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A Historic View of the US Business Ethical Laws and Implications for Developing Countries like China

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Abstract

In the nearly 150 years of the US history, following big historical events or business ethical dilemmas, the business ethical laws have evolved gradually, which can be divided into 11 stages in 4 levels. In each stage, the emphases or governance purposes of the business ethical laws differ greatly, but tend to bear the sign of the times. Through the systematic review and analysis, the paper concludes that in a specific era of the history, when facing a specific ethical dilemma, the government or regulatory authority will develop and perfect the related regulations or norms of business ethical behaviors in line with the feature of the period so as to effectively prevent or solve the ethical problems in the business environment. The practice of the US institutional construction may be of some enlightenment for developing countries like China.

Keywords: US, code of ethics, sign of times, implication

1. Introduction

Business ethics refers to the values, principles or beliefs concerning right or wrong actions in business environments (Zhou, 2009). In fact, business ethics is a cross-disciplinary fiend of study based on relations between enterprises and society as a foundation. In recent years, as a result of economic development accompanied by more and more exposed business scandals, business ethical study has become a very hot topic in the society concerning long term sustainability of businesses. Therefore, it is important to make a study on the relationship between business people and customers, the laws, spirits or values and norms of business ethical conducts of the background of business entities ensuring to have a harmonious and prosperous future development potential.

Regarding the significance of business ethical norms and institutions, Chen (1987) argues that to ensure the healthy development of our market economy, we must nominate and regulate the professional ethics in the business world. Jiang Zengwei, a former vice minister of China Ministry of Commerce made a speech in a forum of corporate citizenship in Sept. 20, 2006 that in our country where there were frequent reports of business scandals like fake products, low-quality products, frauds, rights infringements, bribery, etc., we needed to perfect our related laws and regulations and strengthen our penalty on these immoral or illegal business behaviors in order to protect the interests of citizenships as consumers. According to Andrew (2008), the development history of modern business ethics is actually the history of perfection process of related laws and regulations. It is argued that the perfection of business ethical laws and the construction of business ethical values should be enhanced at the same time to play the roles of external regulation and enforcement and internal driving force and system.

In the Chapter of Ethics and Globalization in the Book of Business Ethics Now complied by Andrew (2012), there is an argument that as a result of globalization, more and firms go global to invest and trade, but facing the new challenges of business ethics in terms of differences of institutional existing between developing nations and developed nations, and that it is believed that more developed countries like the US may have more advanced or stricter rules and laws of business ethics or higher standards of business behaviors than less developed or developing countries. The assumption of this paper also argues that more developed economies are usually featured with a more institutional arrangement and market ethical control system so that less developed economies deserve to draw some experiences from them, which means that it is rational to conduct the study of this very paper.

The paper tries to make a systematic review and analysis of the business ethical laws and regulations in the United States of America to understand its development experience in the related regulations or norms of business ethical behaviors in line with the feature of a specific historic period so as to propose some enlightenment for developing countries like China.

The paper will answer the following questions: What are the ethical dilemmas faced in a specific historic period in the past decades? What are the laws and regulations developed to prevent or reduce the ethical issue? What are the implications of the US development experiences for developing countries like China?

2. Literature Review

In China, the study of ethics or morals has been more traced back to the study of Confucius ethical values of honesty, trust, loyalty, sincerity and so forth which have influenced the behaviors of generations of Chinese people for thousands of years in the history, even today (Zhu, 2007). Confusion culture is actually the origin of core business values of Chinese merchants such as Yue merchants (Cantonese businessmen), Jin merchants (Shanxi businessmen), Hui merchants (Anhui businessmen), and others. Ethical values are an important part of traditional cultures of a nation like China originating from the ancient and becoming the source of modern business management thought (Garry & George, 2009). These cultural values which generally demonstrate the nature of positiveness and integrity have virtually impacted the behaviors of business people in their business operations in China and other nearby nations like Korea and Japan, however, it should be noted that the effect of such ethical values is not really a kind of institutional regulation or norm regulating business people's conducts, but a type of intrinsic genetic transmission of the national culture. In the Western society like the US, the core values of business ethics chiefly developed from religious values have become an real type of institutional regulation or regulatory arrangement norming and controlling the acts of businessmen.

