently assigned this task. Holmes’ observation shows that even when they are, enforcement is not a certainty. Also, the statement of an observer of Van Mill must be noted as it states that, “placing ethics and compliance within internal audit may not work at all companies” (Singer 1999). While a diverse set of codes allows for creativity, it also places the increased burden here of finding effective methods.

New Jersey Rule 5.1(a), which is based on the Model Rules, provides a corresponding example (New Jersey Disciplinary Rules of Professional Conduct 1999 edition). It provides that within a firm, a “lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional conduct” (New Jersey Disciplinary Rules of Professional Conduct 1999 edition). Unlike managers in the business world, senior attorneys consistently have such a duty to enforce ethical norms, that is thus, spelled out clearly. This increases the potential of enforcement. On the negative side, rules such as this suffer from inflexibility, because there is less incentive to seek more effective methods. This is because the Code is accepted as commonplace, with there being little possibility of individual firms having any say when it

comes to changing the applicable Rules.

The situation in business can be compared to the situation prior to 1908. This was before the Canons of ethics were issued by the ABA (Zittrn 1995: 5) when legal ethics still remained under the first stage identified above. Instead of a uniform code, there were 'statements of principles' (Zittrn 1995: 4) that consisted of those areas of ethical behavior where there was some general consensus. However, evolution occurred, with the Canons of Ethics as the next step, although they were said to have had political overtones (Zittrn 1995: 5). Finally, lead by ABA president (and future Supreme Court Justice) Lewis F. Powell, the Model Rules were developed to provide a practical, and should they be adopted, enforceable guide for professional conduct (Zittrn 1995: 6). This in effect constituted achievement of the second stage. This process illustrates a possible path along which ethics in business might develop in the future, and make a similar switch from the first stage to the second. At present, however, it shows the different inherent nature between law and business.

In business, then, ethical codes have existed for a long time, and are effectively utilized by some organizations, while for others they may serve as a mere formality. They remain a useful tool for those inclined to use them as such. The major practical difference would be that the existence of an ethical code within a business does not ensure its enforcement. This is unlike the Disciplinary Rules found in the Model Rules, which state the minimum level of conduct "below which no lawyer can fall without being subject to disciplinary action" (Zittrn 1995: 6). Accordingly, the ethical code as a general concept found in business should not be accorded the same weight as the Model Rules. Also, unlike the situation that exists in the legal profession, there is no commonly applied single code as a model. As can be seen above, there is a significant variation. Thus, despite the fact that codes exist for individual businesses, it can be more appropriately said that there are general principles, in terms of the 'world' of business, and that business ethics reside at the first stage.

### 2.1. Group Dynamics vs. the Individual

Another reason why ethics found in business differ from those found in the legal profession arises out of the fact that in the former case, group dynamics play a much larger role than in the practice of law. David Messick and Ann Tenbrunsel have examined how these dynamics affect the behavior of corporations (Messick & Tenbrunsel 1996: 15).

They start out by defining corporate crime as "crime perpetuated by an organization against either the general public, that segment of the public that uses the organizations products, or the organizations own workers" (Messick & Tenbrunsel 1996: 15). They also note Marshall Clinard's characterization of unethical behavior as "a form of collective rule breaking in order to achieve the organizational goals" (Messick & Tenbrunsel 1996: 15). This is not unlike the 'bureaucratic mentality,' identified by Zigmunt Bauman (Ten Bros 1997), through which "organizations try to 'straightjacket,' people's moral nature" (Ten Bros 1997).

As an example of a corporation harming the public, they note the activities of the Allied Chemical Co, a manufacturer of kepine, which is a substance known to be toxic. Allied Chemical set up a dummy corporation disguised as an independent contractor in order to continue the manufacture of the substance, with the result that eventually one hundred miles of fisheries on the James River had to be closed down due to concentrations of kepine in the

fish. As an example of a corporation harming users of its products, they cite the sale of the Ford Pinto, which was “sold for years by a company in which many executives were aware that it had a gas tank likely to rupture in low speed rear end crashes and incinerate its passengers” (Ten Bros 1997). As an example of an organizations harming of workers, they cite the executives who continued to have shipyard workers work with asbestos long after its carcinogenic properties were known.

By way of identification of the factors giving rise to, or at least enabling such unethical behavior to occur, Messick and Tenbrunsel note the diffusion of information and responsibility that can exist within a corporation (Ten Bros 1997: 18). They state that evidence of the harmful nature of a product tends to accumulate over time (Ten Bros 1997). Because the divisions within a corporation are not in perfect communication with each other, much of the information remains disassembled, often purposely so. This has been labeled as ‘strategic ignorance’ (Ten Bros 1997). Responsibility fits into this since proper knowledge must exist for it to be exercised.

