

Social Policy and the Role of the Individual in Regulating Business Crime

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Abstract

What we are seeing today within the business community in Africa, what most of us are inclined to call the rot in business is but a fresh look at the changes that have taken place within our society. There is a growing concern especially from those outside the business community (those whose will is expressed through government legislation and enforcement), that the business community is violating the generally agreed upon rules. All these point to three major issues about business ethics; the first issue is our business specialisation; second, the use of business gains and finally, the nature of behaviour in business (the style of conducting business). A lot of business crime such as cheating on prices, labeling and quality have been facilitated and perpetuated by those outside the business community. It is in this background that modern Africans, in a society apparently characterised by anomie, urgently need to rethink their attitude towards crime in general and business crime in particular. To be able to address these concerns adequately, we should first focus on the factor of responsibility. Responsibility on the part of all those involved in the business exchange should be seen to be reflected in the organisation in which all the stakeholders in the business exchange are mutually rewarded from the business for as long as the exchange is desirable. The first step is for individual members of society to ask themselves about their individual duties in regulating business crime. They must begin by identifying the crimes they in their individual capacity have facilitated or are facilitating. Secondly, we must ask ourselves how much it will hurt to stop facilitating business crime compared to the losses obtained from facilitating business crime. Finally, if there is any rot in our business, then it can be argued that the rot is but a manifestation of those values we have institutionalised and internalised.

Introduction

Today, we notice a lot of rot within the business community in Africa. In Kenya, for example, corruption, both micro and macro, has become a second religion. Corruption at the micro-level includes cases of giving government officers money before or after signing a trade licence which one has duly paid for and which they are

supposed to sign anyway. In such context, it has been a difficult task for Kenyans to draw a clear distinction between a bribe and an act of appreciation. For instance, it is common practice for members to "honour" government officers with goats, sheep, chicken or even cash once one has had an opportunity to interact with the officers privately. The implication here is that the "honour given to people in position has always been appreciated and hence it has extended its boundaries to involve macro-level corruption such as arranging for huge kickbacks from contractors before awarding tenders in the business community, in the civil service and in other formal and informal institutions of the country. A point to note here is that our country is still in search of a common definition of corruption. One such search is by the Kenya Anti-Corruption Authority (KACA). In the story of KACA, we find a typical case of a painful abortion of an authority "we" had hoped would effectively tackle the vice of corruption.

The KACA was established in 1998 to deal with corruption cases in addition to related economic crimes as per the "dictates" of the International Monetary Fund and World Bank. According to the two institutions and other leading bilateral donors, corruption is the greatest impediment to socio-economic development of any country and hence, everything necessary should be done to fight it. With the establishment of KACA, the overall expectation was that Kenya would save face globally by wiping out all vices related to corruption and other business crimes.

This expectation notwithstanding, KACA did not achieve much as the then director was thrown into conflict with the government officials who ironically were supposed to support the authority to succeed. This was later exemplified by the fact that the then Director, Mr. Harun Mwau, was tried by a commission of judges appointed by the president to determine whether he was competent. This saw the exit of the first director of the KACA.

The operations of KACA were consequently thrown into a quagmire until the appointment of the second director, a High Court judge and the then solicitor general. In December 2000, a three-judge bench declared KACA an illegal body because it was not properly constituted.

This ruling caused international confidence in Kenya's law enforcement agencies to wane to such an extent that the World Bank and IMF insisted on the creation of another KACA as a condition for future funding. In view of the urgency of the donor aid to finance budget deficits, the first limb in the government's response to the High Court decision was the publication of the Constitution of Kenya (Amendment No. 2) Bill 2001. The bill proposed the setting up KACA but this time on a constitutional basis. This was aimed at vesting KACA with constitutional powers to prosecute and also to prevent future legal challenges.

Although the cabinet approved the bill, it was later rejected at the voting stage in the Parliament despite insistence by the IMF and the historic voting for

the bill by the president. The argument against the bill was that it was flawed and that it would only land the country in a constitutional quagmire when dealing with corruption and other business/economic crimes. Soon after its rejection in July 2001, the president established an anti-corruption unit in the police force whose competence in dealing with corruption and economic crimes has been questioned by the general public.

In view of the feuds that have faced KACA since its inception in 1998, the government's commitment to fighting corruption is doubtable in the eyes of observers. To the world, it is Kenya, and Kenyans therefore are the focus. To the Kenyans themselves, it is the state and its institutions such as KACA which are supposed to eliminate corruption; hence they are in focus. However, this paper, while focusing on business crime, discusses corruption and related business crimes as deeply rooted in the society since they are "born and bred" in it, and, thus, any effective management of the two vices needs to have an institutional framework that is made up of the people and their cultures in addition to state commitment.