In the West, business ethics which has more to do with values and beliefs concerning good or bad business conducts and CSR which has more to do with business practices of balancing interests of different stakeholders can be traced back to Adam Smith, a Scottish moral philosopher, who is best known for An Inquiry into the Nature and Causes of the Wealth of Nations (Adam, 1776). The latter, usually abbreviated as The Wealth of Nations, is considered the first modern work of economics, which contains the moral element when he argues that the fair competition is key to the market system as an invisible hand. Friedman (1973) puts forward the theory of shareholders arguing that the social responsibility of business is to increase its profits and that it is not ethical for a business to conduct any activity other than bringing returns to its investors as a kind of fiduciary obligations. Carroll (1979) puts forward the hierarchy of corporate social responsibility, arguing that ethical responsibility is the third level of business obligations among the four levels of economic, legal, ethical and voluntary, while legal responsibility is the second level which is the required obligations of the business.

In 1987, George argued that business ethics which grew out of religion's interest in ethics in business and management education's concern with social issues, has become an interdisciplinary branch of study. Freeman (1987) proposes the theory of stakeholders, arguing that businesses should consider the interests of all stakeholders rather than shareholders to be ethical. Libby and Agnello (2000) examine the effects of gender, age, work experience, academic status and legality on certain ethical decisions, and finds that the legality of the decisions is determined and compared to the reason given by the students for their decisions. In some cases the choice made by a majority of the students was not the one that was supported by the legal authorities which suggests that there may be conflicts between the ethical system of the respondents and the behavior expected of them by society. Mallor (2010) makes a study on the development of business law: the ethical, global, and e-commerce environment in modern times.

In addition, as for the development of business ethical laws in the United States of America, Louis and David (2005), Knouse (2007), Zhu (2012), and Andrew (2014) et al., all have mentioned the issue of US regulation of ethical problems and the development history of CSR, etc. It is generally agreed that in the US's 150 years of business development, especially since 1960s, the US has regarded the institutionalization or regulation of ethical issues as the path to the enhancement of business ethical performance after some big ethical dilemmas occur. In other words, in a specific era of the history, when facing some specific ethical dilemmas, the US government or regulatory authorities will develop and perfect the related regulations or norms of business ethical behaviors in line with the feature of the period so as to effectively prevent or solve the ethical problems in the business environment. But all these above researches on the US business ethical laws and its evolution are not specific enough and also lack of more systematic summarization and reflection, not to say, its implications for the related construction of developing nations like China.

The paper will systematically summarize and answer what the ethical dilemmas are faced by the US in a specific historic period in the past decades and what the laws and regulations are developed by the US in order to prevent or reduce the ethical issues in the business world and simultaneously provide some implications for developing countries in their business ethical governance.

3. Historical View of the US Business Ethical Laws

As mentioned above, the US regulation of business ethical behaviors has shown a clear feature of times in the history. It is now generally accepted by people and firms that the US companies tend to demonstrate more higher or stricter ethical requirements in their global business operations than those of other nations, especially, the developing countries (Zhu, 2007). It is believed that the institutional perfection of the US in managing business ethical issues has played an important role.

First, in different eras of US CSR development history, there are new developments of codes or norms of business ethics with different focuses. In about 150 years of US business development history, accompanied by the occurrence of a historical event, the development of business ethics and corporate social responsibility enters a new stage, as a result, there are new developments of codes or norms of business ethics with different focuses.

Table 1. History of developments of codes or norms of business ethics

Series No.	Era	Historical Event	Developing Stage	Key Focuses of business norms
1	Before 1900	Mass production	Unformed	Advocating family religious values
2	1910s	Fordism	Stage 1	Giving up immoral Capital accumulation modes
3	1930s	Great Depression		Obeying government supervision
4	1940s	World War II		Supporting the war
5	1950s	Recovery		Earning profits for investors
6	1960s	Big society	Stage 2	Obeying dominant federal government
7	1970s	Institutional construction		Perfecting laws and regulations
8	1980s	Business scandals	Stage 3	Emphasizing on social contribution
9	1990s	Business ethical evaluation		Obeying rules and maintaining image
10	2000s	Globalization	Stage 4	Obeying host country laws and protecting environment
11	2010s	Online security		Protecting intellectual rights and online safety

Note. Adapted based on Knouse (2007) and Zhu (2012).

According to the above table, it is generally summarized and concluded that the focuses of business ethical norms in the US are featured as: religious values in the early 20th century, governmental roles and laws in the mid 20th century and international laws and virtual world rules in the early 21st century are respectively emphasized to direct or regulate business ethical behaviors.

In the first stage, religions and social powers play a key role in the regulation or norming of business ethics, in which the basic belief of business ethics institutionalization or regulation is that commercial businesses have the obligation to improve social life and welfare, such as they are expected to try best to satisfy customers, enhance product and service quality, and earn fair trade profits rather than competing in an immoral way. Before this stage, the unformed stage sees the model effect of fathers' values in business operations, but now in the first stage caused by the Industrial Revolution, religious beliefs first were the dominant business core values, then profit-seeking belief for business survival after the Great Depression in 1930s, and then business loyalty to the country and support to the war in 1950s. Since the World War II, the change of focuses of norms of business ethics has begun with the reduction of impacts of religious beliefs and the strengthening of profit maximization goals.