Additionally, a number of issues arise due to the size of a corporation (Ten Bros 1997). The first occurs when a commitment is made to a course of action that may turn out to have ethical considerations (Ten Bros 1997). For example it is harder to change the direction for a large ship, than it is for a motorboat. They state, “it is hard enough for an individual to reverse a personal decision, even when no one else knows of that decision. In organizational settings, decisions are far harder to reverse” (Ten Bros 1997: 21). The second occurs when the harm is more abstract, while there is a tangible gain to be had (Ten Bros 1997: 22). A possible example is the use of a substandard part in a machine that will not necessarily break down, but clearly could. The specific individuals that might get hurt if any are difficult to visualize ahead of time, while the cost of obtaining a new part is saved.

In addition Bauman’s ‘bureaucratic mentality’ can be cited (Ten Bros 1997). Concerning this, it has been said that “bureaucrats are not basically interested in debating the goals of the organization they are working for, but narrowly focus on the task that has to be carried out ... and they refrain from personal opinion and accept whatever the ‘organization,’ claims to be true.” This applies directly to ethical behavior because it speaks of individuals losing sight of ethical norms that they personally hold due to the group dynamics in the form of the need for the accomplishment of goals at the expense of the needs of the individual.

In terms of a solution, Messick and Tenbrunsel note that tort laws and occupational health and safety regulations are of little coercive force, stressing that corporations must assume greater responsibility (Ten Bros 1997: 41). To achieve this, they propose an investigative mechanism that detects and eliminates corruption within the system (Ten Bros 1997).

The Business Roundtable has provided a more comprehensive set of corrective methods (Business Roundtable 1983). The list they have formulated is as follows:

- 1) Continuity of values in leadership of successive chief executive officers.
- 2) Development of a tradition of integrity in the promulgation of standards in all areas where quality is essential.
- 3) Written statements of belief and policy perhaps in the form of a credo or code and in crucial cases requiring annual signed statements signifying compliance.
- 4) Education and training in the meaning of policy and the seriousness of intent.
- 5) Consideration of ethical performance and interest in community affairs linked to performance evaluation and compensation.
- 6) Open decision-making in which differences of opinion are welcomed and the

relevance of ethical standards to proposals is discussed.

- 7) A central system, fortified by audit to supplement trust with broad surveillance.
- 8) Strict and public punishment of identified violations of law or policy (Business Roundtable 1983).

On the legal side, Rule 5.2 of the Model Rules holds that,

“A subordinate lawyer does not violate the rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer’s resolution of an arguable question of professional duty” (Model Rules of Professional Conduct, Rule 5.2.).

A number of things can be determined from this rule. First, it uses the phrase ‘a [subordinate] lawyer,’ which illustrates that the unit of the entity being dealt with in the Model Rules is the individual lawyer as opposed to the law firm. Ted Schneyer further stated in 1992 that, “disciplinary agencies have always taken individual lawyers as their targets.” They have never proceeded against law firms either directly, for breaching ethics rules addressed to them, or vicariously, for the wrongdoing of firm lawyers in the course of their work (Schneyer 1992).

However, from the mention of the ‘supervisory lawyer,’ it can be seen that the model rules do address ethical considerations that arise in law firms. Schneyer makes the observation that the number of lawyers in the private sector working in firms had grown to exceed those who worked as sole practitioners, and that firms had expanded to include fifty, or one hundred people in increasing numbers of cases (Schneyer 1992). Despite this fact, it can still be said that the focus still remains in large part on the individual, or in limited cases, a very small group of individuals (Schneyer 1992). This is because of the language of Rule 5.2 which speaks of a “professional duty,” and the context in which it is used. The latter assumes that individual lawyers are bound with the exception that in this particular rule it might be mitigated if there is an ‘arguable question’ that has been resolved by a supervisory lawyer (Schneyer 1992). Schneyer states that such a “traditional focus on individuals has probably resulted from the systems jurisdictional tie to licensing, which the state only requires for individuals” (Schneyer 1992).

This focus on the individual stands in direct contrast to the ‘corporate crime’ identified above and the large managerial structures leading to the diffusion of responsibility and information among the different divisions in a corporation. It follows that it is much more difficult for lawyers to engage in a ‘strategic ignorance,’ or assume a ‘bureaucratic mentality’ (Ten Bros 1997).

Also, the duty, which has risen to a ‘professional’ level, stands in contrast to the shunned corporate responsibility above in the face of ineffective tort laws, and occupational health and safety mechanisms. In other words, there is an absence of the internal investigative mechanism identified by Messick and Tenbrunsel, and accordingly, that concerning a disciplinary mechanism.