The Individual in Society

Most of us are quick to blame the business people because "their enterprise" is not seen to be rewarding our individual interests. However, when blaming the business people, we forget that we are players in the business exchange. Ideally, the performance of any business does not depend much on the number of people who are rewarded by it (where the business community makes its profits and the other members of the society get the goods and services they need); nor does the success depend much on scientific management. The rewarding and management could be seen as secondary factors in the success of business.

We are concerned today about the rot in business because it has been proven that some members of the business community make their profits by cheating on quantity, quality and even prices. In the process of cheating, there emerges a distortion in the exchange which results in low performance or no performance of the business. However, as we are showing concern, we should note that the most important factor in the success of business is the responsibility of those involved in the business exchange: How they organise themselves so that all the stakeholders in the business exchange are mutually rewarded from the business for as long as the exchange is desirable. On the other hand, the exchange will be desirable only when there is collective consciousness that the exchange is there for all and therefore it is the responsibility of all to maintain it within the generally acceptable social standards. It is in this background that we should be constantly reminding ourselves that a society, once in existence, supercedes the individual in

personal capacity, but this does not mean that the individual with responsibilities is phased out of the community. What it means is that the individual takes a new identity: the "we" identity. This "we" identity should in turn be informed by the basic societal principles governing the individual's behaviour. At the bottom of those principles are the social interdicts and imperatives through which members are punished and rewarded, respectively.

Sometimes, we are quick to blame enforcement agencies for all the business rot that exists. We question what their duty is if not to regulate crime. The reality is that the economic institutions in which business is transacted and the political institutions which regulate business are just structures meant to sustain societal interdicts and imperatives. It is within the process of adherence to societal interdicts and imperatives that we construct organised communities. If individual members subject the societal do's and don't's to their (the individual) selfish interpretations, there definitely will be no common values and by extension no commonly shared norms leading to a state of normlessness.

The Outsider's View

The growing concern especially from those outside the business community (those whose will is expressed through government legislation and enforcement), that the business community is violating the generally agreed upon rules points to three major issues about business ethics. The first issue is business specialisation, the second is the use of business gains and finally there is the nature of behaviour in business (the style of conducting business).

As far as business specialisation is concerned, we should note that if as members of a society we identify our collective concerns in business, then we can organise ourselves according to those concerns. The concerns are by and large determined by society's natural and technological endowment. These are the concerns that members of the society have to finally translate into policy. Ideally, it is expected that once the collective concerns have been identified and accepted as policy, it forever after remains the members' responsibility to safeguard these concerns. Unfortunately, the application of this is questionable. At this juncture, one thing we should ask ourselves as individual members is what our role has been in facilitating business crime. Many business crimes such as cheating on prices, labeling or quality have been facilitated and perpetuated by those outside the business community. These are the people who are not sure what action should be taken against those committing the crimes. There is division, especially in third world countries, because most of us are stakeholders in the crimes. When, for example, you are aware that your relative is making profit through cheating and you do not oppose it because of sympathy, you are

facilitating business crime. It is this conflict of interest that has led to the failure of setting up strong institutions to legislate and enforce our general will in business. We have failed to set up institutions that would enable members to do that which they wish would be done (our desire as members of society and not as members of the business community) because as individual members, we subject social laws to our own selfish individual interpretations. The truth is that there cannot be general will where there is conflict; instead, there will be lawlessness (anomie).

On the issue of business gains, this forces us as individual members of society to come together and collectively agree on what is generally desirable. It is in this background that modern Africans, living in societies apparently characterised by anomie, urgently need to rethink their attitude towards crime in general and business crime in particular. We are busy insulating ourselves with the believe that "one man's meat is another man's poison" and therefore have refused to positively acknowledge the changes that have been taking place in Africans and their concomitant resulting into crime. We are always making concession when it does not hurt us directly but cry the loudest when it hurts us directly. In this way, our attitude towards crime is not guided by that which is generally desirable, but by the attitude that we should only be concerned when it touches our individual interests directly.