In the second stage between 1960s and 1970s, the institutional governance of business ethical behaviors changes from blur social recognition to clear business practices or actions, in which the construction of business ethics is embodied in the procedure and practice of business operations in line with government laws and regulations, for example, in 1960s, the US government passed a series of laws concerning product safety, advertisement integrity, and other social problems while in 1970s, more laws and regulations regulating the behaviors of businesses were passed and executed to the summit point. However, the over-emphasis of business ethical laws may result in the missing of the commonly-accepted ethical values with the excuse of “anything will be right if it does not break the law”.

In the third stage between 1980s and 1990s, the key feature of the development in business ethical regulation and construction is the refocusing of ethical values. This pressure from the public at this period forces the firm’s construction of business ethical institution to not only obey business ethical laws but also insist on a higher ethical standard. During this stage, the contents of business ethical regulation or norming have been enlarged to cover values such as loyalty, honesty, legality, infringing avoidance, etc., and to concern about the standards of conduct such as anti-trust, management responsibility, labor safety, business bribery, internal communication, business secrecy protection, employment prejudice, sexual harassment, charity, and environmental protection, etc. This stage has seen a characteristic change from purely emphasizing the importance of obeying the laws to simultaneously following the laws and the ethical values.

In the forth stage starting from 2000s, the key feature of the development in business ethical regulation and construction is international focus and global perspective as well as online security, in which more and more companies have developed to be multinationals or global competitors, so that the content of business ethical institution has expanded to international communities, which means that as a global citizenship, companies should consider business behaviors in terms of global version and actively undertake more intensive social responsibilities in international markets, such as obeying the local ethical laws, protecting the local environment, respecting the local culture and religious belief, etc. In addition, the issues of human rights, intellectual rights, political contribution, and so forth begin to be concerned in the US construction of business ethical behaviors.

Second, in the most recent five decades of the US history since 1970s, there are specific business ethical dilemmas in the society so that the regulatory construction of business ethical behaviors have been conducted correspondingly just in time. Actually, in 1960s and 1970s, the US society faces the pollution problem caused by business production and the tension of employer-employee relations caused by worker strikes. Companies try to resolve the problem by applying legal weapons and developing business codes of ethics. Ever since then, the US has started its process of five decades of business ethical regulation and institutional construction. Refer to Table 2.

Table 2. History of the US construction of business ethical laws

Series No.	Era	Main Ethical Dilemmas	Construction of Business Ethical Laws
1	1970s	Business scandals and industrial corruptions occurred, and the economic depression led to increased unemployment and infringement to human rights of workers	1977: the US established Ethical Resource Center (ERC) to develop national codes of ethics; 1977: the US Congress passed Foreign Corruption Practice Act to regulate the behaviors of US firms in developing nations
2	1980s	Bribery in national defense industries emerged, and frauds and false advertisement were serious	1980: the US ERC developed the ethical code of governmental services; 1986: the US Congress passed Defense Industry Initiative (DII) and the act of anti-fraud to regulate the behaviors of weapon trade companies in the national

			defense industry
3	1990s	New ethical dilemmas appeared as a result of globalization	1991: the US Congress passed the Federal Sentencing Guidelines for Organizations (FSGO) to regulate the behaviors of business organizations
	2000s	Enron accounting scandal happened	2002: the US Congress passed the Sarbanes Oxley Act (SOX);
			2004: the US Congress passed the Revised Federal Sentencing Guidance for Organizations (Revised FSGO) to regulate the behaviors of public accounting firms
4	2010s	Sub-prime mortgage crisis occurred, and online security problems happened	2010: the US Congress passed the "Senate Bill" and Dodd Frank Act to recover the confidence of people for the financial system, protect interests of bank customers and avoid the happening of new financial crisis

Note. Adapted based on Andrew (2008) and website information (2016).

Based on Table 2, it is seen that just before 1977, the US did not have a dedicated law of anti-corruption while business bribery and other illegal activities of the US firms in other countries could only be handled through the "secondary laws" such as Mail Fraud Act and Bank Secrecy Act as well Securities Exchange Act, etc., but the 1977 FCPA passed by the US Congress tried to send a clear message to the US companies operating in less developed countries that they should rely on quality and price to compete in host counties rather than submitting to the less rigid local laws and norms to conduct business by bribery or other immoral or illegal ways. According to FCPA, if the US companies break the law anywhere in the world, they will be punished accordingly.

