

How and why to create an ethical culture in organizations?

Enrique Aznar
Lawyer and Compliance Officer
Aznar Legal & Compliance

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I Introduction

An important element in determining the existence of an efficient compliance program in the company ("compliance") is the demonstrable existence of a corporate culture based on ethical values. Undoubtedly, the companies of the 21st century are different from the companies of the 20th century, and they will still be more so. For new companies, their "culture" will be their "brand". Creating a brand today is very different from creating a brand 50 years ago. In a world connected by Internet, companies are becoming more transparent, whether they want it or not (1), due to reputational risks that may arise from a blog, a comment from a dissatisfied customer or an investigation by the authorities.

After a turbulent start of the millennium, not only in terms of geopolitics but also in terms of business ethics (remember the corporate scandals of the first years of the century: Enron, Worldcom, Tyco, etc., and the abuses in the financial markets that turned subprime mortgages into the unexpected origin of the world's biggest financial crisis), the second decade of the century is giving way to a reflection on the importance of values, the purpose and the social impact of companies.

The regulation initiated in the twentieth century (US Foreign Corrupt Practices Act (1997), OECD Convention on the Fight against Corruption of Foreign Public Agents (1997)) and continued in the 21st century after the aforementioned scandals (Sarbanes-Oxley Act (2002), Dodd-Frank (2010), UK Bribery Act (2010), Art. 31 bis of the Spanish Penal Code (2015) and others) offers an opportunity for reflection on the need to create corporate cultures inclined to do things well made, simply because the right thing is to do the right thing, instead

of simply bureaucratizing the activity of employers and their employees with rules, processes and tedious controls that, without the proper attitude, serve for little, as will be seen later.

The reflection on the establishment of corporate cultures based on ethical values generates the hope that the business world will seriously take up, finally, the important potential impact that the company can and should have in the construction of a new type of Society, a better world and the raising of the levels of consciousness of its interest groups, in particular, and of the Society, in general.

In addition, the implementation of Management by Values (MbV) in the business world, considering not only the ethical values but also the other two axes of complementary values (pragmatic and emotional), as well as the reconsideration of the final purpose of the business activity, is giving rise to a new type of company that seeks the development of its employees to its maximum potential and, ultimately, facilitates the achievement of personal and collective happiness.

Investors, employees, customers and public opinion increasingly expect companies to do the right thing and make contributions to the Company beyond the minimum regulatory requirements. Reputation and people are the main assets of many companies. Reputation takes years to develop, but it can be lost with just one inappropriate action. Companies that maintain a good reputation attract customers, investors and talent. Today, we see highly capitalized companies facing serious difficulties for having missed the opportunity to reflect on what corporate culture they truly wanted to create. Building a strong ethical corporate culture based on values and socially legitimated should be one of the objectives of each Board of Directors.

II The culture of "compliance" and the criminal responsibility of the legal person

The Organic Law 1/2015, by regulating the criminal liability of legal persons, places the concept of ethical culture or compliance culture in the axis of criminal responsibility of the legal entity. However, article 31 bis of the Criminal Code does not refer to the ethical or compliance culture. It is the Circular 1/2016 of the State Attorney General's Office (*Fiscalía General del Estado*) that establishes that the organization and management models are not intended to avoid the criminal sanction of the company but to promote a true business ethics culture. The key to assessing its true effectiveness lies in the importance that the prevention program has in the decision making of the company.

For the Spanish Supreme Court (*Tribunal Supremo*), the compliance culture should be a source of inspiration for action at all levels of the company, manifested in concrete ways of monitoring and controlling the behavior of managers and their hierarchical subordinates in order to avoid commission of crimes and that must be accredited with adequate and effective crime prevention instruments within the legal entity (2)

III Corporate scandals: what have we learned?

At the beginning of the 21st century, some large companies collapsed due to corporate scandals. This had a tremendous negative impact on its shareholders, customers and employees, as well as on the Company in general. Currently, companies are focusing on developing high performance cultures and this can only be achieved based on ethics. In addition to the impact on employee morale, companies face the risk of not being able to acquire or retain talent, the deterioration of their image in the market in front of clients and regulators and the impact of fines and research costs of the companies. infractions (which have cost some companies billions of dollars) and the imprisonment of some of their managers.