There is no consensus as to what should be the business ethics of profits and social responsibility. In profit ethics for instance, the conflict is between those who advocate for independence of the business people in deciding the profit margin and those who advocate for participatory involvement in the setting of profit margins. The latter would prefer to have credible social institutions enforce the commonly agreed norms on profits. Such is the behaviour that has eroded our duty of being responsible in business. The question is whether anyone will be responsible on our behalf especially when we are not committed enough to act on behalf of other people around us. In the African case, where a good amount of business crime is treated as normal, nobody is actually responsible. On social responsibility, Petit (1967: 8) correctly say that it is not an attitude that business organisation develops/adopts in a fit of benevolence like a decision to hold a company picnic. Social responsibility is, instead, inseparable from its response to the kind of world in which we live. Today's business cannot exist in modern society without reacting constructively to the social goals of society and the economic, technological, social and political forces that mould that society. Bowen (1956: 6) clearly defines social responsibility in business as that obligation of businessmen to pursue policies, to decide or follow lines of objectives and values of society. In Africa today, business, instead of responding to the African's reality of poverty and lack of institutionalised welfare, widens the gap

between the majority of poor and the handful of rich. The big question, no doubt, is whether our business is responding to the urgent needs of alleviating poverty, disease and ill health. Another question is whether business today is aimed at helping people overcome their problems first before they can effectively be able to participate in new processes such as globalisation—a process which is almost overtaking the African poor. Of particular interest is the rise of radical individualism which is predisposing the African to losing ethics in business. There is a don't care attitude in most business crimes. This has left just a handful of rewarded Africans, with the majority being locked out of any form of development. One thing we should remind ourselves at this point is that the ignored majority are first and foremost our concern before becoming the concern of those outside Africa. The loss of ethics in business can be equated with the loss of the Aristotelian virtue which includes loyalty and where individuals conceive themselves as part of a group: Where there is honour, which is but living up to the expectations of the group and there is also shame which conforms to the Ethiopian proverb, "where there is no shame, there is no honour" (Solomon, 1992: 220–222).

Finally, the issue of the nature of behaviour in business relates to the rules of the game. No doubt, there is a general consensus that in Africa, virtues such as honesty, fairness and trust are absent in the business community. It is as if Africans have reached a consensus that a business person must commit a crime in business to make the profit needed to survive in business; that our legislator must double up as a businessman to make ends meet and therefore must commit business crimes for survival; that our law enforcing officer must collude with a business person to get a share of the badly needed loot to survive in this society; and that as a member of the public, one must join the criminals because they are seen to "succeed". All these have separated the individual member from the institutions meant to implement and reinforce will (policy). Today in Africa, we are witnessing a growing gap between existing policies, implementing institutions and the behaviour of the individual in society. We have reached a situation where we have lost hope in correcting what is seen as a "sick society". Clinard and Abbott (1973: 46) are right in their view that food adulteration and the sale of unsafe and unhygienic meats and foodstuffs is probably far more extensive and serious in the developing countries where people are illiterate and have fewer resources. Regulating of crime becomes compounded where there has been a "decline in informal social control, greater opportunities for theft, and the rising prestige of material possessions, however small as status symbol" (ibid: 257).

To mention but one example, it has proved difficult to regulate cheating without resistance from the subscribers of the saying "willing seller, willing buyer". The "willing seller, willing buyer" has made it almost impossible to socially construct crime in business. However, from an ethical point of view there is a

crime committed if one party is not adequately informed to be able to enter into a contract willingly. The so-called willing buyer in micro business, for example, has in all cases been a man or woman forced by need to enter into a contract which leads to exploitation. Need and lack of enough information push the "willing buyer" to a business where he/she is permanently condemned to exploitation. Kenya's rural farmers are a perfect example of this kind of exchange. Although they are the basic producers, they remain poor as the literate and semi-literate ensure that they are kept uninformed of the market dynamics of their produce (lack of information by the victims of business crime). On the one hand, these rural illiterate producers are in need of other services which they can only get after disposing of their goods. The need and lack of knowledge make them victims of exploitation. Ultimately, we find that the majority of willing buyers in Africa are those who are forced to spend above their means. On the other hand, the willing sellers especially in macro business are the same bottom majority who are forced to sell (especially land) because of need.

The other task which has proved impossible to achieve in Africa is the task of regulating the law enforcing institutions without facing reluctance from its members who are not well compensated for their work and therefore are "forced" to rely on thriving business crimes from which they are heavily rewarded. The culprits of this behaviour find it very rewarding and therefore are not willing to enforce the law to curb business crime.

Putting the Individual Before Society

Our concern today about the weakening and absence of business ethics should be seen as a concern about the nature of the society in which business is being transacted. From this perspective, our point of departure therefore, should not be that of putting the businessman before society, as this will simply translate to putting the cart before the horse. The right thing to do, in order to regulate business crime, would be to put the society before the business as an institution. Solomon (1992: 21) writes about business ethics and says that the integrity of the corporation and of the individual within the corporation is the essential ingredient in the overall viability and vitality of the business world.