In 1986, as a response to bribery scandals in defense industry, the US Congress passed the Defense Industry Initiative (DII) to restore people's confidence for military trade. The act contained six basic principles requiring that each enterprise should establish its code of conduct to follow strictly, and should mutually supervise their peers' unfair trade or unethical or illegal behaviors in the defense industry.

In 1991, as a response to organizational criminal cases, the UC Congress passed the Federal Sentencing Guidelines for Organizations (FSGO) which clearly specified that business organizations should be responsible for their workers and agents' criminal activities, and that the maximization penalty for organizations might be up to 290 million dollars, with the "death penalty" of putting the organization out of business. Routine government action for the FCPA is any regular administrative process or procedure, excluding action taken by a foreign official in the decision to award a new or continuing business, for example, providing permits, licenses or other official documents to qualify a person to do business in a foreign company; processing government papers, such as visas and work orders; providing police protection, mail pickup and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across the country; providing phone service, power, and water supply; loading and unloading cargo; or protecting perishable products or commodities of deterioration. In 2004, the US Congress revised the FSGO to make three big changes: first, companies were required to periodically evaluate the effectiveness of their compliance programs on the assumption that there was a substantial risk that any program was capable of failing; second, companies were required to offer the evidence of an active promotion of ethical conduct rather than just compliance with legal obligations; third, accountability was more clearly defined in the revised guidelines.

In 2002, as a response to the 2000 Enron accounting scandal, the US Congress passed the Sarbanes-Oxley Act (SOX) aiming to regulate public accounting firms' ethical behaviors. According to the law, the PCAOB (Public Company Accounting Oversight Board) was established to act as an independent oversight body for auditing companies and in charge of maintaining compliance with established standards and enforcing rules and disciplinary procedures for those organizations that found themselves out of compliance. The act also prohibited specific "non-audit" services of public accounting firms as violations of auditor independence, prohibited public accounting firms from providing audit services to any company whose senior officers (Chief Executive Officer, Financial Officer, and Controller) were employed by that accounting firm within the previous 12 months, and required the auditors to disclose all other written communications between management and themselves so as to ensure the independence of auditors.

In 2010, as a response to the 2008 sub-prime mortgage crisis resulting from banks' excessive risk exposures and highly lucrative compensation package, the US Congress passed the Dodd Frank Act. The Dodd-Frank Act, Dodd-Frank bill, or Dodd-Frank financial regulatory reform bill, was named after its two chief authors, Sen. Chris Dodd (D., Conn.) and Rep. Barney Frank (D., Mass.). In the fall of 2008, a financial crisis of a scale and severity not seen in generations left millions of Americans unemployed and resulted in trillions in lost wealth. The financial regulatory system was a principal cause of that crisis. And it allowed some irresponsible lenders to use hidden fees and fine print to take advantage of consumers.

To make sure that a crisis like this never happens again, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law, aiming to prevent the excessive risk-taking that led to the financial crisis. The law also provides common-sense protections for American families, creating new consumer watchdog to prevent mortgage companies and pay-day lenders from exploiting consumers.

4. Implications for Developing Countries like China

The nearly 150 years of the US business ethical development history indicate that accompanied by some historical events or major ethical dilemmas, the evolution history of the business ethical laws is actually the perfecting process of the related laws and regulations as responses to the ethical challenges. It is generally concluded that the US history of developments of codes or norms of business ethics covers 11 eras with 4 key stages, each of which may have different focuses and regulating or norming intention, but the overall tends to show a feature of times in a specific historic period with a specific ethical challenge. Especially in the most recent 50 years, namely the recent five decades of the US ethical development history have seen the key feature of enhanced and speeded regulatory perfection or institutional improvement in terms of ethical laws and regulations passed one after another as a response to the major ethical dilemma or business scandal event. As a result of the ongoing institutional construction of business ethical laws in the US, it is commonly believed that the firms in the US which is a well developed economy do demonstrate a higher ethical rule and moral standard in business operations or transactions compared with the firms in some developing nations. The research findings have at the least the following implications for the institutional construction of business ethical laws of developing countries like China:

First, it is essential for the government or legal authority to timely adjust and perfect the related business ethical laws when an influential ethical challenge occurs or a historical business scandal event happens.

Second, it is of great importance for a nation to send a clear message to its enterprises that they must always value and obey the commonly-accepted ethical values and business ethical laws wherever they are doing business in the world, otherwise, they will face strict punishment.

Third, the development of business ethical laws should reflect the key feature of current times. For example, as a result of globalization and Internet development, the institutional construction of business ethical laws and ethical codes by the government now should contain elements of a global perfective and online view.

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