There has been no corporate scandal to date that has generated more interest in the field of business ethics than the spectacular rise and fall of Enron. Enron was recognized as a model company. It enjoyed the trust of banks and rating agencies, as well as the best lawyers and audit firms. At its peak, Enron's share reached 90 dollars, with a market capitalization of more than 60 billion dollars, making it the seventh largest company in the world by turnover. In 1997, Enron was identified by Fortune magazine as one of the most admired companies and had been the subject of case studies at Harvard Business School. Its CEO, Ken Lay, was named by Business Week one of the best 25 executives of the year. Enron met perfectly with all the requirements of an exemplary company, including its corporate social responsibility activities, ethical decision-making tools and philanthropy. In 2000, Chief Executive magazine included Enron among the companies with the best management boards. A few months before its fall, Fortune magazine named Enron the most innovative company for the sixth consecutive year. The credentials of the company were above reproach. External observers (including academics and investment analysts) admired the company for the quality of its executives, its products and services, the talent of its employees and its continuous capacity for innovation. Even in the weeks leading up to their fall, financial analysts on Wall Street recommended "overweighting" Enron's shares. Its fall during the third quarter of 2001 also dragged the audit firm that had approved the accounts of Enron, Arthur Andersen, one of the largest and most reputable of the moment. The fall of Enron was the result of an

extensive corporate system that engendered and endorsed the opaque methods of the company, which included lobbying of politicians, creative accounting, silence of advisors and board members and concealment of debts, without considering the possible consequences long-term or the sustainability of the company (3).

Enron is a clear example of organization in which employees were so identified with the dominant norms or statements of values that effectively renounced the freedom to exercise their own common sense and assess what was right. Instead, they trusted their ethical responsibility to an ethical code or to a boss who should do the ethical work for them. Most people associate goodness with conformity to values privileged by "authority" instead of exercising the freedom to accept or transgress those values. In the case of Enron, it is possible to appreciate how attention to the corporate media to develop an ethical culture can displace and obscure important ethical issues and weaken the capacity to act ethically. The appearance of an excellent reputation and a commitment to integrity transmitted through corporate values and its 64-page code of ethics clashed head-on with corporate practices that generated secrecy, rivalry and fear. Enron conceived its employees not as free individuals but as agents with their own interests that should be induced (rewarded or punished) so that those interests would be channeled in the desired direction. Enron, used its exemplary ethical code and corporate governance to "incentivize" certain individuals, either with options on the company's actions or with the threat of dismissal in the case of not achieving the objectives, to act in a way that only the interests of the superiors were important (3).

IV The role of the "Compliance Officer" in the creation of an ethical culture

To ensure that neither employees nor business partners participate in any inappropriate transactions, companies try to implement a solid compliance program, provide sufficient training, perform due diligence, adequate evaluation of their business partners and develop a strong ethical culture. This program will include different workflows focused on establishing the right tone at the apex of the organization, creating an adequate compliance function for the company, conducting risk assessments, raising awareness in the organization on legal and compliance issues, identifying and communicating on possible infractions and their consequences and development of people's compliance skills through adequate training, establishing adequate communication and reporting channels to report irregularities and possible violations of the Code of Conduct, collaborating with other control functions (internal control, internal audit, etc.) and

reporting on progress internally and externally. The risk and impact evaluations and the internal materiality analysis are useful to inform the definition of the main performance indicators relevant to the company's performance, performance and corporate responsibility and to prioritize the work of the compliance function (4).

Clearly, there is great pressure to increase the ethical levels of companies. This can be seen as a great challenge but the truth is that it offers an opportunity to provoke a radical change. Compliance officers can address the legal requirements and shape the activities of the company in order to identify and solve internal and external problems. They also have the opportunity to facilitate the development of an ethical culture, going beyond criminal compliance. Compliance officers, as agents of change, are more likely to succeed in their performance if they manage to know the business and communicate the importance of doing the right thing (doing the right thing is the right thing to do!). Inevitably (and unfortunately), companies that have suffered a corporate scandal will be more sensitive to compliance issues and the role of the compliance officer will receive more attention and recognition than companies where compliance risks seem remote.