## 2.2. Different Needs of Business and Law: The Specific Example of the Emphasis for Confidentiality in Law vs. Whistle Blowing in Business

The general need for confidentiality exists in both business and law. In business, this can be seen by William Frederick’s theory stating that the need for economy, or ‘economizing,’ is

one of the fundamental motivations found in business (Perry, Robert, et al. 1999). Economizing is said to occur in nature, “when an organism acts ‘economically,’ that is, when it acquires energy from its environment and uses the energy to produce something of direct value for itself” (Perry, Robert, et al. 1999). In business, “the firm also economizes by drawing resources from its environment and striving to be economically efficient and productive” (Perry, Robert, et al. 1999). In the fierce world of competition that exists in capitalist societies, business firms attempt to “become ever more efficient” (Perry, Robert, et al. 1999).

It is this need for efficiency that can be said to provide a valid reason to require employees to keep vital company information confidential but also lead to unethical behavior. This occurs when efficiency is sought at the cost of societal needs. The requirement for confidentiality, accompanied by those concerning obedience and loyalty are said by Walter Manley to be considered the three “traditional responsibilities of the employee in our society” (Macy II, Walter W. 1990). Along with the ability to terminate inefficient employees at-will<sup>3</sup> they illustrate the need by businesses to make the most efficient use of their human resources. In fact, it is said that, “no enterprise can long survive,” (Macy II, Walter W. 1990: 30) without requiring such things.

However, it is not only the enterprises, but also the larger society that also needs to survive and have its larger interests protected. This can be seen from the description of whistle blowing as a ‘public policy *exception*,’ (Callahan, Sangrey, & Dworkin 2000) to the at-will-employment doctrine. Accordingly, whistle blowing has been recognized as having the valid objective of ‘exploring, deterring, and curtailing,’ wrongdoing, especially in the past fifteen to twenty years (Callahan, Sangrey, & Dworkin 2000). A clear example “grows out of a clash between a companies economizing values and the communities ecological values,” (Perry 1999) which takes the form of such things as global warming and rain forest depletion. Because of the overlap between society and business here, and because of the importance of protecting society, whistle blowing falls into the third category identified at the outset. This can be seen from the fact that both federal and state statutes have been passed in addition to there being a common law remedy.<sup>4</sup>

Interestingly, there has been an external effort by society that attempted to bring about internal ethical codes in the business world in this area. The Corporate Sentencing Guidelines (Callahan, Sangrey, & Dworkin 2000) attempted to “encourage corporate ‘right doing’ by mitigating sanctions such as large fees, corporate probation, and mandated negative publicity for corporations that have an effective compliance program, and are convicted of federal crimes” (Callahan, Sangrey, & Dworkin 2000).

Ultimately, it can be said that the business world’s valid need for confidentiality, which arises out of the need for economizing, must be balanced to the extent that the needs of the larger society are ignored and constitute wrongdoing.

In the legal profession, although a similar balance exists, it is significantly more tilted in the direction of upholding confidentiality. It has even been said that, “the effectiveness of

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<sup>3</sup> The employment-at-will doctrine states that, absent an explicit contractual agreement holding otherwise, an employee can terminate the employment at any time without reason or notice.

<sup>4</sup> According to Sangrey and Dworkin, the most significant legislation at the federal level is the False Claims Act, although they note that a general federal whistle blowing statute does not exist yet. Significantly, all fifty states have passed statutes, although the degree of support for such statutes is said to vary.

counsel is only as great as the confidentiality of its client-attorney relationship.”<sup>5</sup>

Anywhere a substantial tilt in balance exists, it may be met with criticism. The extreme instances arising here, which include the concealment by attorneys of their clients’ criminal acts, have been thought by some to be contrary to the interests of justice.

Why this ethical value is nevertheless held to be of such importance has been elaborated on by the court in the case of *People of the State of New York vs. Belge*.<sup>6</sup> It points to the adversarial legal system that exists in this country where “the interests of the state are not absolute”<sup>7</sup> but must be balanced by the constitutional rights of defendants, such as the right not to incriminate oneself.<sup>8</sup>

The United States does not use neutral fact finders, as civil law systems do. Instead, in the battle between parties assigned the specific interests of prosecution and defense, the ‘dignity of the individual’<sup>9</sup> must be secured by “the services of an attorney who will bring to the bar and to the bench every conceivable protection from the inroads of the state against such rights.”<sup>10</sup>

Strong arguments can be made against such an adversarial system where the potential ‘inroads,’ by the state have been artificially and significantly increased. This is done by the very nature of the system and the mandatory role assigned government prosecutors. In fact, it is possible that the extent of the need for confidentiality might lessen in absence of such system. Having adopted this system, however, the rights of individuals in general may be in a disadvantaged position if the defense attorneys do not ‘play the game’ by zealously representing their clients even in the face of a confession of guilt by the client.