In any social setting, therefore, business will be seen to portray the business person as one who adheres to societal values in an endeavour to meet societal objectives. In this way, the individual business person, good or bad, will be seen as a creation of the society. This is so because a society is identified by its distinct commonly accepted goals or purpose which its members strive to achieve. An average member of the society must be individually committed to evolving and pursuing that which is common and mutually rewarding. In the struggle to

achieve the commonly desired goals, individual members should first and foremost be obliged to consciously create a favourable climate in which to operate. It therefore becomes the individual's responsibility to contribute in a personal capacity to the planning, setting up of systems and organising to meet common goals. This is the first step in creating basic societal principles or policies for relating and behaving. In other words, it is the first step to getting organised for the mutual benefit of all.

Organisation in this case means a state of being in which various institutions in that community function in accordance with their implied purposes. Each institution should therefore be seen as characterised by society's attitude set—socially recognised values and set goals. In this way, the economic institutions erected in any society could be those governed by the general will of the people.

Business ethics and therefore regulating business crime must begin from the individual member of a society. Individual members who have felt the need should move towards institutionalising their felt needs and internalising them. They should, for example, make it known and therefore accepted that unregulated business has its costs which they must work very hard to minimise. The first step is that individual members of the society asking themselves about their rightful duty in regulating business crime. This must begin with the identification of the crimes they in their individual capacity have facilitated or are facilitating. This will be the first step towards looking at business from an ethical point of view. Secondly, we must ask ourselves how much it will cost to stop facilitating business crime in comparison to the gains got from facilitating the same. This way, we will be looking business crime in the face and therefore will be making a step towards narrowing the apparent gap between existing policies, implementing institutions and behaviour. From there, we can move on to other suggestions like those of Clinard and Abbott (1973: 263) who say, "a partial solution, or mitigation of the problem is to include criminal policy in the overall development planning and to foresee crime control measure at least 5–10 years in advance."

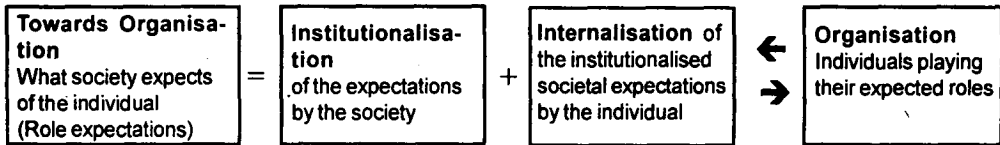
The suggestions by Clinard and Abbott can only be realised if there is effective functioning of the community's institutions. It would also depend on the effective performance of the community members and the efficiency of the mechanisms (social patterns and means of social control) through which members meet their common needs and purposes. This implies that if there is to be some acceptable measure of organisation in any community, two processes must take place. On the one hand, the organisation's members would have to institutionalise the mechanisms by which they meet their common goals. By institutionalising, the members will be pooling their common values with the aim of forming an organised society in which they can all fit better than have to survive in a

disorganised one where they merely exist. In this way, the members would have to operationalise the appropriate means of attaining their common goals which will include, among other processes, socialisation (schooling), bargaining and social control. The means, as a condition to success, need to be generally acceptable to the larger number of the community members. In socialising, members get to identify their group needs and prepare to coordinate their actions for the achievement of an integrated web of relationships for their collective survival. In bargaining, members start by subordinating their individual specific needs and interests to those of the group as a whole. Through social control, members' actions start being guided and constrained by the requirements of the larger human enterprise. On the other hand, the individual members have to internalise that which is institutionalised. The members who strongly feel that they need to regulate crime in their society have to submit to that inner compulsion to work towards and achieve the community goals, a process which involves motivation and having a positive attitude towards community goals among other things (see Ocharo, 2000: 2).

The process is illustrated by Charles Cooley's analysis of the individual in society. Cooley (1964: 24) sees that the individual in society has been oriented through a cultural system and responds to it. This means the acceptance of behaviour governed by mores, morals, attitudes, values, lifestyles and customs (societal interdicts and imperatives). The golden rule is that once put in place, the societal interdicts and imperatives become society's do's and don't's; individuals in their individual capacities must therefore submit to them as members of that society (the institutionalisation). The conclusion that can be drawn is that the process of the individual fitting into a desired society is complete only after the individual's roles have been institutionalised and the individual has in turn internalised the institutionalised roles (see Figure 1).

The illustration shows that there will be an organisation, if and only if, there is the institutionalisation of the individuals' expected roles by the society and the individuals have internalised the institutionalised roles. (Ocharo, 2000: 3). Policy formulation goes through the same processes of institutionalisation and internalisation. In this way, we find that the individual in a society plays a vital role in policy formulation by joining other members in deciding how their lives as groups should be lived.

Finally, if there is any rot in our business, then it can be argued that the rot is but a manifestation of the values we have institutionalised and in turn internalised. A change therefore means evolving new values which must be institutionalised and internalised for change to be realised.



Source: Ocharo, 2000

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