To create an ethical culture, the objective of the company must go beyond mere regulatory compliance, building a business model in which it actively seeks a social impact and that, based on the purpose and core values of the company, that include integrity and respect, can be aligned with the principles and objectives of international frameworks, such as the Global Compact or the Sustainable Development Goals of the United Nations and others. In 2011, the United Nations endorsed the Guiding Principles on Business and Human Rights, proposed by John Ruggie, United Nations Special Representative for Business and Human Rights, as the global standard of practice for which companies are expected to respect human rights.

The Compliance Officer will add value to the company's strategy to create an ethical culture that provokes a positive impact by proposing four key elements to Management:

- Creating value by actively seeking to offer organizational and commercial solutions to social problems that are directly or indirectly related to the company's activities.
- Reduction of costs and risks with preventive measures, improved management of risks and problems, identification of opportunities to combine the benefit of cost and social performance, as well as the increase of the energy efficiency of networks and office buildings.
- Search for a competitive advantage through corporate responsibility activities, linked to the company's main business, that distinguish the company with fair employment practices and community activities that

align closely with the company's commercial strategy and core competencies.

- Development of the legitimacy and reputational capital of the company with strong relationships with the communities in which it operates, the commitment of the interested parties and the presentation of transparent reports and communications.

With the support of the Compliance Officer, companies have to make difficult decisions and, at times, they will lose business opportunities due to the possible unethical implications of some operation. However, in the long term, compliance is associated with stability and trust. It is also a matter of personal responsibility and decency.

V Management by Values (MbV), a new leadership approach based on the culture of the company

In the words of professor Salvador García, the emergence of the post-capitalist society, which will be characterized by a greater Values Intelligence and will be based on the awakening of a greater connection with ourselves, with others and with Nature, will be the result of the inspiring and legitimating initiative of many new leaders "hosts of values" (5).

The role of these new leaders "hosts of values" will be to promote co-creation organizational dynamics that lead to meaningful conversations with oneself and with others, facilitating the context in which the spiral of personal development can manifest itself, organizational and social (6).

According to Salvador García, good leadership inspires and legitimizes the intelligent choice of shared values, both final values that give meaning to collective action (vision and mission of the organization), and ethical instrumental values (authenticity, generosity, respect ...), pragmatic (simplicity, effort, coherence ...) and poietic or emotional (imagination, joy, confidence ...) that adequately orient the members of the organization in the search for their full personal and collective development. The articulation of these three axes of values («Triaxial Model») is essential to give them mutual legitimacy between them and thus create a balanced culture (7).

As everything begins in the individual and in his capacity to realize ("consciousness") and take into account ("conscience") what happens in himself and in the environment, the first generative wave of impact is that of personal development. Development and personal change is the core of all systemic change: without it, development and organizational change or development and

social change are impossible (7). Once the path of personal development has been activated, the second circle of development involves the institutions and organizations of work and the third, and broader, corresponds to the development and social change.

VI What is an ethical culture?

The concept of corporate culture began to be forged decades ago from theoretical and field works such as those of Edgar Shein and Peters and Waterman.

More recently, Frédéric Laloux describes the culture of an organization as the set of assumptions, norms and concerns shared by the people who make up the organization. It's how things are done without people having to think about it. The corporate culture makes or undoes organizations, makes them prosper or stumble (8).

For Michel Foucault, an ethical culture is not one in which employees comply with the letter of an ethical code. An ethical culture in an organization is one in which its members are vested with the responsibility of self-analysis, weighing their individual obligations and responsibilities in relation to their professional and organizational responsibilities ... before applying decision and decision-making standards (9).

We can identify several types of ethical cultures in the corporate world: 1) that characterized by the absolute neglect of ethics (non-ethics); 2) the "minimum" or normative ethic (the one that deals with creating norms and procedures to avoid the commission of unlawful acts) or facilitate the exemption of liability in the case that they are committed, and 3) the generative ethics characterized for the ethical, emotional and pragmatic values mentioned above.

