If It’s Legal, It’s Ethical—Right?

Bruce Weinstein

Imagine that you are producing a reality TV series about alcoholism. You like the cinéma vérité approach (otherwise known as the “fly on the wall” school of filmmaking), so you have your crew follow the routine of a woman, Pam, who is struggling with this disease. At one point, Pam decides to go for a drive. Before leaving the house, Pam takes a swig of vodka. She is in no position to get behind the wheel, so you ask her if she would like for someone in the crew to assist her.

She mumbles, “No, I can drive,” and heads out to her Pontiac Sunbird. Fearing that the woman could be a danger to herself and others, you prevent her from getting into her car and turning it into a killing machine, right? Wrong. You let her drive off.

WHAT?

Well, according to an article in the Oct. 8 issue of The New York Times, this is actually how a member of the team responsible for the A&E program, Intervention, responded to the situation. As disturbing as the choice to do nothing is, The Times notes that “legally, producers are treated like witnesses: They bear no responsibility to intervene.” Consider the following statement from Michael J. O’Connor, an attorney who has represented reality shows such as Survivor and America’s Next Top Model, as quoted in The Times:

“Television producers are not policemen. On a moral level, you get to the point where stepping in seems like it would be something you’d want to do. But from a legal standpoint, third parties causing injuries to other third parties is not something a television program is really responsible for.”

O’Connor’s statement raises three meaningful questions that apply not just to the world of TV but to the world at large:

1. Are our responsibilities limited to what the law requires of us?
2. If we are legally allowed to do something, does that mean we ought to?
3. If there is no relevant law to speak of with respect to a “What should I do?” problem we’re facing, does that mean that anything goes?

The answers to these questions are: No. No. No.

Ethics vs. the Law

Imagine that you are at the end of your life and you are looking back on all you did and didn’t do over the years. Imagine also that your life was dedicated primarily to satisfying your own needs and desires. When faced with the question, “What should I do?” you inevitably chose the solution that benefited you in some way, no matter how this choice affected others. How would you evaluate a life lived in this fashion?

Even if it was the case that you never broke any laws, you cannot say that you lived your best life, because life should not be solely about “me, myself, and I.” To be fully human and be a part of civilized society means to go beyond what the law demands of us. It means to live according to ethical rules and principles, many of which ask more of us than the law does. The answer to “What should I do?” should therefore not be, “What can I get away with legally?” but “What does ethics ask or even require of me?”

There are other differences between ethics and the law. Laws change over time. Laws vary from state to state. Most significantly, political and economic interests, and not the interests of the people, often determine which laws get passed and what is in those laws. Ethical standards, however, transcend time, place, and the whims of politics.

Forms of Punishment

For example, when you encounter an inebriated person who is about to go for a drive, you may not legally be required to get involved, but ethically you are, even if you are a producer of reality TV shows. It is no defense to say, as Intervention Executive Producer Sam Mettler does in The Times article, that “this is their life with me or without me.” As soon as you show up with a camera, you are ethically implicated in the choices your subject makes.

In fact, simply by being an observer, you are ethically accountable for what happens on your watch. To be a member of the human race is to care for what transpires in the world around us. It is hard to imagine how any law could demand that we care for strangers or require punishment if we don’t.

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From the Pages of History

Let’s delve more deeply into the schism between ethics and the law. Consider the following facts from U.S. history:

1. Slavery was perfectly legal until the 13th Amendment to the Constitution abolished it in 1865.
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2. Children were allowed to work in mines, glass factories, and textile and other industries instead of going to school until the Fair Labor Standards Act was passed in 1938.

3. Women didn’t have the right to vote until 1920.

4. In Dec. 1, 1955, in Montgomery, Ala., Rosa Parks broke the law when she refused to give up her bus seat to a white passenger.

How is it possible that a practice that was legal in the past is now against the law? Is it the case that slavery, for example, used to be ethical, but now it isn’t? Of course not. Ethics hasn’t changed. The law just took awhile to become aligned with what is right.

Although business as an institution has been getting a bad rap in the mainstream media for the wrongful conduct committed at Enron, Adelphia, WorldCom, Tyco, and other companies, let’s not forget those organizations that took the high road, went beyond what the law required of them, and ultimately reaped many rewards. For example, in 1982, seven people in the Chicago area died of cyanide poisoning after unwittingly consuming tainted Tylenol capsules. Within a matter of days, Johnson & Johnson responded aggressively by withdrawing all 31 million bottles of the drug (with a retail value of over $100 million), creating a new, triple-sealed package, and offering consumers deep discounts.

Effectively and Ethically Managing Crisis

The law did not require Johnson & Johnson to take such measures, but by doing so, the company earned the respect of consumers and the media alike, and this case is now widely taught in business schools as an example of how to manage a crisis effectively—and continue to prosper. Those seven who died can never be brought back, but J&J took extraordinary steps to ensure that no one else would be in jeopardy. Here we are, 25 years after the fact, still talking about how the company conducted itself admirably.

(Disclosure: Several years ago, I gave a few speeches that were sponsored by Vistakon, a subsidiary of Johnson & Johnson.)

For many more examples of companies that took the high road, even when they had no legal obligation to do so, see the latest issue of Ethisphere magazine.

For any law, we can and should ask: Is it right? Is it fair? Is it just?

The ultimate standards for deciding what we ought to do are ethical, not legal, ones. As the Intervention example shows, sometimes we are not legally obligated to do what we ought to do. Our history of failing to recognize the inherent dignity of women, children, and African-Americans shows that the law sometimes gets it all wrong. And the Tylenol case suggests that companies that value doing the right thing rather than what is merely legally required of them may not only endure, but prevail. As this column has endeavored to show over and over, the reason to do the right thing is simply because it is the right thing to do. Businesses that take ethics seriously, however, often find themselves winning over consumers and a skeptical media alike.

We are a nation of laws, and our society would quickly devolve into anarchy without the rule of law as a binding, motivating force for all of us. Nevertheless, the ethical principles of Do No Harm, Make Things Better, Respect Others, Be Fair, and Be Loving are the true basis of our society, and it is to those principles we ought to return every day when we ask ourselves: “What should I do? What kind of person should I be? How can I bring out the best in myself and others?”

Yes, laws are important. But all of us, and not just the employees of a certain manufacturer of hot dogs and salami, should answer to a higher authority.