Accordingly, it is said that,

“If the lawyer cannot get all the facts about the case, he can only give his client half a defense. This of necessity involves the client telling his attorney everything remotely connected with the crime ...[and so] for the client to disclose not only everything about this particular crime but also everything about other crimes which might have a bearing upon his defense, requires the strictest confidence in, and on the part of the attorney.”<sup>11</sup>

The different dynamics in this area help illustrate the fundamental distinctions here of profession vs. diversity and the existence of a uniform ethical code vs. general principles. If the situation in law is compared to a game, there is a common one being played called the ‘adversarial system.’ If lawyers fail to play this game in a uniform manner concerning confidentiality and otherwise, the offense of the government may trample on the constitutional rights of citizens in addition to the game being in danger of losing its integrity through confusion. Accordingly, there must be a relatively coherent ‘team’ of lawyers, or in other words, “a profession” and a common play book, which in this case might be the Model Rules.

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<sup>5</sup> *People of the State of New York vs. Belge*, 83 Misc. 2d 186, 372 N.Y.S. 2d 798 1975.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

In business, where there is more diversity, the entities involved on either side of the balancing process do not fit into the neat categories identified above. Instead, it is harder to keep track of which elements of society are being harmed amidst the wide variety of businesses and their activities. There is not one 'game' being played, but many, that are being conducted by different teams using different rulebooks. This is because despite the general needs for economizing and protection, the specific needs vary.

### 3. CONCLUSION

Although 'synergistically and intimately' related, a great many differences between business and law have been examined. This includes the group versus individual dynamics and the need for whistle blowing versus strict confidentiality which have led to very different systems of ethics. One means of interpreting the systems is to place them in the identified categories with business residing at the first stage consisting of generality and disorganization, and law at the second stage of internal consistency expressed through a common code of ethics.

In the examination of the group dynamics found in business, it has been shown that an accompanying lack of focus has allowed for relatively low levels of responsibility. However, it is also the general nature of the need for 'economizing' that has allowed for more of an equal balance concerning society's needs when employees have attempted to alert it to possible threats to those needs in the form of whistle blowing.

Conversely, the sharper focus which is on the individual in law, made possible by the existence of the profession has arguably lead to more responsible behavior on the part of lawyers. One significant reason is because the possibility of disciplinary action exists, that may take the form of expulsion from the profession. Society has been outraged, however, in the face of the strict adherence to confidentiality that is also a result of the profession and its common practices and code, even if the ultimate goal consisted of protection of individual rights.

At the core of such differences lies this fundamental distinction of profession versus non-profession. As corresponding systems develop in other nations, the determination must be made in each case whether or not the formation of a profession would be advantageous and/or appropriate. The distinction might be cited as the reason for the placement of legal and business ethics at the two different stages, with one uniform code serving as a model for the legal profession, while many diverse and less formal codes exist among businesses, ultimately leaving only general principles for the larger business world. Of course, when a pressing need existed, society provided the solidifying impetus and brought about the passage of laws that have regulated both business and law.

On a final note, which is of great significance in understanding the larger picture of American ethics, it can be seen that the three stages are not strictly hierarchical, and that there are interesting dynamics at work. Greater levels of commonality might be seen as good, and accordingly, the third stage might be thought to represent this 'best' category because the most people have agreed upon a common course of action and passed laws. However, problems remain in determining which category is best in an objective sense. This can be seen in the relative ineffectiveness of tort laws governing corporate behavior, absent proper measures at the corporate level. The 'best' category here could very well be a different one. In other words, it has been recommended by Messick, Tenbrunsel, and others that the

business world achieves the second category of internal discipline rather than the third.

However, the legal profession, which arguably has effective discipline and *has* achieved the second stage, is seen by some as having come together to yield too much power and to operate contrary to the wishes of society, or at least some of its segments, especially in the area of confidentiality. Some might easily advocate a move to the third category while the profession may be satisfied with its current stage.

What becomes important, then, for the world of business and law in each society is not necessarily to achieve a certain category. Instead, it is to be aware of the category that is currently applicable, and whether it is effective in accomplishing the needs of the group while adequately balancing the needs of the remaining groups. When there is cooperation between business, law, and society through such things as the addition of another layer of protection in the form of another category, or bringing about a switch from one category to a more suitable one, the three groups can compensate for each other's weaknesses. This can harmonize the differences and foster the synergistic elements leading to a more efficient and yet ethical society in the United States, which can eventually spread to other nations to establish a better world.

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