A strong shared culture is the glue that keeps organizations cohesive, united and effective. Employees have the confidence of the organization to make decisions, guided by a small number of well-shared values, rather than by a thick manual of rules and policies. These organizations place an inspiring purpose at the heart of everything they do. Employees feel appreciated and empowered to contribute. These organizations often also consider their corporate responsibility as an integral part of their mode of operation. Social responsibility is often at the center of its purpose, and it provides the motivation that makes them innovate and become better corporate citizens (10). The culture of an organization should be shaped by the context and purpose of the organization, and not only by the personal presumptions, norms and interests of its founders and its leaders (11).

Ken Wilber, the founder of Integral Theory, discovered a profound truth about the nature of reality: any phenomenon has four facets and can be approached from four sides. Applied in organizations, this means that you should look at 1) the mentality and beliefs of its members, 2) the behavior of the people, 3) the culture of the organization, and 4) the structures, processes and practices of the organization (12) (13).

Dov Seidman (14) establishes a classification of corporate cultures into four types: 1) Anarchy and misgovernment; 2) Blind obedience, 3) informed acquiescence, and 4) Self-government. Most groups are organized in a progressive and evolutionary state embracing elements of all of them. They require some coercion of blind obedience (disciplinary dismissal, for example), some rules, some anarchy and a measure of self-government. Some groups may also have different and related cultures operating at different levels of the organization. A board of directors may have a different culture than the management team, which, in turn, supervises teams that may have unique characteristics. In the fourth group (self-government) everyone assumes personal responsibility for maintaining a safe work environment because they understand that it is in the interest of the group that the organization and its members do not incur risks. They are organizations that are based on shared values. There is a big difference between employees who believe in some values and others who comply with a number of standards. Values have the power to inspire and not just motivate. Self-government based on values controls unwanted behavior while inspiring a higher culture. An employee aligned with a company's value will be an employee less likely to betray that value because doing so would not only be a violation of a corporate policy but would be betraying itself.

Investing in creating an ethical culture does not imply, far from it, giving up the economic benefit. There is a correlation between the ethical culture of an organization and its return to the shareholder (15). Happy employees, motivated and committed, satisfied customers with the values of the company and managers who do not have to dedicate time and effort to resolve scandals allow companies to focus on achieving their purpose successfully.

VII How to create a generative ethical culture?

Beyond compliance with a "minimum" or normative ("compliance") ethic, the establishment of a "generative ethical culture" is a consequence of raising the level of consciousness (awareness) and awareness (take into account) of the members of the organization. In order to raise the level of consciousness of a company, it is essential to have the full support and involvement of its owners and its leaders. For Laloux, the general rule seems to be that the level of

consciousness of an organization can never be greater than the level of consciousness of its creators (16).

In this sense of doing things right from the start, the idea of management by values takes on special importance (17).

A journey of cultural evolution will only succeed if, in addition to the strong commitment of the Management Team, there is a strong alignment between the departments of People (also called Human Resources) and Internal Communication, as well as the active participation of each manager and employee. Clearly and adequately identifying and communicating the purpose of the company and its values is key. Finding a good balance between up and down is also critical. Both levels need to develop and transform. To achieve the evolutionary leap, all participants must be in tune and take coherent initiatives that resonate within the organization.

Building a generative ethics culture is a great co-creative exercise, involving everyone in the company in meaningful and continuous dialogues to build new relationships based on values between people, functions and, in the case of multinational companies, countries, ensuring that everything the world is headed in the same direction.

We could use the simile of the organization as a living system and represent the cultural transformation as a human body with its head and limbs (Method LEAP-X). In the head we would find the leadership of the creation exercise of the new culture whose mission would be to facilitate, guide and inspire dialogue within the company so that employees co-create the new culture and achieve the desired harmony, coherence and resonance in the cultural construction trip. This model of governance would be composed of: (1) a dedicated cultural creation or transformation office ("Participative Project Team") that would inspire, support and coordinate the different initiatives and operate as the catalyst for cultural change, (2) a commission formed by representatives of the management and of different functions, regions and operations that would supervise the process and evolution of the change, and (3) a community of cultural transformation formed by employees in operations and functions that would be in charge of the start-up of different activities in the different headquarters of the company.

In one of the upper extremities, there would be the creation, development and planning phase of the change exercise. In this phase, the company would identify its purpose, its reason for existing, its ethical, pragmatic and emotional values, the desired behaviors that reflect the experimentation of those values, the required skills, the reporting processes, etc. They would be the employees of the company, including the management, who, through different workshops, with

different formats and discovery tools, would discuss and identify that purpose, values and desired behaviors.

