

Dear Joel,

Publicly traded companies do have conflicting responsibilities. They have legally defined responsibilities not only to their shareholders, but also to their employees, customers and suppliers, to potential investors and to regulators acting on behalf of society as a whole.

Corporate law emphasises the financial interests of shareholders to protect them from abuse by company managements. This has not always been successful. Enron, World Com, Paramalat and the rest of the recent corporate mega-scandals have all had shareholders as their primary victims. Those shareholders are predominantly investment and pension funds managing the savings of ordinary people.

Nothing in corporate law permits a company to ignore its other legal responsibilities in discharging those to shareholders. Despite the popular currency of the idea, there actually is no 'imperative' for companies to put their shareholders financial interests above all others. On the contrary, directors of companies who knowingly or negligently do so, and some do, are breaking company as well as other laws.

These other legal responsibilities define the wider interests of society. I accept that these can be inadequate, incomplete, badly designed and poorly enforced and that legal frameworks rarely keep up to date with changing expectations. I also accept that there are wider and subtler range of responsibilities that are not easily codified into law.

Your also say that the current interest in corporate social responsibility masks a campaign for a radical roll-back of all regulation. This parallels the widely held belief in some places that environmentalism is really a disguised attempt by closet socialists to throttle capitalism.

Some at the margins of both communities do have these fantasies. But many businesses are now looking to go beyond mere compliance with the law. Wouldn't we be better off working out how to identify and reward those corporate behaviours that really are more responsible?

Tom

Dear Joel,

There are three quite different lines of thought in your response; one dealing with the relationship between company law and other laws; another concerning the relationship between corporate social responsibility and corporate philanthropy and a third to do with the drive for deregulation.

I do not understand your first point. Company law defines the responsibilities of those individuals who hold office in public companies in relation to that company. That company is then bound by all the statutes that apply to its activities.

Directors who permit a company to break an applicable statute on, say, the environment, or racial or gender discrimination, are, by definition, not acting in the best interests of the company and thus break company law. The company itself is liable to whatever penalties apply for having broken that law. Furthermore, those directors are rendering themselves personally vulnerable to being barred as company directors.

Corporate philanthropy is not corporate social responsibility. It is just what it says and is of debatable value. Some companies do confuse the two and cite acts of corporate philanthropy as examples of corporate social responsibility. I think they are wrong to do so.

I completely agree with you that corporate social responsibility is no substitute for effective legal regulation. But not all legal regulation is effective. Nor is simply complying with currently applicable laws enough to define a company's behaviour as responsible. Establishing the limits of 'beyond compliance' behaviours is another dimension to be thought through. We need a constructive debate over the part both can play.

This debate is not advanced by political ideologues who believe that any regulation is an unjustified imposition on a company's freedom to pursue profits. Nor is it advanced by passionate campaigners who believe that only an ever more prescriptive web of regulations can bring about responsible corporate behaviour.

Yours,

Tom

Dear Joel,

We are clearly getting different legal advice or living in different legal regimes.

Companies do break the law, both by accident and, more rarely, intentionally. The penalties for breaches of environmental, labour or anti - discrimination regulations, primarily fines, are often low. Irresponsible companies do sometimes see this as an affordable cost.

Nevertheless, I have never come across a case where a company has even tried to defend such illegal actions on the grounds that obeying the law would have led them to breach their fiduciary responsibilities. As I have argued, there is, at least in British law, no such defence. Companies are required to obey all the laws that apply to them not just those they choose.

There is clearly a good case for tougher penalties for breaches of what you call regulatory law. Companies that consistently break the law collapse value for all the businesses in their sector. They also compete unfairly with those that observe the law. Responsible companies have no interest in protecting such free riders.

The existence of the corporate sector is the consequence of a bargain between business and society. Society has granted the owners of companies, both public and private, the privilege of limited liability in return for putting their capital at greater risk than they might otherwise be prepared to do and in return receives a flow of public benefits that might otherwise not be available.

I see the movement for corporate social responsibility as primarily an effort by society to renegotiate the terms of that bargain so that there is a greater flow of public benefits to meet rising public expectations. Smarter companies have little to lose and much to gain by being constructive partners in this renegotiation. The opposition to it is predominantly political as both the far right and irredentist left continue to fight yesterday's wars.

Yours ever

Tom

Dear Joel,

We are still not quite on the same legal planet. If the directors of a public company knowingly or negligently allow that company to break applicable laws then they are breaking company law.

This not only renders them vulnerable to possible criminal prosecution under company law and disqualification as directors, it also removes their limited liability protection and makes them personally vulnerable to civil suits for any damage done to others by the company's actions.

This is why public companies have assurance processes. These are internal management systems intended to ensure that a company's directors know what is being done on their shareholders behalf. Failure to put in place adequate assurance processes is itself a breach of a director's responsibilities under company law.

If a company breaks an environmental law and is found not to have installed an adequate assurance process, the directors are in breach of company law. If there was an appropriate assurance process in place, then the company has broken environmental law but not company law. If the directors of the company issued instructions that the environmental law should be broken then they are in breach of both.

I have spelt this out in some detail because your repeated assertion that there is no connection between company law and other laws is, in my view, simply wrong.

Complying with the law is a necessary but not a sufficient condition for corporate social responsibility. I agree about the need for a 'public, democratic and effective regulatory system'. But I am puzzled by what you think I am dismissing. I am in favour of companies being asked by society to go beyond compliance. The one is not a substitute for the other. If I am vulnerable to any charge about my responses to your arguments it is that I have taken them over seriously.

Yours,

Tom