In the other upper extremity, we would find the phase of commitment and participation, in which different types of actions aimed at materializing the elements described in the creation phase would be visualized. Through face-to-face co-creation workshops and on-line tools, all employees would have the opportunity to participate and discuss the different components identified in the creation phase and to visualize, debate and even recognize or reward those members of the organization that demonstrate a particular alignment with the values of the company, through different recognition programs. Involve management and employees in different workshops and activities such as "day or week of values", in which all employees of the company are invited, through playful or introspective activities, to revisit the purpose of the organization, the values and the standards and ask themselves to what extent, individually or in their teams, live that purpose, values and norms. Collective lunches in the office, including presentations with internal or external speakers and examples of visible actions help raise awareness about the desired culture and allow employees and senior executives to raise their level of awareness. Prizes to recognize and reward the correct behavior and create models or ambassadors for the desired culture of the company through a structured democratic process are also useful tools in a transformation of the culture. Workshops on the visualization of the future and even the redesign of the office in a way that reflects the values of the company can be part of this phase of commitment and participation. Some organizations even create spaces of silence in which employees can meditate, practice yoga or pray. An interesting practice is the one described by Laloux regarding the German company Heiligenfeld, in which every week a relevant topic is discussed, such as conflict resolution, values, failure management, interpersonal communication, bureaucracy, innovation, risk management, mindfulness, etc. (18). Cultural change is a long journey that may not necessarily be planned with a road map. It is about making people feel moved: their hearts, their minds ... and their pockets.

In one of the lower extremities we would find the measurement phase. Here we would evaluate the progress and impact of the change in the organization. Surveys, pulse controls and focus groups are useful tools to identify priorities and measure progress, identify desired behaviors and define the actions that make these behaviors visible. Behaviors, symbolic acts (or rituals) and processes (or systems) are the main elements that define a corporate culture. Key performance indicators can be built around them. Sharing information is also important. A database with the activities carried out, open to all members of the cultural transformation community, to see and use as inspiration, share successful initiatives, best practices and learnings, helps accelerate the transformation process. This database can also be used to generate reports for senior

management, which is responsible for measuring and monitoring progress in the transformation of culture.

In the other lower limb we would find the development phase. In this phase, it is the company that must make an effort to make available to employees the necessary tools for their development and training. Visits to companies that have carried out a similar transformation, on-site or online courses, coaching, development of constructive evaluation methodologies, etc. They could be used in this phase.

VIII Conclusion

To ensure that neither their employees nor their business partners participate in any illegal transaction, companies try to establish robust compliance programs, provide training and carry out due diligence on business partners. They also develop tools that help make decisions that minimize the risks that can destroy their reputation and create exposure to fines, penalties and loss of market capitalization, among other things. However, this "minimum" ethic ("compliance") is necessary but not sufficient.

Companies must establish adequate structures of corporate governance and develop a strong ethical and generative culture based on ethical, emotional and pragmatic values, in which their employees do the right thing because it is the right thing to do, and not out of fear of reprisals otherwise.

Building a generative ethical culture requires determination and patience. The importance of creating the right culture must be perceived by the owners and leaders of the company, who must have an appetite for evolution and development. Creating a new business culture is an exercise in coherence, tuning and resonance. As in an orchestra, it is not a matter of all the instruments playing the same score. To produce a beautiful symphony that resonates between the performers and the audience, what is really important will be that the score for each instrument is part of a coherent system and that the instruments are properly tuned. With the proper essay, which in French is interestingly translated as *répétition*, and the help of a good inspirational conductor, the resonance will be guaranteed (!).

We are used to assessing companies according to discounted cash flows or similar criteria. Perhaps in the not too distant future companies will also be valued for their culture or social impact. However, there will be no cultural transformation unless people are prepared to transform themselves. This is probably the most difficult challenge in a culture transformation and in the creation of an ethical culture.

Regardless of the positive externalities (greater creativity, greater employee loyalty, greater social legitimacy, etc.), the highest ethical / axiological standards provide meaning to organizations and address most of the global problems that affect our economy and our Society.

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